

GAZETTE EXTRAORDINARY

**The Malawi Gazette Supplement, dated 7th February, 2024, containing
a Bill**

NOTICE

The following Bill, for introduction in Parliament, is published for general information.

LILONGWE 7th February, 2024.

FIONA KALEMBA
Clerk of Parliament

**LEGAL EDUCATION AND LEGAL PRACTITIONERS
(AMENDMENT) BILL, 2024**

MEMORANDUM

This Bill seeks to amend the Legal Education and Legal Practitioners Act (No. 31 of 2018) in order to address the challenges identified during the course of implementing the Act.

One notable challenge pertains to redundancy. Currently, the Act requires holders of a law degree, seeking to be admitted to the bar, to attend the Malawi Institute of Legal Education (hereinafter referred to as "MILE") and subsequently write and pass the Malawi Law Examinations. However, some learning institutions accredited to offer legal education in accordance with the Act already offer courses similar to those offered by the MILE, during their degree programme. Therefore, the requirements for persons graduating from those institutions to attend MILE and pass the Malawi Law Examinations are creating unnecessary redundancy and resource inefficiency.

Additionally, it has been noted that the removal of the requirement for newly admitted legal practitioners to practice under the supervision of a prescribed legal practitioner for a prescribed period has negatively impacted the practice of law in the country. Practice under the supervision of a prescribed legal

practitioner facilitates the transfer of knowledge and skills, that could not have been acquired in a classroom set-up, from experienced legal practitioners to newly admitted legal practitioners.

The Bill, therefore, among other things proposes to—

(a) delete duplicated provisions, correct errors and address inconsistencies in the Act;

(b) exempt holders of a degree in law awarded by an institution accredited to offer legal education in accordance with the Act from the requirements to enrol with the Malawi Institute for Legal Education and pass the Malawi Law Examinations, in order to be admitted to practise law in Malawi, where the Council determines that, to qualify for award of the degree, the person passed courses comparable in scope to those taught at MILE; and

(c) re-introduce conditional admission for legal practitioners and outline the conditions regulating their practice during the period when their admission is conditional.

**LEGAL EDUCATION AND LEGAL PRACTITIONERS
(AMENDMENT) BILL, 2024**

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 22 of No. 31 of 2018
3. Amendment of s. 23 of the principal Act
4. Amendment of s. 29 of the principal Act
5. Insertion of new s. 29A into the principal Act
6. Amendment of s. 30 of the principal Act
7. Amendment of s. 96 of the principal Act

A BILL

entitled

An Act to amend the Legal Education and Legal Practitioners Act

ENACTED by the Parliament of Malawi as follows—

- | | |
|---|--|
| <p>1. This Act may be cited as the Legal Education and Legal Practitioners (Amendment) Act, 2024.</p> | <p>Short title</p> |
| <p>2. The Legal Education and Legal Practitioners Act (hereinafter referred to as the “principal Act”) is amended, in section 22 (5), by deleting the words “Chief Justice” and substituting therefor the word “Registrar”.</p> | <p>Amendment of s. 22 of No. 31 of 2018</p> |
| <p>3. Section 23 of the principal Act is amended—</p> <p>(a) in subsection (1), by deleting paragraph (b) and substituting therefor a new paragraph (b) as follows—</p> | <p>Amendment of s. 23 of the principal Act</p> |

“(b) subject to subsection (3), holds a foreign law qualification as defined in subsection (4); or”;

(b) by renumbering subsections (2), (3), (4), (5), (6) and (7) as subsections (3), (4), (5), (6), (7) and (8), respectively;

(c) by inserting a new subsection (2) as follows—

“(2) A person who—

(a) holds a degree in law awarded by an institution accredited to offer legal education in accordance with this Act; and

(b) to qualify for award of the degree, passed courses assessed by the Council as comparable in scope to those offered by the Institute,

shall be exempt from the requirements to enrol with the Institute and pass the Malawi Law Examinations.”;

(d) in subsection (5)(d), by deleting the words “(2)(b)(ii)” and substituting therefor the words “(3)(b)(ii)”;

(e) in subsection (7), by deleting the words “requirement First Schedule under the section,” and substituting therefor the words “requirements under subsection (1).”.

4. Section 29 of the principal Act is amended by deleting subsection (3).

5. The principal Act is amended by inserting, immediately after section 29, a new section 29A as follows—

“Conditional
admission to
practise

29A.— (1) Where an application for admission to practise as a legal practitioner is made under section 23, the Chief Justice may admit such person to practise with conditions.

(2) A legal practitioner admitted to practise with conditions, shall practise as an employee, under the guidance, supervision and control of a—

(a) prescribed legal practitioner;

(b) firm of legal practitioners of which at least one partner is a prescribed legal practitioner; or

(c) legal department of a Government ministry, local authority or a body established under any written law, headed by a prescribed legal practitioner.

Amendment
of s. 29 of the
principal Act

Insertion of
new s. 29A
into the
principal Act

(3) A prescribed legal practitioner shall not, at any time, exercise guidance, supervision and control over more than two legal practitioners whose admission is conditional.

(4) The Chief Justice may, on the recommendation of the Society, make rules prescribing the manner of the conduct of guidance, supervision and control prescribed under subsection (2).

(5) A legal practitioner whose admission to practise is conditional may, by motion supported by an affidavit, apply to the Chief Justice for removal of the conditions attaching to the admission of the legal practitioner, under subsection (1).

(6) The Chief Justice may, upon being satisfied that the applicant has—

(a) since the date of the admission, been actively employed for a continuous period of not less than two years in compliance with subsection (2); and

(b) complied with the rules prescribed under subsection (4), order the removal of the conditions and thereupon the admission shall cease to be conditional.

(7) For purposes of this section, “prescribed legal practitioner” means a legal practitioner of at least five years standing at the bar.”.

6. Section 30 of the principal Act is amended by—

Amendment
of s.30 of the
principal Act

(a) deleting subsection (3);

(b) renumbering subsections (4), (5), (6), (7), and (8) as subsections (3), (4), (5), (6) and (7), respectively; and

(c) inserting in subsection (7), the words “(c),” immediately after the words “(b),”.

7. Section 96 of the principal Act is amended, in subsection (1), by deleting paragraph (a) and substituting therefor a new paragraph (a) as follows—

Amendment
of s.96 of the
principal Act

“ (a) recommend to the Attorney General to make an application under section 89, to strike the legal practitioner off the Roll;”.

OBJECTS AND REASONS

The principal object of this Bill is to amend miscellaneous provisions of the Legal Education and Legal Practitioners Act in order to address the challenges identified in the course of implementing the Act.

T. CHAKAKA-NYIRENDA
Attorney General