

Malawi

## National Assembly (Powers and Privileges) Act Chapter 2:04

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# National Assembly (Powers and Privileges) Act

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## Malawi

# National Assembly (Powers and Privileges) Act

## Chapter 2:04

Commenced on 13 February 1957

*[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 declare and define certain Powers, Privileges and Immunities of the National Assembly and of the Members of such Assembly, to secure Freedom of Speech in the National Assembly, to regulate Admittance to the Precincts of the National Assembly, to give Protection to the Persons employed in the Publication of the Reports and other Papers of the National Assembly and for purposes incidental to or connected with the matters aforesaid**

### Part I – Short title and interpretation

#### 1. Short title

This Act may be cited as the National Assembly (Powers and Privileges) Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Assembly**” means National Assembly of Malawi;

“**Clerk**” means the Clerk of the National Assembly;

“**committee**” means any standing, sessional, select or other committee of the Assembly;

“**journals**” means the minutes of the Assembly or the official record of the votes and proceedings thereof;

“**member**” means any member of the Assembly;

“**officer of the Assembly**” means the Clerk or any other officer or person acting within the precincts of the Assembly, other than when serving a summons under [section 10](#) (3), under the orders of the Speaker, and includes any police officer on duty within the precincts of the Assembly;

“**police officer**” has the same meaning as in the Police Act;

*[Cap. 13:01]*

“**precincts of the Assembly**” means the chamber and offices of the Assembly and the galleries and places provided for the use or accommodation of strangers, members of the public and representatives of the press, and includes, while the Assembly is sitting, and subject to any exceptions made by direction of the Speaker, the entire building in which the chamber of the Assembly is situated, and any forecourt, yard, garden, enclosure or open space adjoining or appertaining to such building and used or provided for the purposes of the Assembly;

“**Speaker**” means the Speaker of the Assembly and includes any other member when such other member is presiding at a meeting of the Assembly;

“**Standing Orders**” means the Standing Orders of the Assembly for the time being in force;

“**stranger**” means any person other than a member or an officer of the Assembly.

## Part II – Privileges and immunities

### 3. Immunity from legal proceedings

No civil or criminal proceedings may be instituted against any member for words spoken before, or written in a report to, the Assembly or to a committee, or by reason of any matter or thing so brought by him by petition, Bill, motion or otherwise.

### 4. Freedom from arrest

No member shall be liable to arrest—

- (a) for any civil debt whilst going to, attending at or returning from a sitting of the Assembly or any committee;
- (b) within the precincts of the Assembly while the Assembly or a committee is sitting, for any criminal offence without the consent of the Speaker.

### 5. Exercise of process

No process issued by any court in the exercise of its jurisdiction shall be served or executed within the precincts of the Assembly while the Assembly is sitting or through the Speaker, the Clerk or any officer of the Assembly.

### 6. Entry to Assembly

No stranger shall be entitled, as of right, to enter or to remain within the precincts of the Assembly.

### 7. Regulation of admission to Assembly

- (1) The Speaker is hereby authorized to issue such orders as he may in his discretion deem necessary for the regulation of the admittance of strangers to the precincts of the Assembly.
- (2) Copies of orders made under this section shall be duly authenticated by the Clerk and exhibited in a conspicuous position in the precincts of the Assembly; and such copies when so authenticated and exhibited shall be deemed to be sufficient notice to all persons affected thereby.

### 8. Order of withdrawal from Assembly

The Speaker may at any time order any stranger to withdraw from the precincts of the Assembly.

## Part III – Evidence

### 9. Power to order attendance of witnesses

The Assembly or any committee may, subject to [section 14](#) and [section 16](#), order any person to attend before the Assembly or before such committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

### 10. Attendance to be notified by summons

- (1) Any order to attend to give evidence or to produce documents before the Assembly or a committee shall be notified to the person required to attend or to produce the documents by a summons, in such form as may be prescribed, under the hand of the Clerk issued by the direction of the Speaker or, in the case of a committee, by the chairman and so described on the face of such summons.

Every such summons, if purporting to bear the signature of the Clerk, shall be deemed *prima facie* to be lawful and to be issued by the direction of the Speaker or the chairman as the case may be.

- (2) In every summons under subsection (1) there shall be stated the time when and the place where the person summoned is required to attend and the particular documents which he is required to produce and the summons shall be served on the person mentioned therein either by delivering to him a copy thereof or by leaving a copy thereof at his usual or last known place of abode in Malawi, with some adult person; and there shall be paid or tendered to the person so summoned, if he does not reside within four miles of the place of attendance specified in the summons, such sum for his expenses as may be prescribed by Standing Orders.
- (3) A summons under this section may be served by an officer of the Assembly or by a police officer.

## 11. Power to issue warrant to compel attendance

- (1) If a person to whom a summons under [section 10](#) is directed does not attend before the Assembly or the committee at the time and place mentioned therein, the Speaker may, upon being satisfied that the summons was duly served or that the person to whom the summons is directed wilfully avoids service, direct the Clerk to issue a warrant, in such form as may be prescribed, to apprehend him and bring him, at a time and place to be stated in the warrant, before the Assembly or committee.
- (2) A warrant issued under this section shall be executed by a police officer.
- (3) The Speaker, on directing the issue of a warrant under this section, may, if he thinks fit, by ordering an appropriate endorsement on the warrant, direct that the person named in the warrant be released after arrest on his entering into such a recognizance before a court for his appearance before the Assembly or committee as may be required in the endorsement.
- (4) Every warrant issued under this section and every endorsement upon such warrant shall, if purporting to bear the signature of the Clerk, be deemed *prima facie* to be lawful and to be issued or made under the direction or order of the Speaker.

## 12. Witnesses may be examined on oath

The Assembly or any committee empowered to order the attendance of witnesses may require that any facts, matters and things relating to the subject of inquiry before the Assembly or such committee be verified or otherwise ascertained by the oral examination of witnesses, and may cause any such witnesses to be examined upon oath, which the Clerk or the chairman of the committee or other person specially appointed for that purpose by the Assembly or by such committee is hereby authorized to administer.

## 13. Objection to answer question or to produce papers

- (1) Subject to [section 14](#), where any person ordered to attend to give evidence or to produce any paper, book, record or document before the Assembly refuses to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the Speaker may excuse the answering of such question or the production of such paper, book, record or document, or may order the answering or production thereof.
- (2) Subject to [section 14](#), where any person ordered to attend or to give evidence or to produce any paper, book, record or document before any committee refuses to answer any question that may be put to him or to produce any such paper, book, record or document on the ground that the same is of a private nature and does not affect the subject of inquiry, the chairman of the committee may report such refusal to the Speaker with the reasons therefor; and the Speaker may thereupon excuse the answering of such question or the production of such paper, book, record or document or may order the answering or production thereof.

## 14. Privileges of witnesses

- (1) Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Assembly or a committee thereof shall be entitled, in respect of such evidence or the disclosure of any communication or the production of any such paper, book, record or document to the same right or privilege as before a court of law.
- (2) Except with the consent of the President, no person in the employment of the Government shall—
  - (a) produce before the Assembly or a committee any paper, book, record or document; or
  - (b) give before the Assembly or a committee evidence,  
relating to the correspondence of any naval, military or air force matter; nor shall secondary evidence be received by or produced before the Assembly or a committee of the contents of any such paper, book, record or document.
- (3) Except when in the opinion of the President it would be contrary to the public interest and the President so directs, no person in the employment of the Government shall refuse—
  - (a) to produce before the Assembly or a committee any paper, book, record or document; or
  - (b) to give before the Assembly or a committee evidence,  
relating to the correspondence of any civil department or to any matter affecting the public service; secondary evidence shall not be received by or produced before the Assembly or a committee of the contents of any such paper, book, record or document which the President has directed shall not be produced.
- (4) An answer by a person to a question put by the Assembly or a committee shall not, except in the case of criminal proceedings under sections 105, 109, 110 and 112 of the Penal Code or of an offence against this Act, be in any proceedings, civil or criminal, admissible in evidence against him.

*[Cap. 7:01]*

## 15. Evidence of proceedings in Council or committee not to be given without leave

- (1) Save as provided in this Act, no member or officer of the Assembly and no person employed to take minutes of evidence before the Assembly or any committee shall give evidence elsewhere in respect of the contents of such minutes of evidence or of the contents of any document laid before the Assembly or such committee, as the case may be, or in respect of any proceedings or examination held before the Assembly or such committee, as the case may be, without the special leave of the Assembly first had and obtained.
- (2) The special leave referred to in subsection (1) may be given during a recess or adjournment by the Speaker, or during any dissolution of the Assembly, by the President.

## 16. Questions relating to evidence and production of documents before the Assembly or committee to be determined in accordance with usage of Parliament

Where at any time any question arises in the Assembly or in a committee in regard to—

- (a) the right or power of the Assembly or a committee to hear, admit or receive oral evidence; or
- (b) the right or power of the Assembly or a committee to peruse or examine any paper, book, record or document or to summon, direct or call upon any person to produce any paper, book, record or document before the Assembly or committee; or



- (c) the right or privilege of any person (including a member of the Assembly or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or document before the Assembly or committee,

that question shall, subject to the preceding provisions of this Act, and except in so far as express provision is made in those provisions for the determination of that question, be determined in accordance with the usage and practice of the Commons House of Parliament of the United Kingdom.

## **Part IV – Offences and penalties**

### **17. Proceedings to be deemed judicial proceedings for certain purposes**

Any proceedings before the Assembly or a committee thereof at which any person gives evidence or produces any paper, book, record or document, shall be deemed to be judicial proceedings for the purposes of sections 105, 109, 110 and 112 of the Penal Code.

*[Cap. 7:01]*

### **18. Offences relating to admittance to the Assembly**

Any person who—

- (a) being a stranger enters or attempts to enter the precincts of the Assembly in contravention of any order of the Speaker; or
- (b) being a stranger fails or refuses to withdraw from the precincts of the Assembly when ordered to withdraw therefrom by the Speaker; or
- (c) being a stranger contravenes any order made under this Act by the Speaker regulating the admittance of strangers to the precincts of the Assembly or any rule made by the Speaker under the Standing Orders; or
- (d) attends any sitting of the Assembly as the representative of any journal after the general permission granted under any order made under this Act or under the Standing Orders to the representative or representatives of that journal has been revoked,

shall be liable to a fine of £25 and to imprisonment for three months.

### **19. Other offences**

Any person who—

- (a) disobeys any order made by the Assembly or a committee for attendance or for production of papers, books, documents or records, unless such attendance or production be excused as hereinbefore provided; or
- (b) refuses to be examined before, or to answer any lawful and relevant question put by the Assembly or a committee, unless such refusal be excused as hereinbefore provided; or
- (c) offers to any member or officer of the Assembly any bribe, in order to influence him in his conduct as such member or officer, or offers to any member or officer of the Assembly any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill of matter submitted to or intended to be submitted to the Assembly or any committee; or
- (d) assaults, obstructs, molests or insults any member coming to, being within, or going from the precincts of the Assembly, or endeavours to compel any member by force, insult or menace to declare himself in favour of or against any proposition or matter pending in or expected to be brought before the Assembly or any committee; or

- (e) assaults, molests, insults, resists or obstructs any officer of the Assembly while in the execution of his duty or while proceeding to or from the Assembly knowing or having reasonable grounds for believing him to be such an officer; or
- (f) creates or joins in any disturbance which interrupts or is likely to interrupt the proceedings of the Assembly or any committee while the Assembly or such committee is sitting; or
- (g) presents to the Assembly or a committee any false, untrue, fabricated or falsified document with intent to deceive the Assembly or such committee; or
- (h) utters or publishes any false or scandalous slander or libel on the Assembly or upon any member in his capacity as such; or
- (i) attempts, directly or indirectly, by fraud, or by threats or intimidation of any kind, to influence a member in his vote, opinion, judgment or action, upon any question arising in the Assembly or in a committee, or to induce him to absent himself from the Assembly or any committee; or
- (j) threatens, assaults or insults a member or an officer of the Assembly on account of his conduct as such member or officer; or
- (k) gives false evidence (in the case of witnesses not examined on oath), prevarication or other misconduct as a witness before the Assembly or a committee; or
- (l) destroys documents which have been ordered to be produced before the Assembly or a committee; or
- (m) endeavours, directly or indirectly, to deter or hinder any person from appearing or giving evidence before the Assembly or a committee; or
- (n) tampers with a witness in regard to evidence to be given by him before the Assembly or a committee; or
- (o) threatens or in any way punishes, damnifies or injures or attempts to punish, damnify or injure any person for having given evidence before the Assembly or a committee, or on account of the evidence which he has given before the Assembly or a committee; or
- (p) publishes any evidence taken by, or document presented to, a committee where such evidence has been taken with closed doors, or where its publication has been expressly prohibited by the Assembly or the committee,

shall be liable to a fine of £200 and to imprisonment for two years.

## 20. Acceptance of bribes by members

Any member who accepts or agrees to accept or obtains or attempts to obtain for himself or for any other person any bribe, fee, compensation, reward or benefit of any kind for speaking, voting or acting as such member or for refraining from so speaking, voting or acting or on account of his having so spoken, voted or acted or having so refrained shall be liable on conviction before the High Court to a fine of £200 and to imprisonment for two years.

## Part V – Miscellaneous

## 21. Commons Journals to be *prima facie* evidence in inquiries touching privilege

Subject to this Act, a copy of the Journals of the Commons House of Parliament of the United Kingdom printed or purporting to be printed by the order or by the Printer of the Commons House aforesaid shall be received as *prima facie* evidence without proof of its being such copy upon any inquiry touching the privileges, immunities and powers of the Assembly or of any member thereof.

**22. Journals printed by the Government Printer to be admitted as evidence**

Upon any inquiry touching the privileges, immunities and powers of the Assembly or of any member, any copy of the journals printed or purporting to be printed by the Government Printer shall be admitted as *prima facie* evidence of such journals in all courts and places without any proof being given that such copy was so printed.

**23. Penalty for printing false copy of Act, journal, etc.**

Any person who shall print or cause to be printed a copy of any Act now or hereafter in force, or a copy of any report, paper, minutes or votes and proceedings of the Assembly as purporting to have been printed by the Government Printer or by order or under the authority of the Assembly or by order or under the authority of the Speaker, and the same is not so printed, or shall tender in evidence any such copy as purporting to be so printed knowing that the same was not so printed, shall be liable to a fine of £200 and to imprisonment for three years.

**24. Protection of persons responsible for publications authorized by the Assembly**

Any person, being a defendant in any civil or criminal proceedings instituted for or on account or in respect of the publication by such person or by his servant, by order or under the authority of the Assembly, of any reports, papers, minutes, votes and proceedings, may, on giving to the plaintiff or prosecutor, as the case may be, twenty-four hours' written notice of his intention, bring before the court in which such civil or criminal proceedings are being held a certificate under the hand of the Speaker stating that the reports, papers, minutes, votes and proceedings in respect whereof such civil or criminal proceedings have been instituted were published by such person or by his servant by order or under the authority of the Assembly together with an affidavit verifying such certificate, and such court shall thereupon immediately stay such civil or criminal proceedings and the same and every process issued therein shall be deemed to be finally determined.

**25. Publication of proceedings without malice**

In any civil proceedings instituted for publishing any report or summary of or any extract from or abstract of any report, paper, minutes, votes and proceedings of the Assembly, if the court is satisfied that such report, summary, extract or abstract was published in good faith and without malice, judgment shall be entered for the defendant.

**26. Exercise of jurisdiction by courts**

Neither the Speaker, nor any officer of the Assembly, shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or such officer by or under this Act.

**27. Powers of officers**

Every officer of the Assembly shall, for the purposes of this Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.

**28. Power of arrest**

An Officer of the Assembly may arrest without warrant—

- (a) any person who commits any offence contrary to section 18 or 19 in his presence;
- (b) any person within the precincts of the Assembly whom he reasonably suspects of having committed, or being about to commit, an offence contrary to either of the said sections.

**29. Speaker may order words out of order not to be published**

- (1) Where the Speaker, under the Standing Orders of the Assembly, rules any words used by a member to be out of order, the Speaker may, in his absolute discretion, order that such words, or any words out of which they arose or arising out of them, shall not be published in any manner.
- (2) Any person who publishes any words which are the subject of an order made under subsection (1) shall be liable to a fine of £200 and to imprisonment for two years.

**30. Sanction for prosecutions**

No prosecution for an offence under this Act shall be instituted except with the written sanction of the Director of Public Prosecutions.

**31. Rules**

The President may make Rules prescribing anything which, under this Act, may be or is to be prescribed.