

Malawi

Referendum Act, 2018

Act 6 of 2018

Legislation as at 2 February 2018

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Malawi

Referendum Act, 2018

Act 6 of 2018

Assented to on 24 August 2018

Not commenced

[This is the version of this document from 2 February 2018.]

An Act to provide for the conduct and holding of referenda in Malawi and other matters connected thereto

ENACTED by the Parliament of Malawi as follows—

Part I – Preliminary

1. Short title and commencement

This Act may be cited as the Referendum Act, 2018 and shall come into operation on such date as the Minister shall appoint, by notice published in the *Gazette*.

2. Interpretation

In this Act, unless the context otherwise requires—

"**Commission**" means the Electoral Commission established under section 75 of the Constitution; and

"**Referendum Committee**" means a committee registered under section 10.

Part II – Holding of a referendum

3. Proclamation of a referendum

- (1) Where a need arises to amend a provision of the Constitution under section 196(1)(a) of the Constitution, the President shall, by order published in the *Gazette*, proclaim that a referendum be held.
- (2) Where the President considers that it is in the public interest to obtain, by means of a referendum, the opinion of the electorate on any issue or question, the President, in exercise of powers conferred on him under section 89(1)(i) of the Constitution, may, by order published in the *Gazette*, proclaim that a referendum be held.
- (3) The order proclaiming a referendum shall appoint a day for the holding of the referendum:
Provided that the poll shall not take place before the expiry of sixty (60) days from the date of the proclamation.
- (4) A proclamation may direct that more than one question be put to the electorate.

4. Referendum question

A question for a referendum shall be so framed that each member of the electorate may express an opinion on the question by making a mark after the word "YES" or "NO" or a symbol assigned to "YES" or "NO" on the ballot paper.

5. Restriction on proclamation of referenda

A referendum shall not be held on any matter relating to—

- (a) national defence, security and intelligence;
- (b) budget, fiscal and taxation policy;
- (c) political amnesty; and
- (d) declaration or termination of a state of emergency.

6. Notice of referendum

- (1) After proclamation of a referendum by the President under section 3, the Commission shall, by notice published in the *Gazette*, provide details for the holding of the referendum, through—
 - (a) at least two broadcast stations of national reach;
 - (b) at least two newspapers of widest national circulation; and
 - (c) any other means that the Minister may prescribe.
- (2) The notice shall specify—
 - (a) the referendum question;
 - (b) the symbols, if any, assigned for the answers to the referendum question;
 - (c) the day on which the referendum is to be held;
 - (d) the polling time for the referendum;
 - (e) the day and time by which referendum committees shall file applications for registration with the Commission; and
 - (f) the day and time by which campaign in support of or in opposition to the referendum question shall start and cease.

7. Conduct of referendum

- (1) A referendum shall be conducted, so far as may be practicable and with necessary modification, in accordance with the provisions of the Presidential, Parliamentary and Local Government Elections Act.
- (2) Without prejudice to the generality of subsection (1), the following matters shall apply to a referendum—
 - (a) registration of voters and management of the voters roll;
 - (b) conduct and regulation of campaign;
 - (c) establishment of polling stations;
 - (d) appointment of returning officers, presiding officers and polling station officers;
 - (e) voting process;
 - (f) maintenance of order at polling stations;
 - (g) security of ballot papers and ballot boxes;
 - (h) counting of votes and declaration of results;
 - (i) complaints and appeals; and

- (j) offences and penalties.

8. Vote to be decided by a simple majority

A referendum question shall be decided by a simple majority of the electorate voting in favour of the question.

Part III – Referendum committees

9. Referendum committees

- (1) Any person intending to campaign for or against a referendum question shall, together with any other person, form one national referendum committee and other district or constituency referendum committees, as may be necessary.
- (2) Where there is more than one referendum question, persons intending to campaign for or against each referendum question shall form one national referendum committee and other district or constituency referendum committees, as may be necessary.

10. Registration of referendum committees

- (1) A referendum committee shall apply for registration for the purposes of a particular referendum by filing an application with the Commission, within the period prescribed under section 6 (2)(e) of this Act,
- (2) An application for registration shall be signed by the leader of the referendum committee and shall set out—
 - (a) the full name of the committee;
 - (b) the name, address and telephone number of the leader of the committee;
 - (c) the physical address and telephone number of the office of the committee where its books and records are kept and to which communication may be addressed; and
 - (d) the name, address, telephone number and title of each officer of the committee.
- (3) Upon receipt of an application for registration from a referendum committee, the Commission shall examine the application and determine whether or not the committee can be registered and, shall—
 - (a) if the committee can be registered, register it and so inform the person who signed the application; or
 - (b) if the committee cannot be registered, inform the person who signed the application that the committee cannot be registered, with good and justifiable reasons.
- (4) A referendum committee shall not be registered if—
 - (a) the application for registration does not comply with this section;
 - (b) the name of the committee so resembles the name of a previously registered referendum committee that the committee is likely to be confused with that previously registered referendum committee; or
 - (c) the name or logo of the referendum committee so resembles the name or logo of a political party that the committee is likely to be confused with the political party.
- (5) Applications for registration shall be processed in the order in which they are received by the Commission.

- (6) Where a referendum committee is registered and any information given by the committee pursuant to subsection (2) ceases to be applicable or to be complete or accurate, the committee shall forthwith send a report in writing to the Commission, Signed by the leader of the committee or a member of the committee acting on his behalf, setting out such information as is necessary to bring the information provided earlier up to date.

11. Validity of registration

The registration of a referendum committee shall be valid only for the referendum in respect of which it is registered.

12. Compliance with code of conduct

A member of a referendum committee shall subscribe to and abide by a code of conduct issued by the Commission.

13. Costs of referendum committee

Each referendum committee shall bear its own costs.

Part IV – Miscellaneous

14. Regulations

The Minister may, on recommendation of the Commission, make regulations for the effective carrying out of the provisions of this Act.

Passed in Parliament this thirteenth day of December, two thousand and seventeen.

Fiona Kalemba

Clerk of Parliament