

Malawi

## Education Act

### Chapter 30:01

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# Malawi

## Education Act

### Chapter 30:01

Commenced on 6 December 2013

*[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, organization, governance, control, regulation and financing of schools and colleges; to provide for the establishment of the Teachers Council of Malawi; to provide for the establishment of the Malawi Institute of Education; and to provide for incidental matters thereto**

#### Part I – Preliminary

##### 1. Short title

This Act may be cited as the Education Act.

##### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Advisory Council**” means a Council established under [section 6](#);

“**assisted college**” means a college which is maintained in whole or in part by grants-in-aid;

“**assisted school**” means a school which is maintained in whole or in part by grants-in-aid;

“**Board**” means the Board of the Malawi Institute of Education;

“**Board of Governors**” means a Board of Governors established under [section 25](#);

“**college**” means a teacher training college other than a university established under any written law or any other university recognized by the Minister;

“**Council**” means the Teachers' Council of Malawi established under [section 57](#);

“**Education Appeals Tribunal**” means a tribunal established under [section 42](#);

“**Government college**” means a college wholly maintained by the Ministry out of public funds;

“**Government school**” means a school wholly maintained by the Ministry out of public funds;

“**Government Teaching Service Commission**” has the meaning ascribed to it under the Government Teaching Service Commission Act;

*[Cap. 30:08]*

“**grant-in-aid**” means a grant of money from public funds or the funds of any public authority or local government authority in aid of any school, college or education activity;

“**Institute**” means the Malawi Institute of Education established under [section 82](#);

“**local government authority**” means a District Council, Town Council, Municipal Council or City Council;

“**maintain**”, in relation to a school or college, means to pay the current outgoing expenses of the school in respect of staff salaries, wages, tuition and boarding costs, rent, repairs, electricity and water supply and similar expenses;

“**manager**”, in relation to a school or college, means a person other than the head teacher or principal, who, on behalf of, or instead of, the proprietor, attends to the maintenance of a school or the employment and supervision of staff;

“**parent**”, in relation to a student, includes a guardian, whether by customary law or otherwise, and every person who has the actual custody of the student;

“**primary education**” means at least the first seven levels of formal education;

“**primary school**” means a school at which primary education is provided;

“**proprietor**”, in relation to a school or college, means the person in whom is vested the ownership, custody or control of the place at which the school or college is carried on, and of the buildings, equipment and other things provided for the student attending the school or college and, where such ownership, custody or control is vested in more than one person, includes both or all of them, and any person registered as the person authorized to act as a manager on his or their behalf, but shall not include a landlord or other owner who has no right to immediate possession;

“**Register of Schools and Colleges**” means the register of schools and colleges established and maintained in accordance with [section 34](#);

“**school**” means an institution at which a student receives regular secular instruction whether by personal tuition or by open and distance learning and any assembly of students for the purpose of receiving any such regular secular instruction, and any institution or place from which regular secular instruction emanates, or is imparted by means of open and distance learning, and includes any part of a school and any playing fields, recreational facilities, workshops, dormitories, kitchens, sick bays, hostels, laboratories staff quarters and ancillary buildings used in connection with a school, but does not include—

- (a) any institution, assembly or place maintained or approved by a Ministry or Department other than the Ministry for the purpose of providing specialized instruction; or
- (b) any institution, assembly or place in which the instruction is, in the opinion of the Minister, wholly or mainly of a religious character:

Provided that any class, division or section of any such last mentioned institution, assembly or place in which instruction is, in the opinion of the Minister, wholly or mainly devoted to secular subjects, shall be deemed to be a school;

“**student**” means a person of any age for whom education is provided or is required to be provided under this Act and any person enrolled on any register of enrollment of persons in attendance at a school or college maintained in a school or a college;

“**teacher**” means a person authorized or licensed to teach in accordance with this Act;

“**university**” means a university established under any written law, and any university recognized by the Minister by notice published in the *Gazette*.

### 3. Application

This Act shall not apply to—

- (a) a university;
- (b) any education institution which is established, administered, controlled, licensed or supervised under the provision of any other law;



- (c) an institution established by a department of the Government other than the Ministry, except as may be prescribed by order in consultation with the Minister responsible for the portfolio subject under such department; and
- (d) any other institution that provides education solely of a religious, social or recreational nature.

## **Part II – Promotion of education**

### **4. General duties and powers of the Minister**

- (1) It shall be the duty of the Minister to—
  - (a) promote education for all people in Malawi; irrespective of race, ethnicity, gender, religion, disability or any other discriminatory characteristics;
  - (b) formulate policies, plan and manage information systems at national level;
  - (c) mobilize and allocate resources;
  - (d) design and develop the national curriculum;
  - (e) set and maintain national education standards;
  - (f) monitor, assess and evaluate the education system; and
  - (g) provide effective mechanisms for a transparent and accountable education system at all levels.
- (2) In the exercise and performance of all the duties and powers conferred and imposed upon the Minister by this Act, the Minister shall have regard—
  - (a) to the general guiding principles of access, quality, relevance, efficiency, equality, equity, liberalization, partnership, decentralization, transparency and accountability; and
  - (b) in particular, to the general principle that, in so far as is compatible with the provision of efficient instruction and training and the avoidance of excessive public expenditure, students are to be educated in accordance with the wishes of their parents.

### **5. Goals of education in Malawi**

- (1) The purpose of education in Malawi shall be to equip students with knowledge, skills and values to be self-reliant, and to contribute to national development.
- (2) Without prejudice to the generality of subsection (1), the national goals of the education system in Malawi shall be to—
  - (a) promote national unity, patriotism and a spirit of leadership and loyalty to the nation;
  - (b) develop in the student, respect for the Constitution of Malawi and the principles of good governance;
  - (c) inculcate in the student, acceptable moral and ethical behaviour;
  - (d) develop in the student, an appreciation of one's culture and respect of other people's culture;
  - (e) develop in the student, an awareness of appropriate environmental resource utilization and management practices;
  - (f) develop in the student, an appreciation of the impact of rapid population growth on the environment and delivery of social services;
  - (g) impart vocational and entrepreneurship skills in the student in order to raise personal income and improve living standards;

- (h) develop in the student respect of practical work in order to stimulate industrial development;
- (i) promote equality of educational opportunity for all Malawians by identifying and removing barriers to achievement;
- (j) develop in the student knowledge, understanding and skills needed by Malawians to compete successfully in the modern and ever-changing world;
- (k) develop in the student a spirit of inquiry, independent thinking and problem solving; and
- (l) promote innovation and development of appropriate technologies.

### **Part III – Advisory Council**

#### **6. Establishment and powers of the Advisory Council**

- (1) There is hereby established an Advisory Council to advise the Minister on matters affecting education.
- (2) The powers and functions of the Advisory Council shall be to—
  - (a) advise the Minister on educational matters upon the Advisory Council's own initiative or any question referred to the Advisory Council by the Minister;
  - (b) monitor and evaluate the implementation of educational policies;
  - (c) monitor the improvement and maintenance of quality in the education system;
  - (d) initiate review of overall effectiveness of particular aspects of the education system;
  - (e) foster public awareness and understanding of education policies;
  - (f) provide the Minister with professional information and advice for the development and execution of national policies of education; and
  - (g) exercise and perform such other powers and functions conferred or imposed upon it by or under this Act.

#### **7. Composition of the Council and its procedure**

- (1) The Advisory Council shall, subject to this section, consist of fifteen members who shall hold office for a period of three years and the members may be eligible for re-appointment at the expiry of that term for one more term.
- (2) The Minister shall, for the purposes of appointing members of the Advisory Council, by notice in the *Gazette*, invite bodies or institutions with interest in education to nominate persons for appointment.
- (3) The members of the Advisory Council shall be persons with sufficient interest or experience in the education sector or in some special aspect of the education sector.
- (4) The Chairperson and Vice-Chairperson of the Advisory Council shall be elected from among the members at the first meeting of the Council.
- (5) The Secretary of the Advisory Council shall be an official from the Ministry.
- (6) The Advisory Council shall determine its own procedures.

## 8. Invited persons

The Advisory Council may invite any person or persons to attend any meeting of the Council or any of its committees and such person or persons may take part in the proceedings of that meeting but shall not be entitled to vote.

## 9. Reporting

The Chairperson of the Advisory Council shall report to the Council at each meeting the action taken by the Minister in any matter on which the Council has advised the Minister.

## 10. Orders to be published

The order appointing an Advisory Council, and every appointment, revocation of appointment, and resignation of a member of an Advisory Council, shall be published in the *Gazette*.

# Part IV – Grants and loans in aid of schools and other education institution

## 11. Expenditure by Minister

The Minister may, from time to time, from public funds available for such purpose—

- (a) establish, maintain or make grants or advances on loan in aid of schools or colleges and services related to education;
- (b) maintain or make grants or advances on loan in aid of boarding accommodation, physical training and recreation at schools and colleges;
- (c) maintain or make grants or advances on loan in aid of anybody or persons, institutions or organizations which promote the education of the people of Malawi or a substantial section thereof; and
- (d) subject to the Technical, Entrepreneurial and Vocational Education and Training Act or any other written law, make grants or advances on loan in aid of any person who provides technical instruction by way of an apprenticeship scheme or otherwise.

[Cap. 55:07]

# Part V – Primary education

## 12. Provision of primary education

- (1) The provision of primary education shall be the responsibility of the local government authority for the area over which it exercises its jurisdiction.
- (2) Notwithstanding subsection (1), a local government authority may enter into an agreement with another local government authority to administer and manage primary schools in the jurisdiction of the other local government authority.

## 13. Free and compulsory primary education

The provision of primary education in Government schools shall be free of tuition to all and compulsory for every child below eighteen years of age.

#### 14. Appointment of education committees

- (1) Every local government authority shall appoint an education committee to which it shall refer all matters relating to the performance of its duties and exercise of its powers under this Act.
- (2) Every local government authority shall appoint an officer to be secretary to the committee.
- (3) A committee appointed under subsection (1) shall submit quarterly and specific reports to the local government authority.
- (4) Every local government authority shall consider a report from its education committee before exercising any of its powers under this Act.

#### 15. Duties of local government authorities

The duties of a local government authority shall be to—

- (a) implement the Government primary education policy in its area of jurisdiction;
  - (b) estimate the immediate and prospective needs of its area in respect of primary schools and primary education and the financial and other resources available for the establishment, maintenance, staffing and other requirements of such schools;
  - (c) prepare and submit to the Minister a plan (in this Act referred to as a “development plan”) within such time and in such form as the Minister may direct, showing the action which the local government authority proposes should be taken for furthering primary education in its area and to prepare and submit to the Minister further development plans from time to time whenever required by the Minister, and to carry into effect development plans for its area published by the Minister;
  - (d) provide such funds as are available to it for the establishment and maintenance of primary schools, educational services related to primary education, physical training and recreation at primary schools and other expenses of primary education in its area in accordance with the primary education development plan for its area as the local education authority shall publish from time to time;
  - (e) exercise control, in accordance with this Act and any subsidiary legislation made under this Act, over primary schools in its area, to allocate funds provided for such schools and to control expenditure in accordance with estimates approved under any written law applicable to the authority and, in particular, to ensure that money provided by or through such local government authority for a particular purpose at any school is so used or is refunded;
  - (f) prepare and submit to the National Local Government Finance Committee established under the Local Government Act annual estimates of revenue and expenditure in respect of matters relating to primary education in its area in such form as the National Local Government Finance Committee may, by rule, prescribe;
- [Cap. 22:01]*
- (g) compile financial records and keep such financial books and other documents, and make such returns in respect of financial and other matters relating to primary education as the National Local Government Finance Committee, with the concurrence of the Minister responsible for Finance, may prescribe;
  - (h) comply with all policies adopted and guidelines issued by the Minister in accordance with powers conferred on him by this Act; and
  - (i) make recommendations to the Minister with respect to the ownership, management and registration of private primary schools.

## 16. Development plans

- (1) A development plan shall cover such period as a local government authority may in any case decide and may provide for all matters in respect of which the local government authority has duties and powers.
- (2) In the preparation of its development plan, a local government authority shall consult the proprietors or persons representing the proprietors of all schools other than schools maintained by the local government authority which would, in the opinion of the local government authority, be affected by the execution of the plan and shall, after preparing the plan as soon as practicable furnish to the proprietors of every school such particulars relating to the plan as are sufficient to show the manner in which the school would be affected by the execution thereof.
- (3) Where a development plan has been prepared under this section, a local government authority shall, if it is of the opinion that no particulars or insufficient particulars of the plan have been furnished to any person who, in its opinion, would be affected by the execution of the plan, give such directions as it considers expedient for securing that sufficient particulars are so furnished.
- (4) A local government authority shall make available a copy of the development plan to the proprietor of every primary school in its area.

## 17. Powers of local government authorities

For the purposes of fulfilling its duties under this Act, every local government authority shall have power to—

- (a) receive subvention or sums of money as Parliament shall appropriate for the purpose of primary education;
- (b) seek and receive, with the approval of the Minister responsible for Finance, grants-in-aid from public or private funds;
- (c) allocate funds for the establishment and maintenance of primary schools, educational services related to primary education, physical training and recreation at primary schools in its area;
- (d) provide funds for scholarships and bursaries for maintenance and transport of pupils attending courses of instruction approved by the Minister within its area or outside;
- (e) determine the siting and establishment of primary schools, through the education development plan or otherwise,
- (f) require a proprietor of any primary school in its area to provide such information regarding the staff, students, classes and equipment of such school, the fees payable and received for tuition, boarding and otherwise, the funds available for maintenance and expansion of such schools and all such other information as it may require for the purpose of the preparation of development plans;
- (g) allocate, in accordance with regulations made under this Act, funds provided by the Minister for primary schools in its area;
- (h) maintain primary schools in its area, educational services related to primary education, physical training and recreation connected herewith;
- (i) where it is justifiable, withhold any grant-in-aid to any assisted primary schools;
- (j) inspect the buildings, furniture and equipment of and records, books and accounts kept at all primary schools in its area, report to the Minister the result of such inspections, and take steps to remedy any faults found; and
- (k) attend to the performance of all its other duties under this Act or under any subsidiary legislation made under this Act.

## 18. Composition of education committee

- (1) Every education committee shall consist of such number of members as may be appointed by a local government authority from time to time.
- (2) A chairperson of the committee shall be elected from among its members at the first meeting of the committee.
- (3) A local government authority may, by simple majority resolution, remove from the membership of the committee, any member of the committee on reasonable grounds of which the member has had written notice of not less than twenty-one days.
- (4) Vacancies in the committee may be filled from time to time by appointing members from the local government authority.
- (5) An officer appointed as secretary of the committee shall attend all meetings of the committee but shall not be entitled to vote.
- (6) An education committee may, where necessary co-opt any person to attend a meeting of the education committee but such a person shall not be entitled to vote.

## 19. Delegation of duties and powers of education committees

- (1) Every local government authority may delegate the performance of its duties under [section 15](#) (a), (b), (c), (e) and (g), and the exercise of its powers under [section 17](#) (b), (d), (e), (f), (j), and (h), to its education committee.
- (2) The education committee of a local government authority shall prepare for the approval of the local government authority—
  - (a) draft annual estimates of revenue and expenditure in respect of matters relating to primary education in the area of the authority; and
  - (b) draft development plans.

## 20. Duties of secretary

A secretary of an education committee shall—

- (a) undertake the preliminary preparation of the work of the committee, including the preparation of estimates, education development plans, reports and other documents;
- (b) carry out school inspections on behalf of the committee;
- (c) take such other executive action as a local government authority or the committee may lawfully direct;
- (d) when required, assist and advise school management committees and proprietors of primary schools;
- (e) interpret Government educational policy to the local government authority and the committee; and
- (f) carry out any other functions which the local government authority may direct.

## 21. Establishment of school management committee

- (1) Each local government authority shall establish a school management committee in respect of a Government primary school or assisted primary school.

- (2) In establishing the school management committee, the local government authority shall ensure that—
  - (a) the community served by the school is represented;
  - (b) where applicable, the proprietor who established the school is represented; and
  - (c) there is a representative of the local government authority.
- (3) The local government authority may co-opt, on the committee persons who are not members of the committee but where a matter is to be decided through a vote, the co-opted persons shall not be entitled to vote.

## 22. Notice to be published

The Minister shall, by a notice published in the *Gazette*, provide for—

- (a) the number of members of a school management committee;
- (b) the membership representing the proprietor, a local government authority and the parents of students or the communities served by the school or group of schools;
- (c) the tenure of office of the members and the method of ensuring continuity of membership of the committee;
- (d) the revocation of the appointment of, the retirement and resignation of members of the committee and the appointment of new members and of temporary members in the case of absence or inability to act of any member;
- (e) the co-option on the committee of persons who are not members; and
- (f) such other matters as the Minister may prescribe in respect of the constitution, functions or procedure of the committee.

## 23. Functions of school management committee

- (1) Subject to this Act, the function of a school management committee shall be to assist in certain aspects of management and to advise a local government authority on any matter the committee deems appropriate.
- (2) Without prejudice to the generality of subsection (1), the functions of the school management committee shall be to—
  - (a) observe the attendance and punctuality of teachers and students and advise the proprietor on the times at which the school session shall begin and end on any day;
  - (b) advise the proprietor on the appointment, supervision and dismissal of any non-teaching staff;
  - (c) advise the proprietor on the appointment, resignation or dismissal of any teacher from the school;
  - (d) satisfy itself as to the maintenance of the school fabric and the provision of school furniture and equipment to the standards approved by a competent authority;
  - (e) satisfy itself as to the implementation of reports by inspecting officers, where the reports relate to any matter mentioned in this subsection;
  - (f) advise the proprietor on the provision of religious instruction to an agreed syllabus, which in the case of schools established by a religious body, shall be in accordance with the tradition of the religious body;
  - (g) satisfy itself as to the proper payment of salaries to teachers;

- (h) consider and advise the proprietor whether the conduct of the school is generally in accordance with the wishes of the parents; and
- (i) advise the proprietor on the admission or refusal of students.

#### 24. Obstruction of school management committee

If a local government authority is satisfied that a proprietor of an assisted school is obstructing the work of a school management committee, the local government authority may suspend payment of any money due to be paid from public funds to that school.

### Part VI – Management of secondary schools and colleges

#### 25. Management of Government secondary schools and colleges

- (1) The management of Government secondary schools and Government colleges shall be under the control of the Minister.
- (2) The Minister may, where he considers such action desirable for the improvement of education, by order published in the *Gazette*, establish a Board of Governors for any Government secondary school Functions of school management committee or college or group of Government secondary schools or Government colleges.
- (3) A Board of Governors established under subsection (2) shall have such powers and duties as are set out in the order by which it is established, and shall, subject to [section 26](#), be composed of such persons as the Minister may determine.

#### 26. Content of order establishing a Board of Governors

- (1) An order establishing a Board of Governors under [section 25](#) shall provide for—
  - (a) the Board's exercise of the duty of management of a secondary school or a college or group of secondary schools or colleges specified in the order subject to such limitations or restrictions as may be so specified;
  - (b) the number of members of the Board;
  - (c) the representation on the Board of the Ministry, parents of students, the community or communities served by the secondary school or college or group of secondary schools or colleges and such bodies or organizations as, in the opinion of the Minister, are necessary to be represented on the Board;
  - (d) the method by which continuity of membership of the Board will be provided;
  - (e) the revocation of the appointment of, the retirement and resignation of members of the Board and the appointment of new members and of temporary members in case of absence or inability to act of any members thereof; and
  - (f) such other matters as the Minister may consider necessary in respect of the constitution, functions or procedure of the Board.
- (2) A Board of Governors established under subsection (1) shall be a body corporate, if the order by which it is established so provides, by the name of the Board specified in such order, with perpetual succession and may sue and be sued in its name and shall have power to enter into contracts and to own land.
- (3) With the consent of the Minister responsible for Finance, any such order or any subsequent order may vest in such body corporate any property used for the purposes of any school or college affected by the order.



- (4) An order made under this section may be added to, varied, or revoked by the Minister at any time.
- (5) Where any property is vested in a Board of Governors, the order vesting the property shall provide for the responsibilities, duties and powers of the Board in respect of the use of such property at times when it is not required to be used for purposes of education.

## **27. Responsibilities of proprietor of a secondary school or college**

- (1) The responsibility for the management of a secondary school or college other than Government owned, shall rest on the proprietor.
- (2) In cases where the proprietor of a secondary school or a college consists of more than one person, all such persons shall be jointly and severally responsible for the management of the secondary school or the college and each shall be responsible for the acts and omissions of the others relating to such management.
- (3) The proprietor may, with the written consent of the Minister, and subject to the provisions of Part VII relating to registration, appoint a suitable and qualified person as manager to perform his duties during the temporary absence of the proprietor from Malawi or in other circumstances approved by the Minister.
- (4) The appointment of a manager shall in no way relieve or excuse the proprietor from his responsibilities and liabilities under this Act.
- (5) Any proprietor who would have been liable under this Act to any penalty for anything done or omitted to be done, if such a thing had been done or omitted to be done by him personally, shall be liable to the same penalty if such thing has been done or has been omitted to be done by his co-proprietor, manager, servant or agent.

## **28. Board of Governors of assisted secondary schools and colleges**

- (1) Where, in the opinion of the Minister, it is desirable that a Board of Governors should be set up to manage an assisted secondary school or assisted college or a group of assisted secondary schools or assisted colleges, he shall consult the proprietor, of the secondary school or college or proprietors of the group of secondary schools or colleges, as the case may be, for that purpose.
- (2) Where, in the opinion of the proprietor of any assisted secondary school or assisted college or group of assisted secondary schools or assisted colleges, it is desirable that a Board of Governors be set up to manage the secondary school or college or group of secondary schools or colleges, the proprietor or proprietors as the case may be, shall submit a proposal for that purpose to the Minister.
- (3) The Minister may, by order published in the *Gazette*, establish a Board of Governors for a secondary school or college or group of secondary schools or colleges to which such proposals relate in accordance with any agreement which may be reached between him and the proprietor.

## **29. Contents of order, assisted secondary schools or colleges**

- (1) An order establishing a Board of Governors under [section 28](#) shall provide for—
  - (a) the name of the Board;
  - (b) the Board's exercise of the duty of management of the secondary school or college or group of secondary schools or colleges specified in the order, subject to such limitations or restrictions as may be specified;
  - (c) the membership of the Board, including representation on the Board of the Ministry, the proprietor, parents of the students, or the community or communities served by the secondary school or college or group of secondary schools or colleges, and such bodies or organizations as may be agreed upon by the Minister and the proprietor all in such numbers and proportions as may be so agreed;

- (d) the method by which the continuity of the membership of the Board may be provided;
  - (e) the revocation of the appointment of, the retirement and resignation of members of the Board and the appointment of new members thereof and of temporary members thereof in case of absence or inability to act of any members thereof;
  - (f) the respective responsibilities, duties and powers of the Board and of the persons, if any, in whom any land or other property is vested in trust for or for the benefit of any secondary school or college affected by the order and in respect of the use of the buildings and grounds of any such secondary school or college at times when they are not required to be used for purposes of education; and
  - (g) such other matters as the Minister may, in agreement with the proprietor, consider necessary in respect of the constitution, functions or procedure of the Board.
- (2) A Board of Governors established under subsection (1) shall be a body corporate, if the order by which it is established so provides, by the name of the Board specified in the order, with perpetual succession and may sue and be sued in its name and shall have power to enter into contracts and to own land.
- (3) An order under [section 28](#) may vest all or any property of the proprietor in the Board of Governors or in the trustees of the secondary school or college, or group of secondary schools or colleges thereby affected.
- (4) In any case in which property is or remains vested in the trustees of a secondary school or college or group of secondary schools or colleges, the order establishing a Board of Governors thereof may provide that the Board shall have the sole responsibility for management of the secondary school or college or group of secondary schools or colleges and in such case the trustees shall, notwithstanding any other provision of this Act, be under no liability as proprietors for any act or omission in relation to the management of the secondary school or college or group of secondary schools or colleges by the Board of Governors thereof, who shall be solely responsible for their own acts and omissions.
- (5) An order made under [section 28](#) may be varied or added to by the Minister at any time with the agreement of the proprietor or proprietors of the secondary school or college or group of secondary schools or colleges thereby affected:
- Provided that if such proprietor or proprietors have died or ceased to exist, such variation or addition may be made without any such agreement.

### **30. Stamping and registration**

- (1) An order made under [section 25](#) or [28](#) by which any property is vested shall not be liable to stamp duty and any officer concerned with the registration of title, or documents relating to the title of the land affected by such order shall, at the request of the Minister, register the same or a copy thereof without payment of any fee:

Provided that the order or copy shall not be presented for registration except in accordance with the regulations and forms ordinarily governing registration in such registry.

## **Part VII – Establishment, classification and registration of schools and colleges**

### **31. Establishment of Government schools and colleges**

- (1) The Minister may, for the purpose of discharging his functions under this Act, establish and maintain such Government schools and Government colleges for the provision of education.

- (2) The establishment of a Government school or a college other than a school providing primary education, may include the establishment or provision of hostels and other buildings for the boarding of students and housing of teachers, as the case may be.

### **32. Establishment of private schools or colleges**

- (1) Subject to subsection (2), any person may establish and maintain a private school or college at his own cost and expense.
- (2) No school or college other than a Government school or Government college shall be established except with the approval of the Minister.

### **33. Classification of schools or colleges**

All schools and colleges shall be classified as follows—

- (a) Government school or Government college;
- (b) assisted school or assisted college; and
- (c) private school or private college.

### **34. Registration of schools and colleges**

- (1) The Minister shall cause to be established and maintained in the prescribed form, a Register of Schools and Colleges, in which shall be entered the particulars required or permitted under this Act or any subsidiary legislation made under this Act.
- (2) For the purposes of such Register, a system of classification shall be adopted which distinguish schools offering primary education from other schools.

### **35. Duty of proprietor to conform to registered particulars**

- (1) The education provided in any school or college shall be in accordance with the particulars, from time to time, registered in respect of such school.
- (2) Any proprietor of a school or college, who refers to such school or college in any correspondence, advertisement or literature of any sort or description in such manner as to suggest that the school or the college is of a type or classification other than that in which it is, for the time being, registered under this Part, commits an offence.
- (3) The proprietor of any school or college who does any act calculated to lead to the belief that the school or the college is registered while it is not registered under this Act commits an offence.

### **36. Procedure for establishing a school or college**

- (1) Any person desirous of establishing a school or college shall first apply to the Minister for the registration thereof, in accordance with [section 34](#) and any subsidiary legislation made under this Act.
- (2) The Minister may, refuse any application for registration of a school or college if any of the conditions specified in subsection (3) or any other condition under this Act is not satisfied.
- (3) The Minister shall register a school or college, if he is satisfied—
  - (a) that the school or college and any hostel premises or other facilities provided or to be provided at the school or college, are suitable and adequate in accordance with the prescribed minimum requirements applicable to a school or college;

- (b) that the proprietor is—
  - (i) a resident of Malawi; and
  - (ii) a fit and proper person to be responsible for a school or college of the classification and type in respect of which the application is made; and
- (c) with the undertaking of the proprietor that—
  - (i) adequate financial provision has been made or guaranteed for the maintenance of the school or college for a reasonable period;
  - (ii) the teaching staff to be employed at the school or college are sufficiently qualified for the purpose of efficient provision of quality education; and
  - (iii) the school or college shall not impose restrictions of whatever nature with respect to the admission of students, recruitment and appointment of staff.
- (4) No person shall erect any building intended for use as a school or college before he first obtains an approval from the Minister or a local government authority, as the case may be.
- (5) No person shall enroll any student in a school or college before he first registers the school or college under this Act.

### **37. Application for registration of a school or college**

A person who wishes to establish a school or college shall apply in writing to the Minister for the registration of a school or college in the prescribed manner and shall give particulars regarding—

- (a) the classification of the school or the college sought to be established;
- (b) the standards, forms and classes to be provided; and
- (c) the name(s) and address of the proprietor or proprietors of the school or the college.

### **38. Variation of establishment**

- (1) A proprietor of a school or college shall ensure that no variation in the establishment of the school or college takes place without the prior written approval of the Minister.
- (2) In this Part, the expression “variation in the establishment of a school or college” includes—
  - (a) the provision of any nature, type or form of education different from the nature, type or form of education particulars of which have been registered in respect of such school or college in the Register of Schools and Colleges;
  - (b) the provision of any class, standard or form additional to those of which particulars have been entered in the Register of Schools and Colleges, whether or not such class, standard or form is in parallel to any registered class, standard or form in the school or college;
  - (c) the alteration of any qualification for admission to the school or college;
  - (d) the transfer of the school or the college to a new site; or
  - (e) any change in or transfer or proprietorship or ownership of the school or the college including the admission of a partner or new partner, death or retirement of any proprietor or partner and the appointment or change of any manager.
- (3) An application for variation in the establishment of a school or college shall be made in the manner prescribed under this Act.
- (4) The Minister may refuse any such application and shall give reasons for the refusal.

- (5) Upon approval of a variation in the establishment of a school or college, the Minister shall issue a new certificate of registration in respect of the school or college.

### **39. Register of Schools and Colleges, publication and inspection thereof**

- (1) the Minister shall establish and maintain in such form as he deems fit, a Register of Schools and Colleges.
- (2) The Minister shall, at least once every year, cause to be published in the *Gazette* and at least in one local newspaper with wide circulation, the names of schools or colleges for the time being registered under this Part.
- (3) The Register of Schools and Colleges shall be open for inspection at the offices of the Ministry by the general public at all reasonable times and the Ministry shall disseminate copies of the Register to all local government authorities for similar purposes.

### **40. De-registration of a school or college**

Upon the cancellation of the registration of any school or college, the Minister shall cause notice of such cancellation to be published in the *Gazette* and at least in one local newspaper with wide circulation.

### **41. Complaints**

- (1) If, after an inspection conducted at school or college under [section 48](#) following a complaint lodged by any person regarding a school or college and the Minister is satisfied that the school or college is objectionable upon all or any of the grounds of complaint set out in subsection (3), the Minister shall by notice in writing inform the proprietor of the school or the college accordingly the measure necessary to remedy the matters complained of within such period, not being more than six months from the date of service of the notice.
- (2) The notice shall also state whether the school or the college should be closed, where applicable, or payment of grants-in-aid be withheld or postponed if the measures necessary to remedy the complaint are not taken.
- (3) The following may be grounds of complaint—
  - (a) that the school or the college is redundant having regard to the development plan for the area in which the school or college is situated;
  - (b) that the school or the college premises or any part thereof are unsuitable for a school or college;
  - (c) that the accommodation provided at the school or the college premises is inadequate or unsuitable having regard to the number, age and sex of the students attending the school or the college;
  - (d) that efficient and suitable instruction is not being provided at the school or the college having regard to the age and sex of the students attending the school or the college;
  - (e) that the proprietor of the school or the college or any teacher employed therein is not a fit and proper person to be the proprietor of a school or college or to be a teacher in any school or college, as the case may be;
  - (f) that the curriculum approved by the Minister is persistently and materially departed from at the school or the college;
  - (g) that there is no adequate supervision and control of staff; or
  - (h) that there has been an infringement of [section 35](#) (1).

- (4) If it is alleged by any notice of complaint served under this section that any person employed as a teacher at the school or college is not a fit and proper person to be a teacher in any school or college, that person shall be named in the notice and the particulars contained in the notice shall specify the grounds of the allegation, and a copy of the notice shall be served upon him.
- (5) Every notice of complaint served on a proprietor under this section shall limit the time, not being less than thirty days after the service of the notice or copy, within which the complaint may be referred to the Education Appeals Tribunal appointed under [section 42](#).
- (6) Any proprietor upon whom a notice of complaint is served under this section may, within the time limited by the notice, refer the notice to the Education Appeals Tribunal in such manner as may be provided by rules made under this Act.
- (7) Any teacher named in a notice of complaint may refer the complaint to the Government Teaching Service Commission in accordance with rules made under the Government Teaching Service Commission Act.

*[Cap. 30:08]*

#### **42. Education Appeals Tribunal**

- (1) There is hereby established an Education Appeals Tribunal appointed by the Minister on recommendation from the Government Teaching Service Commission.
- (2) Members of the Education Appeals Tribunal shall elect a chairperson and a vice-chairperson from among their number at the first meeting of the Education Appeals Tribunal.
- (3) The Minister may make rules with respect to the hearing of complaints by the Education Appeals Tribunal and subject thereto the Education Appeals Tribunal shall have powers to determine its own procedure.
- (4) The Minister may make such financial provision as he may think fit for—
  - (a) the appointment of a secretary and other staff, if any, for the Education Appeals Tribunal;
  - (b) the remuneration of members of the Education Appeals Tribunal and reimbursement of their expenses; and
  - (c) defraying of any reasonable expenses incurred by the Education Appeals Tribunal.
- (5) Any sum payable under any provision made by the Minister under subsection (4) shall be paid out of money provided by Parliament.

#### **43. Powers of the Education Appeals Tribunal**

Where a notice of complaint under [section 41](#) is referred to the Education Appeals Tribunal, the Tribunal shall, after affording all parties concerned an opportunity to be heard, and after considering such evidence as may be tendered by them or on their behalf, have power—

- (a) to order that the complaint be dismissed;
- (b) to order that the school or the college in respect of which the notice of complaint was served be closed;
- (c) to order that the school or the college be closed unless the requirements of the notice, subject to such modifications, if any, as may be specified in the order are complied with to the satisfaction of the Minister before the expiration of such time as may be specified in the order; or
- (d) if the complaint relates to a teacher, to direct that the consideration of the complaint so far as it relates to the school or college, be postponed until any reference by the teacher named in the complaint, to the Government Teaching Service Commission has been disposed of.

#### 44. Power to close schools or colleges

- (1) The Minister may order any school or college to be closed in any case where he is satisfied that—
  - (a) a notice of complaint regarding the school or college, which has been duly served under [section 41](#), has not been duly referred to the Education Appeals Tribunal and that the matters complained of have not been remedied within the time limited by the notice of complaint, or that the notice stated that a matter complained of was irremediable;
  - (b) the school or college is being conducted in a manner detrimental to the physical, mental or moral welfare of the students attending such school or college;
  - (c) any instruction at the school or college is being imparted to any student which is prejudicial to peace, good order or good government;
  - (d) any publication which is for the time being declared to be unsuitable for use in schools or colleges or any copy or extract thereof, has been used or referred to in, or in the course of, any instruction given in the school or college; or
  - (e) the school or the college is not registered under this Act:

Provided that the Minister shall not order the school or the college to be closed on the ground set out in [section 41](#) (3) (a) if, in the notice of complaint, it was stated that in the Minister's opinion the appropriate action would be the withholding or postponement of payment of grant-in-aid, in such a case the Minister may withhold or postpone payment of any grant to the school or college.
- (2) The Minister may order the re-opening of a school or college closed under this section where—
  - (a) a proprietor of the school or college complies with the notice of complaint; and
  - (b) the school or college has remained closed for a period of less than six months.
- (3) The proprietor of any school or college ordered to be closed under this section may appeal against such order to the Education Appeals Tribunal in accordance with rules made under this Act.

#### 45. Power to re-open school or college and payment of compensation

- (1) In any case where—
  - (a) a school or college has been ordered to be closed under [section 43](#) or [44](#) and, if any appeal is permissible, the time for an appeal under [section 44](#) has expired without any appeal having been made in accordance with [section 44](#) (3); or
  - (b) a school or college has remained closed for a consecutive period of six months, and it appears to the Minister to be in the public interest that the school or college should be re-opened, the Minister may, by notice in writing, inform the proprietor of the school or the college of his intention to take possession of the school or college and thereafter the Minister may take possession thereof and make arrangements for the re-opening and management of the school or college as provided in [section 46](#).
- (2) A notice under subsection (1)—
  - (a) shall require the proprietor of the school or the college to hand over to a Ministry officer designated in such notice, the school or the college and all moveable and immovable property usually used, at the date of the order closing the school or the college, in connexion with the school or the college on a date specified in such notice being not less than one month from the date of service of the notice; or
  - (b) may offer a sum by way of compensation or may propose a means by which the amount of compensation may be settled and shall require the proprietor to make a claim for



compensation within such time not being less than three months as is stated in the notice if he does not accept the Minister's offer or proposal.

- (3) As soon as convenient after service of a notice under subsections (1) and (2) the Minister shall publish in the *Gazette* a declaration that the school or college is required for a public purpose.
- (4) If, within the time stated in the notice under subsection (2), the proprietor does not accept the offer or proposal made in the notice—
  - (a) but does claim compensation, the payment of compensation shall be governed by subsections (5) to (12); and
  - (b) does not claim compensation, the amount, if any, offered by way of compensation in the notice shall be the amount payable by way of compensation and may be paid to such person and in such manner as is provided in the Lands Acquisition Act.

[Cap. 58:04]

- (5) Subject to the prior provisions of this section, the Lands Acquisition Act shall apply to the acquisition of the school or the college and payment of compensation in respect thereof with following variations—
  - (a) a notice and declaration under this section shall be deemed to be a notice and declaration under section 5 of the Lands Acquisition Act;  
[Cap. 58:04]
  - (b) section 9 of the Lands Acquisition Act shall be subject to this section;  
[Cap. 58:04]
  - (c) compensation shall not be payable in respect of any property or part of any property to the extent that such property or part thereof was purchased or constructed out of public funds, in such cases subsection (8) shall apply.

[Cap. 58:04]

- (6) In any case where the property handed over to, or taken by the Minister under this Part consists of or includes moveable property used in connection with the school or the college, the compensation payable in respect of such moveable property shall be limited to the value of the moveable property that was not purchased out of public funds.
- (7) Subject to subsection (6), compensation for moveable property shall be a sum equal to the price which the proprietor thereof could, immediately before the service of notice, under subsection (1), have reasonably been expected to obtain upon a sale of such moveable property on the basis of a willing seller and willing purchaser, regard being had to the condition of the property at the time when possession is obtained by the Minister.
- (8) Where a dispute arises regarding the amount of compensation payable under subsection (6), such dispute may, if the court considers it convenient, be heard and determined at the same time as proceedings in relation to the acquisition of land forming part of the school or college.
- (9) In any case where compensation is payable in respect of any property which was purchased or constructed partly out of funds provided by the proprietor and partly out of public funds the amount of compensation payable shall be a proportion of the value of the property equal to the proportion of the total cost provided by the proprietor.
- (10) In all proceedings under this section, the onus of proving the total cost of the property and the amount contributed by the proprietor shall be on the person claiming compensation and the phrase “public funds” shall throughout this section be deemed to include the value of any labour and materials voluntarily contributed by the people in the district in which the school or college is situated.



- (11) Where any dispute arises regarding the persons entitled to compensation under this section, the fact that any person is registered as proprietor in the Register of Schools and Colleges shall not be conclusive evidence of title to the land.
- (12) Where a dispute arises regarding ownership of any moveable property before compensation is paid, the dispute shall be decided by the court and the Minister may pay into court the sum awarded, as compensation and such payment into court shall be a complete discharge to the Minister from his obligations to pay compensation.
- (13) Where no dispute regarding ownership of moveable property has arisen before the compensation agreed or awarded therefore has been paid to the person registered as proprietor in the Register of Schools and Colleges, the receipt by the registered proprietor shall be a complete discharge to the Minister from his obligations to pay compensation but shall not hinder any subsequent proceedings by any other person claiming to have a better right thereto against the person to whom such payment has been made.

#### **46. Minister to handover possession to local government authority**

Where the Minister takes over possession of a primary school under this Act, he shall, within a period of six months, handover the school to a local government authority of the area in which the school is situated.

#### **47. Power to take possession**

- (1) For the purpose of re-opening a school or college under [section 45](#), the Minister may, if the school or the college or any part thereof is not handed over in accordance with the notice under that section—
  - (a) take possession of the school or the college and the site thereof including any land usually used for educational and recreational purposes in connexion with the school or the college before the school or the college was closed;
  - (b) take possession of any movable property which is then in the school or the college or was in the school or the college at the date of the order closing the school or the college, and was usually used in connection with the school or the college;
  - (c) subject to the Waterworks Act, take water for the purpose of the school or the college from any source of supply whether natural or artificial;
  - (d) do, or authorize the doing, in relation to such school or college, anything which a person being the absolute owner thereof would be entitled to do by virtue of such ownership;
  - (e) make any arrangements, including the payment of managers or a managing body with such powers as he may think fit to vest in him or them, in relation to the management of the school or college;
  - (f) give such directions as appears to him to be necessary or expedient in respect of any of the foregoing matters and which he is authorized to give under this Act or any rules made under this Act; and
  - (g) request any person who was, at the date of the order closing the school or the college, using or in occupation or possession of such school or college, school or college site, land, movable property or source of water supply, to furnish in relation thereto such information as may be in his possession to such persons or authority as may be specified in the request.
- (2) Any police officer may, on written request by the Minister for assistance, give assistance to the Minister in implementing this section and may for that purpose use such force as appears to him reasonably necessary.
- (3) Where the Minister takes possession of any movable property under the powers conferred by subsection (1), he may use or deal with, or authorize the use of, or dealing with, the property in

such manner as he thinks fit, and may hold or sell or otherwise dispose of such property as if the Government were the absolute owner thereof:

Provided that any such property which is proved to the satisfaction of the Minister to belong to any member of the former staff of the school or the college shall be returned to the owner if claimed within two months from the date when possession was taken.

- (4) Where the source of any water supply or other utilities is the property of any statutory undertaker, water or other utilities shall not be taken from such source except with the consent of such statutory undertaker.
- (5) Any person who—
  - (a) hinders or obstructs the Minister or any Ministry officer acting in the course of his duty, or any person exercising powers, or performing duties conferred or imposed, by or under this section; or
  - (b) fails to comply with any request made to him under subsection (1) (g),commits an offence and shall, upon conviction, be liable to a fine of K100,000 and to imprisonment for two years.

#### **48. Failure to close school or college**

Any proprietor who fails to close, in accordance with this Act, a school or college ordered to be closed under section 43 or 45 commits an offence and shall, upon conviction, be liable to a fine of K 1, 000, 000 and in default of payment to imprisonment for five years, and to a further fine of K 100, 000 for each day on which the offence continues after conviction therefor and, of such further fine, or imprisonment for such period as is prescribed by the Penal Code.

[Cap. 7:01]

#### **49. Unsuitable publications**

- (1) The Minister may by notice published in the *Gazette* declare any publications or periodical publication to be unsuitable for use in schools or in colleges, and such a declaration made in respect of a periodical publication shall include past and future issues thereof unless otherwise specified.
- (2) For the purposes of this section, the expressions “publication” and “periodical publication” have the meanings assigned to them respectively by section 45 of the Penal Code, and such a declaration as aforesaid shall be deemed to extend to all copies and translations, in whatsoever language, of such publication or periodical publication.

[Cap. 7:01]

### **Part VIII – Inspection of schools and colleges**

#### **50. Appointment of inspectors**

- (1) There shall be appointed, by name or office, public officers each of whom shall perform the functions of an inspector of schools and colleges.
- (2) Any person appointed under subsection (1) shall have relevant qualifications and not less than ten years experience in teaching, administration and management of an education institution.

#### **51. Inspection of schools and colleges**

- (1) The Minister shall cause any school or college to be inspected by an inspector for the purposes of ensuring that the school or college complies with this Act and of ascertaining whether that school or college is being properly and efficiently conducted.

- (2) Every inspector shall make a report in respect of every school or college inspected with respect to such matters as the Minister may require him to report upon.
- (3) An inspector shall make available a copy of the inspection report send to the Minister under this section to the school or college concerned, and in case of a primary school, to the local government authority responsible for the area in which the primary school is situated.

## **52. Functions of an inspector**

An inspector shall—

- (a) promote the highest standards of quality in the provision of education;
- (b) keep the Minister informed of the state of the education service and ensure that the State is getting value for the money it spends on education;
- (c) ensure compliance with the provisions of this Act;
- (d) act as a facilitator and guide to teachers in the teaching and learning process;
- (e) participate in the development and revision of the curriculum; and
- (f) recommend to the Minister priorities for the continued training of teachers.

## **53. Powers of inspector**

- (1) An inspector may—
  - (a) at all reasonable times, enter the premises of any school or college or any place in which it is reasonably suspected that a school or college is conducted;
  - (b) enter any premises upon which he has reason to suspect that an offence against this Act has been or is being committed;
  - (c) after entering the premises of any school or college, require any manager, principal or teacher to produce any book, document or other article or to furnish any information relating to the administration or management of or teaching or activities in the school or college;
  - (d) remove for further examination any book, document or other article which he has reason to suspect is evidence of the commission of an offence against this Act or of grounds for cancellation of the registration of the school or college or of any teacher in the school or college;
  - (e) make an entry in the school or college log book recording the date of inspection and such remarks as the inspector desires to make; and
  - (f) do such other things or acts as may be necessary for the furtherance of the purpose of inspection.
- (2) Any person who, in any way, hinders or obstructs an inspector lawfully entering and making an inspection at any school or college under subsection (1) commits an offence and, upon conviction, shall be liable to a fine of K100,000 and to imprisonment for (12) twelve months.

## **54. General duties of proprietor**

- (1) A proprietor of every school or college shall conduct the school or college in accordance with this Act and with any subsidiary legislation made under this Act and shall obey the lawful directions and requirements of the Minister given and made under the provisions of this Act.

- (2) Without prejudice to the generality of subsection (1), the proprietor shall—
- (a) keep a record in such form as may be prescribed, of teachers employed at the school or the college showing their qualifications;
  - (b) ensure that the school or college is properly conducted and follows a curriculum approved by the Minister;
  - (c) ensure that the head teacher keeps a register of enrollment of students and register of their daily attendance in such form as may be prescribed;
  - (d) furnish to the Minister and persons or bodies designated by him such statistical information and other returns as he or they may require;
  - (e) ensure that funds provided by Government or any local government authority for any purpose at the school or college are expended for the purpose specified or are refunded; and
  - (f) ensure that National Examinations are conducted in accordance with the Malawi National Examination Board Act or any other written law as may be applicable.

[Cap. 30:04]

- (3) The proprietor of every assisted school or assisted college shall ensure that the salaries and conditions of service of teachers employed by him are in accordance with any subsidiary legislation made by the Minister under this Act.
- (4) The proprietor of any school or college who fails to comply with any of the requirements of this section commits an offence and shall, upon conviction, be liable to a fine of K300,000 and imprisonment for two years.

## 55. Conducting school or college without consent of Minister

Any person who, without the prior consent in writing of the Minister, owns or conducts a school or college or acts as manager for a school or a college commits an offence and shall be liable to a fine of K1,000,000 and to imprisonment for five years.

## 56. Refund of grant in certain cases

- (1) The proprietor of a school or a college shall be liable to refund the whole of any grant-in-aid made to the school or college if it is found that the grant made was greater in amount than it should have been owing to any misrepresentation or false return made by the proprietor.
- (2) In the event of it being found that any grant-in-aid made was greater in amount than it should have been owing to a *bona fide* mistake on the part of the proprietor, the excess amount only shall be refunded and may, at the discretion of the Minister, be deducted from the grant next payable to such proprietor or manager.
- (3) In any case where any grant-in-aid is made to a school or college for a specific purpose and that purpose is not carried out the grant shall be refunded.

## Part IX – Establishment of the Teachers Council of Malawi and Registration of Teachers

### 57. Establishment of Council

There is hereby established the Teachers Council of Malawi, (hereinafter referred to as “the Council”), which shall be a body corporate having perpetual succession and 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.

## 58. Composition of the Council

- (1) The Council shall consist of—
  - (a) the following members appointed by the Minister—
    - (i) three persons having relevant knowledge, skill and experience in matters of education, in particular teacher training;
    - (ii) two representatives from religious umbrella bodies on matters of education;
    - (iii) a representative of private schools;
    - (iv) a representative of the Teachers Union of Malawi; and
    - (v) a Dean of a Faculty of Education of a university; and
  - (b) the following *ex officio* members—
    - (i) the Executive Director of the Malawi National Examination Board or his designated representative;
    - (ii) a representative of the caucus of local government authorities appointed by that caucus;
    - (iii) the Secretary for Education or his designated representative;
    - (iv) the Chairperson of the Government Teaching Service Commission or his designated representative; and
    - (v) the Director of Malawi Institute of Education or his designated representative.
- (2) Members of the Council, other than *ex officio* members, shall serve on the Council for a period of three years, or until such earlier date as may, at the time of his appointment, be determined by the person or authority appointing him, and may be eligible for re-appointment for one more term.
- (3) Members of the Council shall elect a Chairperson and Vice Chairperson from among their number at the first meeting of the Council.
- (4) An *ex officio* member shall not be elected Chairperson or Vice-Chairperson of the Council.

## 59. Vacation of members from office

- (1) The office of a member of the Council, other than an *ex officio* member, shall become vacant—
  - (a) upon the expiry of the period of his appointment;
  - (b) upon his death;
  - (c) if he is adjudged bankrupt;
  - (d) if he is sentenced to imprisonment term without the option of a fine for an offence against any written law;
  - (e) if he fails to attend three consecutive meetings, of the Council, of which he has had notice;
  - (f) upon giving notice in writing of his resignation; and
  - (g) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member.

## 60. Meetings of the Council

- (1) The Council shall meet at such place, and at such time, as the Chairperson of the Council may determine and shall meet at least once in every four months.
- (2) An ordinary meeting of the Council shall be convened by the Chairperson by notice in writing issued to the members fourteen days prior to the date of the meeting.
- (3) The Chairperson may, at his discretion, and shall at the written request of six or more members and within seven days of such request cause an extraordinary meeting of the Council to be summoned at such place and time as he may appoint.
- (4) The Chairperson or in his absence, the Vice-Chairperson, shall preside at meetings of the Council and the quorum at any meeting of the Council shall be one half of the members.
- (5) In the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over a meeting of the Council.
- (6) Minutes of each meeting of the Council shall be kept by the Registrar.
- (7) The decision of the Council at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.
- (8) The Council shall determine its own procedure for the conduct of its meetings, and the meetings of any committees it may establish.

## 61. Disclosure of interest

If a member acquires any pecuniary or other interest, direct or indirect, in any matter and is present at a meeting of the Council at which the matter is the subject of consideration by the Council, he shall as soon as practicable after the commencement of the meeting disclose the fact to the Council, and shall not take part in the consideration or discussion of, or vote on any question with respect to the matter.

## 62. Functions of the Council

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

- (a) to establish and maintain, in such form as it thinks fit, a Register of Teachers and a Roll of Licensed Teachers;
- (b) to take part in all matters affecting the education and training of teachers;
- (c) to advise the Minister on any matter falling within the scope of this Act;
- (d) to promote professional and ethical standards in the teaching profession; and
- (e) to communicate to the Minister any information acquired by the Council relating to matters of education in general and teacher education in particular.

## 63. Powers of the Council

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

- (a) to remove from or restore to the Register any name which has been recommended as such by the Government Teaching Service Commission or any employer;
- (b) to acquire, hire or dispose of property, borrow money on security of assets of the Council, accept any donation or accept and administer any trust;

- (c) to consider any matter affecting the teaching profession and make representations thereon to the Minister or take such action in connection therewith as the Council may consider necessary;
  - (d) upon application by any person, to recognize any qualification held by that person, whether such qualification has been obtained in Malawi or elsewhere, as being equal, either wholly or in part to any prescribed qualifications, whereupon such person shall, to the extent to which the qualifications have been so recognized, be deemed to hold such prescribed qualifications;
  - (g) to perform such other functions as may be prescribed or assigned to the Council by the Minister; and
- [Please note: numbering as in original.]*
- (h) generally to do such things as the Council deems necessary or expedient to achieve the objects of this Act.

#### **64. Committees**

- (1) The Council may establish any number of 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 each committee shall be appointed by the Council from among the members of the Council.
- (3) Any committee may co-opt as members of the committee, persons who are not members of the Council.
- (4) The chairperson of a committee may, at any time and place, convene a meeting of his committee.
- (5) 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 practicable, comply with such direction.
- (6) Every committee shall inform the Council of its activities and shall conduct its proceedings in such a manner as the Council may direct.
- (7) Any member of a committee shall, in respect of expenses incurred by him in travelling or subsistence while discharging his duties as member of that committee, be paid out of the funds of the Council, such allowances as the Council may determine.

#### **65. Appointment of Registrar and other staff**

- (1) Subject to the provisions of this section, the Council—
  - (a) shall appoint a Registrar upon such terms and conditions approved by the Minister; and
  - (b) may appoint a Deputy Registrar 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) The Council may delegate to the Registrar the appointment of other employees of such grades as determined by the Council on such terms and conditions as the Council may consider appropriate and the Registrar shall, after he has employed any person, report the fact thereof to the Council at its next meeting.
- (3) The Registrar shall be the secretary to the Council and to every committee established under [section 64](#) and shall, on the instructions of the Chairperson of the Council or the chairperson of any committee, convene a meeting of the Council or committee, as the case may be.
- (4) If the Registrar is absent or unable to carry out any of his functions under this Act, the Deputy Registrar or any other officer of the Council shall exercise, during the period the Registrar is so

absent or unable to act, such functions of the Registrar as the Chairperson of the Council may designate.

## 66. Duties of the Registrar

- (1) The Registrar shall—
  - (a) keep a Register of Teachers and a Roll of Licensed Teachers;
  - (b) under the direction of the Council—
    - (i) enter in the Register of Teachers or the Roll of Licensed Teachers, particulars required under this Part of every person whom he registers or licenses as a teacher;
    - (ii) make in the Register of Teachers or the Roll of Licensed Teachers any necessary alterations on the name, address, qualification or other particulars of a registered or licensed person;
  - (c) erase from the Register of Teachers or Roll of Licensed Teachers the name of a registered or licensed person who—
    - (i) dies;
    - (ii) applies for removal of his name from the Register of Teachers or Roll of Licensed Teachers;
    - (iii) has been convicted of a criminal offence;
    - (iv) has been guilty of such misconduct that renders him unsuitable for employment as a teacher; and
    - (v) for a continuous period of five years, has not been engaged in teaching or in the administration of educational services.
- (2) For the purposes of this section, “misconduct” shall include professional misconduct, conduct prejudicial to law and order and conduct prejudicial to the physical, mental or moral welfare of any student in any school or college.
- (3) Where the Registrar erases or removes from the Register of Teachers or Roll of Licensed Teachers, the name of a person registered or licensed, he shall enter in the Register of Teachers or Roll of Licensed Teachers of the reasons therefor.
- (4) The Registrar shall publish any names erased or removed from the Register or Roll of Licensed Teachers, as the case may be, in the *Gazette* and two widely circulated newspapers.

## 67. Qualifications and requirements for registration

- (1) Any person—
  - (a) who successfully completes a course of training as a teacher which is approved or recognized by the Minister and the Council;
  - (b) who satisfies the Council that he is of good character and has satisfactorily completed a probationary period of employment as a teacher approved by the Minister; and
  - (c) whose name has not at any time been removed from the Register, shall be entitled, on application made in that behalf to the Registrar, to be registered as a teacher, and shall be issued an authority to teach.
- (2) An application for registration as a teacher shall be made in such form as the Minister may prescribe.
- (3) Every registered teacher shall notify the Registrar of any change in his particulars as contained in the Register.



## 68. Licence to teach

- (1) The Council may issue a licence to any person to teach for such period as it thinks fit notwithstanding that such person has not completed a course of training as a teacher or has not attended such a course, and may, from time to time, review any such licence for a further period.
- (2) The Registrar shall cause to be entered in the Roll of Licenced Teachers such particulars as the Council may by rules prescribe, of all persons to whom a licence to teach has been issued.
- (3) The Council may make a licence issued under this section subject to such conditions, including that the person may teach only a particular subject or subjects or may teach only a particular class or classes in a school or college.
- (4) The Council may, after affording the person an opportunity to be heard, withdraw the licence of any licensed teacher at any time, and may refuse to renew the licence of any licensed teacher.
- (5) The Council shall from time to time cause to be published in the *Gazette* and in at least one local newspaper with wide circulation in the country, the names of persons to whom a licence to teach has been issued.

## 69. Teaching without licence or authority prohibited

- (1) No person shall teach in any school or college unless he holds a licence to teach or authority to teach issued by the Council.
- (2) Any person who holds a licence to teach shall not teach otherwise than in accordance with the conditions stated on the licence.
- (3) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine of K300,000 and imprisonment for two years.

## 70. Appeals

- (1) Any person aggrieved by—
  - (a) the refusal of the Council to register or license him or any particulars which he wishes to be registered under this Act; or
  - (b) the removal from the Register of Teachers or the Roll of Licenced Teachers of his name or particulars which he considers he is entitled to under this Act to have been entered against his name in the Register of Teachers or the Roll of Licensed Teachers, may, after notice to the Council and within three months after the date on which notice is given to him by the Registrar of such refusal or removal, appeal to the Education Appeals Tribunal in such manner as may be prescribed.
- (2) The Education Appeals Tribunal may—
  - (a) dismiss the appeal;
  - (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 particulars, as the case may be, be entered in the Register of Teachers or Roll of Licensed Teachers; or
  - (c) may refer the matter back to the Council for further consideration.

## 71. Offences relating to teaching and teachers

Any person who—

- (a) not being the holder of an authority to teach or licence to teach issued under this Act, teaches or assists in teaching in any school or college;

- (b) employs or engages as a teacher any person who is not the holder of an authority to teach or licence to teach issued under this Act;
- (c) being a person licensed to teach under this Act, teaches or assists in teaching otherwise than in accordance with conditions stated on his licence; or
- (d) employs or engages such person referred to in paragraph (c) above to teach or assist in teaching otherwise than in accordance with the conditions stated on his licence,

commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for three years.

## 72. Evidence of entries in Registers of Teachers and of other records

- (1) Entries in the Register of Teachers or the Roll of Licensed Teachers and the contents of an authority or licence to teach may be proved by copies thereof or extracts therefrom upon which is endorsed a certificate, purporting to be signed by the Registrar, stating that the copy is a true copy.
- (2) A certificate purporting to be signed by the Registrar stating that a person is or is not registered in the Register of Teachers or Roll of Licensed Teachers shall be prima facie evidence, in all legal proceedings, of the facts stated in such certificate.
- (3) Every certificate purporting to be signed by the Registrar under this section shall be admissible as evidence, in all legal proceedings, without proof of the handwriting or official position of the person signing the certificate.

## 73. Funds of the Council

- (1) The funds of the Council shall consist of—
  - (a) such moneys as may be appropriated by Parliament for the purposes of the Council;
  - (b) registration and annual membership fees; and
  - (c) such other moneys and assets as may vest in or accrue to the Council, whether in the course of its functions or otherwise.
- (2) The Council may accept moneys or other assets as may accrue to the Council by way of grants, subsidies, bequests, donations or gifts from any other person.

## 74. Accounts

The Council shall cause to be kept proper books of accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement Act.

*[Cap. 37:01]*

*[Cap. 37:02]*

*[Cap. 37:03]*

## 75. Audits

The accounts of the Council shall be examined and audited annually by auditors appointed by the Council.

## Part X – Curriculum and instructions in schools and colleges

### 76. National curriculum for schools and colleges

- (1) The Minister shall promote the development of a national curriculum for schools and colleges that is comprehensive, balanced, flexible, integrated, diversified and relevant to the needs of the student and society.
- (2) The national curriculum shall—
  - (a) prepare students for the world of work, social and political participation in the context of a rapidly changing and dynamic global economy and society;
  - (b) be student-centered and non-authoritarian, and encourage active participation of students in the learning process;
  - (c) stimulate critical and effective reasoning and develop problem solving and information processing skills;
  - (d) foster self-discipline;
  - (e) treat knowledge as provisional and contestable;
  - (f) promote moral and ethical behaviour;
  - (g) develop necessary understanding, values and skills for sustainable development;
  - (h) promote respect for human rights;
  - (i) promote unity in diversity through a flexible framework which allows for the accommodation of cultural differences and needs;
  - (j) take into account cross-cutting emerging and contemporary issues;
  - (k) promote entrepreneurial and technological values and skills; and
  - (l) prepare students for life long training.
- (3) The national curriculum shall provide a general education based on positive values and attitudes, and academic and vocational skills.
- (4) The areas of study across different learning contexts shall be as prescribed from time to time by the Minister.
- (5) The design and development of the national curriculum, including the preparation of syllabuses, books and other learning materials shall be the responsibility of the Institute.

### 77. Teacher training curriculum

- (1) Any curriculum for teacher training shall take into account the national curriculum and shall be diversified to meet the needs of education for all.
- (2) The areas of study and the structure of the teacher training curriculum shall be as prescribed by the Minister.
- (3) The design and development of teacher training curriculum, including the preparation of syllabuses, trainers manuals and other instructional materials shall be undertaken by the Institute in accordance with the provisions of this Act.

### 78. Language of instruction

- (1) The medium of instruction in schools and colleges shall be English.

- (2) Without prejudice to the generality of subsection (1), the Minister may, by notice published in the *Gazette* prescribe the language of instruction in schools.

## 79. Syllabus

The Minister shall exercise supervision and control over the instruction given in all schools or colleges to which this Act applies and may control the course of instruction in any school and colleges or category of schools by prescribing the syllabus which shall be followed in the school or college or category of schools or colleges.

## 80. Religious instruction

- (1) Religious instruction shall be given in every Government school or Government college and assisted schools or assisted colleges of any category but need not be included in a correspondence course.
- (2) The syllabus for religious instruction in the case of Government schools or Government colleges shall be prescribed by the Minister and in the case of any other school or college shall be submitted by the proprietor for the information of the Minister.
- (3) If a parent of any student in attendance at any Government school or Government college or assisted school or assisted college requests that he be wholly or partly excused from attendance at religious worship in the school or college or from attendance at both religious worship and religious instruction until the request is withdrawn, the student shall be excused from such attendance accordingly.
- (4) A minister of religion shall have right of access at such reasonable times as may be agreed to any school or assisted college for the purpose of giving religious instruction to students whose parents have not made a request under subsection (3).
- (5) Where a parent of a student attending a school or a college requires him to attend religious worship or religious instruction of a kind which is not provided in the school or the college, the proprietor of the school or the college shall make such arrangements as may be practicable for the student to receive religious instruction and attend religious worship of the kind desired by the parent.
- (6) The Minister may, by order published in the *Gazette*, direct that this section shall not apply to any school or college or classification or type of schools or colleges or students of a particular religious persuasion in any school or college.
- (7) No assisted school or assisted college shall be permitted to give religious instruction to or enforce divine worship on any student contrary to the wishes of a parent of the student.
- (8) In the case of the proprietor of an assisted school or assisted college failing to provide religious instruction as required by this section or providing religious instructions contrary to this section, the Minister may withhold or postpone payment of grant-in-aid.

## 81. Textbooks and other instructional materials

- (1) The Institute shall be responsible for establishing and implementing a quality assurance process through the evaluation of textbooks, teachers guides, other instructional materials and, shall prescribe the criteria for the publication of textbooks, teacher guides and other instructional materials.
- (2) All textbooks, teachers' guides and other instructional materials which meet the prescribed publishing criteria and are recommended for use in schools by the Institute, shall bear a symbol on their covers signifying that the textbooks or other instructional materials have been approved by the Ministry and the list of such books and other instructional materials shall be published in the *Gazette* and in at least one local newspaper with wide circulation in the country.

- (3) The Institute shall make available the list of all textbooks and instructional materials approved for use in schools for public information, and shall distribute copies thereof to all users of such information.
- (4) A person who is involved in the development of education materials shall not be involved in the evaluation process of the education materials.
- (5) The Institute shall develop an enforceable code of conduct for publishers, authors, officials of the Ministry and the Institute that ensures that no conflict of interest situations or privileged relationships occur.
- (6) Procedures for the evaluation of textbooks shall take into account the necessary lead time for research, trialing and consultation in order to achieve the highest level of quality.
- (7) Selection of textbooks from the approved list shall occur, as far as possible, at institutional level.
- (8) Government, local government authorities and proprietors, as the case may be, shall be responsible for the provision, in schools or colleges, of adequate instructional materials approved and selected in accordance with the provisions of this section.

## **Part XI – Establishment of the Malawi Institute of Education**

### **82. Establishment of the Institute**

- (1) There is hereby established a body to be known as the Malawi Institute of Education which shall—
  - (a) be a body corporate having perpetual succession, and common seal;
  - (b) be capable of suing and being sued in its corporate name;
  - (c) have power, subject to this Act, to do or perform all such other acts or things which a body corporate may lawfully do or perform.
- (2) The Institute shall be governed by a Board which shall be responsible for the work and functions of the Institute, subject to such limitations or restrictions as are prescribed in this Act.

### **83. Composition of the Board**

- (1) The Board shall consist of—
  - (a) the following members appointed by Minister—
    - (i) a Vice-Chancellor of a university, who shall be the Chairperson;
    - (ii) Dean of Faculty of Education of a university or college of higher learning;
    - (iii) two persons with expertise in the field of finance or any other appropriate field;
    - (iv) a representative of an organization of private schools;
    - (v) two representatives from religious organization; and
  - (b) the following *ex officio* members—
    - (i) the Secretary responsible for education or his designated representative;
    - (ii) the head of inspectorate and methods advisory in the Ministry responsible for education;
    - (iii) the Secretary to Treasury or his designated alternate;
    - (iv) a representative of the Ministry responsible for pre-service and in-service teacher education; and

- (v) the Executive Director of the Malawi National Examination Board or his designated representative.
- (2) The Members of the Board, other than the *ex officio* members, shall serve for a period of three years or until such earlier date as may, at the time of his appointment, be determined by the person or authority appointing him, and may be eligible for re-appointment for one more term.

#### 84. Duties of the Board

- (1) The responsibility of the Board shall be to—
- (a) design, develop and evaluate the national curriculum for schools and colleges;
  - (b) evaluate textbook, teachers' guides and other instructional materials produced by publishers;
  - (c) review school and college curricula;
  - (d) establish and implement programmes for continuing professional development of teachers and other educational personnel;
  - (e) conduct education research;
  - (f) publish textbooks, teachers' guides and other instructional materials;
  - (g) disseminate relevant education information through the production and publication of journals and otherwise;
  - (h) train and assist in the training of teachers;
  - (i) provide training and professional services for teachers and offer advisory services to other sectors; and
  - (j) admit students and participants into courses offered by the Institute.
- (2) For the purposes of this section, "students" include participants in programmes and seminars conducted by the Institute.

#### 85. Powers of the Board

- (1) The Board shall have the power to do or perform any act or thing necessary for the purposes of discharging its responsibilities, subject to the provisions of this Act and of any other written law and to any written policy decisions taken by the Minister.
- (2) Without prejudice to the generality of subsection (1), the Board shall have the following powers—
- (a) to ensure that there is proper management and administration of the Institute;
  - (b) to approve the programmes of work of the Institute, including the organization of courses and the selection of students or participants;
  - (c) to approve and from time to time review the staff establishment of the Institute;
  - (d) to approve and employ all categories of staff required by the Institute;
  - (e) to consider the financial estimates required to carry out the work of the Institute and control expenditure of necessary recurrent and capital funds;
  - (f) to evaluate, from time to time, the work of the Institute;
  - (g) to co-opt additional members and establish whatever committees that may be needed;
  - (h) to appoint such Boards of Study and Boards of Examiners, as may be required for the effective conduct of Institute courses and examinations; and

- (i) to award degrees, diploma's and certificates in the courses of study conducted by the Institute.

#### **86. Vacation of office**

A member of Board other than an *ex officio* member, shall cease to be a member if he—

- (a) fails to attend three consecutive meetings of the Board without a valid excuse, of which he has had notice;
- (b) adjudged bankrupt;
- (c) dies;
- (d) is sentenced for an offence against any written law, to a term of imprisonment without an option of a fine;
- (e) becomes incapacitated by reason of physical or mental disability; or
- (f) resigns by giving one month notice to the Chairperson of the Board.

#### **87. Secretary of the Board**

The Executive Director of the Institute shall, unless the Board otherwise directs, be the secretary of the Board.

#### **88. Meetings of the Board**

- (1) The Board shall meet in ordinary meetings at least three times a year.
- (2) An ordinary meeting of the Board shall be convened by the Chairperson by notice in writing issued to the members fourteen days prior to the date of the meeting.
- (3) The Chairperson may, at his discretion, and shall at the written request of six or more members and within seven days of such request cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.
- (4) Every notice given under subsection (3) shall include the agenda of the matters to be considered at the meeting.

#### **89. Procedure at Board meetings**

- (1) Subject to subsections (2) and (3), at any meeting of the Board—
  - (a) the quorum shall be formed by two-thirds (2/3) of the members thereof;
  - (b) only the members present may vote and each member shall have one vote;
  - (c) every matter shall be determined by a majority of the members present and voting, and in the event of an equality in the votes, the Chairperson, or any other member presiding, shall have a casting vote in addition to his deliberative vote; and
  - (d) the members present and forming the quorum may, if both the Chairperson and the Vice-Chairperson are absent or otherwise unable to act, elect one of their number to preside thereat.
- (2) A member who is aware that he has a personal, proprietary, or pecuniary interest in a matter which is to be considered or is being considered by the Board, shall declare the interest to the Chairperson in writing, and shall not take part in the deliberations or to vote on the matter.

- (3) A member who is unable to attend a meeting of the Board—
  - (a) may, with the written consent of the Chairperson, submit to the Board, in writing, his views on any matter to be considered by the Board; and
  - (b) shall not be entitled to vote on any matter which has been considered by the Board at that session.

#### **90. Executive Director**

- (1) There shall be an officer of the Institute who shall be designated as the Executive Director.
- (2) The Executive Director shall be appointed by the Board from among persons who have experience in teaching, curriculum development and management of an educational institution.
- (3) Except as is otherwise expressly provided by this Act, the Executive Director shall, subject to any general or special directions given by the Board, be the principal administrator in control of the internal organization and the day-to-day management of the Institute.

#### **91. Deputy Executive Director**

- (1) The Institute shall have a Deputy Executive Director who shall be appointed by the Board from among persons who have experience in teaching, curriculum development and management of an educational institution.
- (2) The Deputy Executive Director shall be responsible to the Executive Director and shall assist the Executive Director in every respect to promote the proper management of the Institute.

#### **92. Other staff**

In addition to the Executive Director and Deputy Executive Director, the Board shall appoint such other staff as may be required to carry out the functions of the Institute.

#### **93. Terms and conditions of service**

The Executive Director, Deputy Executive Director and other staff appointed by the Board shall be subject to such terms and conditions of service as the Board shall, with the approval of the Minister, determine.

#### **94. Proposals and reports to the Board**

- (1) Except as is provided under subsection (2), any proposal or report by any person relating to the management or activities of the Institute shall be submitted in writing to the Board.
- (2) Where a member of staff of the Institute wishes to submit any proposal or report to the Board under this section, he shall do so through the Executive Director.

#### **95. Withdrawal and suspension of students or participants**

- (1) The Board may withdraw from the Institute any student or course participant for any cause which it considers to be seriously adverse to the discipline or management of the Institute.
- (2) The Executive Director may suspend from the Institute any student for any cause which he considers adequate to warrant either suspension, or withdrawal by the Board under subsection (1), and in such event he shall as soon as possible, report in writing the circumstances of the suspension to the Board for final decision.



## 96. Finance and Audit Committee

- (1) The Board shall establish a Finance and Audit Committee to which the Board may delegate any or all of its executive functions on financial matters, subject to the general policy, control and guidance of the Board.
- (2) The Finance and Audit Committee shall make recommendations to the Board on the following matters—
  - (a) the investment and management of the Institute's money;
  - (b) the annual budget of the Institute;
  - (c) the control of expenditure authorized by the Board; and
  - (d) the preparation and presentation of the annual accounts of the Institute.
- (3) The Board shall appoint, from among its members, a chairperson of the Finance and Audit Committee with experience in finance.

## 97. Control of finances

The Executive Director shall, on behalf of the Board, control the day-to-day expenditure of the Institute, and shall present an account of such expenditure to the Board three times a year or as often as the Board may direct.

## 98. Accounts

The Board shall furnish the Minister annually, or as often as the Minister may direct, accounts in respect of finances and property of the Institute, as well as an estimate of income and expenditure of the Institute for the following year, and in this regard, the Board shall comply with the relevant provisions of the Public Audit Act and the Public Finance Management Act.

*[Cap. 37:01]*

*[Cap. 37:02]*

## 99. Expenditure

- (1) The Board shall pay all expenses connected with the Institute, and shall retain in a current account with a registered bank such funds as are necessary for the day-to-day administration of the Institute.
- (2) The annual expenditure of the Institute shall not exceed the amount approved by the Minister, and any virement between heads shall be at the direction of the Finance and Audit Committee of the Board.

## 100. Appeals for public subscription

The Board may, with the approval of the Minister, appeal to the public or any person or body for subscriptions and donations towards any project or purpose which it considers to be for the benefit of the Institute.

## 101. Borrowing and investments

Subject to the Public Audit Act, the Board may—

- (a) with the prior approval of the Minister, borrow moneys for any stated purpose of the Institute and, in such event, shall ensure that proper provision is made for the repayment of such moneys and for the payment of any interest thereon or other charges in respect thereof; and

- (b) invest, on such terms as may be approved by the Minister, such funds as are not immediately necessary for the day-to-day administration of the Institute.

[Cap. 37:01]

## 102. Property of the Institute

The Board shall keep all property of the Institute in good state of repair, and may make such alterations to the grounds, buildings, fixtures, or fittings as it may consider to be for the benefit of the Institute.

## Part XII – Students

### 103. Duty to obey school or college rules

- (1) Every student, on entry to any school or college of any category, shall undertake to obey all rules and orders given by the school or college and which conform with the directions of a local government authority or Minister, as the case may be.
- (2) A Board of Governors of any school or college may direct any such school or college to cancel or vary any standing order or rule made by the school or college.

### 104. Medical examination

The Minister or a local government authority, as the case may be, may, after notification of parents, cause a medical examination to be carried out in respect of students at any school or college but such consent may be dispensed with if, in the opinion of the management of school or college, circumstances so require on account of emergency or other factors.

## Part XIII – Fees

### 105. Minister may prescribe certain fees

- (1) The Minister may from time to time make regulations prescribing the fees which shall be charged in any Government school or college other than a government primary school.
- (2) Such regulations may prescribe fees for—
  - (a) tuition and other charges in schools and colleges;
  - (b) the accommodation, including boarding of students at any school or college; or
  - (c) special courses of instruction provided for students.
- (3) In any regulations made under this section, the Minister may—
  - (a) fix different rates of fees for different students, schools and colleges; or
  - (b) prescribe the circumstances in which fees may be refunded or remitted, whether in whole or in part; and
  - (c) prescribe the time or date when fees shall be payable in Government schools or Government colleges and the person to whom it shall be paid.
- (4) The regulations made under this section may prescribe payment of fees to a proprietor of a school or college or to a body constituted or established under this Act or to a person delegated to receive fees on behalf of the proprietor or the body.

## Part XIV – Miscellaneous provision

### 106. Power of Minister to make regulations or rules

- (1) The Minister may make regulations or rules for the purposes of this Act in respect of any matter for which the power to make regulations or rules has not been specially conferred under any other Part of this Act.
- (2) Without derogation from the generality of subsection (1), regulations or rules made under this section may provide for—
  - (a) anything which by this Act may be prescribed and generally for the effective administration of this Act;
  - (b) the conditions for payment of grants-in-aid and advances on loans;
  - (c) the requirements for school or college buildings, premises and equipment;
  - (d) the conditions for the grant and withdrawal of bursaries and scholarships;
  - (e) the establishment and control of the scales of salary to be paid to teachers in assisted schools or colleges and the other conditions of service of such teachers;
  - (f) the compulsory attendance of schools by students in any area and the manner in which compulsory attendance is to be ensured;
  - (g) the conditions for admission to any school or college and the conditions for expulsion or exclusion from Government schools and colleges and assisted schools and colleges;
  - (h) the manner in which the inspection or supervision of schools or colleges shall be carried out;
  - (i) safeguards for the health of students and staff in any school or college and the manner in which school or college medical inspection shall be carried out;
  - (j) the regulation of procedure in any Advisory Council, school management committee and Board of Governors appointed or established under this Act;
  - (k) the curriculum to be offered in any school or college and courses in such subjects and any syllabus to be followed in connexion therewith;
  - (l) where applicable, the manner in which records, statistics and accounts shall be kept and the returns or reports required by the Minister shall be made to the Ministry;
  - (m) the manner and form in which applications for the establishment and registration of schools or colleges shall be submitted and the information which shall be furnished in relation thereto and the manner and form in which such registration shall be effected;
  - (n) the manner in which schools or colleges shall be classified and the nomenclature thereof and of the classes or standards or forms into which schools may be divided;
  - (o) the conditions of the use of the buildings of Government schools or colleges out of school hours;
  - (p) the number and qualification of staff required in any school or college; and
  - (q) the procedure to be followed on any reference or appeal to the Education Appeals Tribunal to be made under this Act or on application by a teacher for his name to be restored to the Register of Teachers or Roll of Licensed Teachers and the fees to be paid in relation thereto.

### 107. Delegation

The Minister may delegate any person by name or the person for the time being holding any designated office to exercise, on his behalf, any power or perform, on his behalf, any duty which he is by this Act authorized to exercise or perform, subject to such conditions, exceptions and qualifications as the Minister may specify, and thereupon, or from the date specified by the Minister, the person to whom the Minister has delegated shall have and may exercise such power and may perform such duty subject to any conditions, exceptions and qualifications as aforesaid:

Provided that nothing in this section shall empower the Minister to delegate to any person any power—

- (a) to make regulations or rules;
- (b) to make an order that any school or college be closed;
- (c) to issue a notice of his intention to take possession of any school.

### 108. Defective appointment of member to be of no effect

No act or proceeding of any Board of Governors, school management committee or other body constituted or established under this Act shall be invalid on account of the appointment of any member having been defective.

### 109. General penalty for offences

Any person guilty of an offence against this Act for which no special penalty is provided by this Act shall be liable to a fine of K100,000 and to imprisonment for twelve months.

### 110. Service of notices and other documents

Any notice, request, demand or other document authorized or required by this Act to be given, sent or made to or served on any person may be given, sent, made or served by delivery thereof to that person or by sending a copy through the post in a cover addressed to him—

- (a) in the case of a proprietor, at the address registered in the Register of Schools and Colleges as being his address;
- (b) in the case of a teacher, at the address registered in the Register of Teachers or in the Roll of Licensed Teachers, as the case may be, as being his address; and
- (c) in any other case, at his last known place of abode, and shall, if sent through the post, be deemed to have been received not later than twenty-one days after the day when posted.

### 111. Repeal and savings

- (1) The Education Act is hereby repealed.
- (2) Any subsidiary legislation made under the Act repealed by subsection (1) and in force immediately before the coming into force of this Act—
  - (a) shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act; and
  - (b) may be amended, replaced, or revoked by subsidiary legislation made under this Act.
- (3) All appointments, registrations made or given under the Act repealed under subsection (1) and subsisting at the time of the coming into force of this Act shall be deemed to have been made under this Act.

*[Cap. 30:01]*

## 112. Transitional provisions

At the commencement of this Act—

- (a) any person who is working as a teacher but is not registered or licensed as a teacher under the Act repealed by [section 111](#), shall ensure that he registers or is licensed as a teacher within six months; and
- (b) any proprietor of a private school or private college that is not registered under the Act repealed by [section 111](#), shall ensure that the school or the college, as the case may be, is registered in accordance with the provisions of this Act within three months.