

Law Commission Report 21



MALAWI LAW COMMISSION

**REPORT OF THE LAW COMMISSION
ON THE
REVIEW OF EDUCATION ACT**

March 2010

ISBN: 978-99908-85-05-7

Printed by THE GOVERNMENT PRINTER, Lilongwe, Malawi

**The Malawi Gazette Supplement, dated 16th April, 2010, containing
Report of the Law Commission (No. 11D)**

LAW COMMISSION REPORT NO. 21

CONSTITUTION OF MALAWI

REPORT OF THE LAW COMMISSION ON THE REVIEW
OF THE EDUCATION ACT

The Report of the Law Commission on the Review of the Education Act is hereby published and shall be laid in Parliament pursuant to section 135 (*d*) of the Constitution.

Dated this 30th day of March, 2010.

(FILE NO. LC/01/48)

PROF. PETER ARTHUR MUTHARIKA
*Minister of Justice and
Constitutional Affairs*

REPORT OF THE LAW COMMISSION ON THE REVIEW OF THE
EDUCATION ACT

TO: THE MINISTER OF JUSTICE

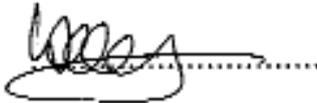
This is the Report on the Review of the Education Act by the special Law Commission appointed under section 133 of the Constitution to review the Education Act.

We, members of the Commission, submit this Report pursuant to section 135 (d) of the Constitution and commend the Report and its recommendations to the Government, Parliament and people of Malawi.

MEMBERS

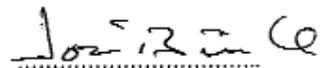
MRS. LONELY V. MAGRETA

—*Chairperson*
Ministry of Education and
Vocational Training



MR. JOHN BISIKA

—*Deputy Chairperson*
Faculty of Education, University of Malawi



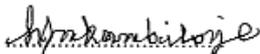
MRS. GERTRUDE LYNN. HIWA

—Law Commissioner



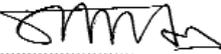
SISTER JULIAN M. KAMBILONJE

—Government Teaching Service Commission



DR. SIMEON HAU

—Malawi Institute of Education



MRS. MAINA J. MKANDAWIRE

—Private Schools Association of Malawi



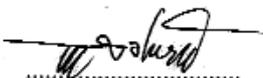
MR. ALIFEYO BANDA

—Ministry of Local Government and Rural
Development



MR. CLEOPES MASTARA

—Association of Christian Schools in Malawi



MR. DAVID YADIDI

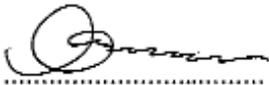
—Malawi National Examination Board



.....

MR. ORBERT D. A. RAMBIKI

—Ministry of Labour and Vocational Training



.....

DR. MARY SHAWA

—Ministry of Women and Child Development



.....

Dated March, 2010

Changes in the membership of the Commission

Professor Dan Chimwenje from Mzuzu University, who was Chairperson of the special Law Commission, passed away during the tenure of the Commission.

Programme Officers

The Commission was professionally serviced by three officers in all, Mr. William Yakuwawa Msiska, LLB (Hons) (Mw), LLM, (Northampton), Assistant Chief Law Reform Officer, as principal programme officer, Mr. Allison Mbang'ombe, LLB (Hons) (Mw), LLM (Warwick), Ag. Chief Law Reform Officer and Mr. Chizaso Nyirongo, LLB (Hons) (Mw), LLM (Oslo), Assistant Chief Law Reform Officer as assisting programme officers.

Acknowledgements

Funding for this Programme was provided by the British Government through DFID and the European Union under the Rule of Law Programme. The special Law Commission also would like to acknowledge in a very special way Justice Elton M. Singini, SC, Justice of Appeal, who was the Law Commissioner during the early stages of the work of the Special Law Commission and Mrs. Janet Banda who is the Chief Law Reform Officer but currently on a long term study leave, for their contributions.

FOREWORD

In 2002, the Law Commission received a submission from the Ministry of Education, Science and Technology that requested the Law Commission to review legislation governing the provision of education in Malawi. It was considered that a programme to review and reform the education legislation was long overdue taking into account certain developments in the education sector such as free primary education, and the provision of education by the private sector, just to mention a few.

Following the submission, a special Law Commission was appointed under section 133 of the Constitution to carry out the necessary law reform work. Membership of the Commission included representation from the Universities, the Ministry of Education, Science and Technology, Government Teaching Service Commission, the Ministry of Labour and Vocational Training, the Ministry of Gender and Community Services, the Malawi National Examinations Board, the Private School Association of Malawi, the Association of Christian Educators in Malawi, the Ministry of Local Government and Rural Development and the Malawi Institute of Education. The Commission commenced its work in August, 2003. Funding for the review of the Education Act was initially provided by the British Government through Department For International Development (DFID) and the European Union, through the Rule of Law Programme, financed some other activities to finalize the review.

In reviewing the Act, the special Law Commission was mindful of the fact that the principal objective of education is to equip the citizenry with knowledge and skills relevant for social and economic development of the nation. In this regard, the Commission recognized that the governing legislation on the provision of education, namely, the Education Act, which was enacted in 1962 was obsolete. On attaining independence in 1964, Malawi adopted the colonial Act wholesale save for the few amendments that the Act went through.

The Commission concluded that in its present framework the Act is conspicuously in need of reform to put the law in tandem with social change and the current constitutional order. Further, in recent times the general public has bemoaned the quality of education being very low. This, it has been suggested, is as a result of the mushrooming of privately owned schools whose establishment does not follow the legal requirements. The expectation is that reforms to the education law will contribute to the improvement of the low standards in the education system. In this vein, the Commission is recommending the adoption of the new Education Act which should incorporate constitutional and applicable international norms relating to education at all levels.

In arriving at its findings, the Commission undertook a programme of public consultations to have wider input into its work. This was done through convening of meetings with various stakeholders and through invitations of submissions from the general public. These invitations were issued by means of notices that were published in the local press. Further, members of the Commission visited

some countries in the Region, namely Namibia and Tanzania. The Commission also visited some educational establishments in the country.

As part of the national consultative process, the Commission also convened three regional workshops and a national workshop to subject its findings and recommendations on the Act to the scrutiny of a wider section of society with a view to enhance participation in the law reform process.

I, on behalf of the Law Commission, the Government and the people of Malawi thank the British Government through Department For International Development (DFID), for the financial support provided to the Law Commission for part of the review of the education legislation. I also acknowledge, with thanks, the additional financial support from the European Union under the Rule of Law Programme for the completion of the review process.

Mrs. Lonely V. Magreta

Chairperson

TABLE OF CONTENTS

	PAGE
FOREWARD	5
INTRODUCTION	8
Terms of Reference	8
Work Methodology	8
Draft Legislation	9
Structure of the Report	9
Overview of the Education Act (Cap. 30:01)	9
Synopsis of the Draft Legislation	10
SPECIFIC FINDINGS AND RECOMMENDATIONS	
LONG TITLE	12
PART I—GENERAL PRINCIPLES	15
PART II—ADVISORY COUNCILS	17
PART III—CENTRAL ADMINISTRATION	19
PART IV—PRIMARY EDUCATION	20
PART V—MANAGEMENT OF GOVERNMENT AND OTHER SCHOOLS	30
PART VI—ESTABLISHMENT AND CONTROL OF SCHOOLS	35
PART VII—TEACHERS	51
PART VIII—CURRICULUM AND INSTRUCTION IN SCHOOLS	60
PART IX—PUPILS	73
PART X—FEES	74
PART XI—SUPPLEMENTARY AND RULES	76
NEW AREAS	
PRELIMINARY	12
INSPECTION OF SCHOOLS AND COLLEGES	48
ESTABLISHMENT OF THE TEACHERS COUNCIL OF MALAWI	51
ESTABLISHMENT OF THE MALAWI INSTITUTE OF EDUCATION	64
APPENDIX	
EDUCATION BILL, 20	80

INTRODUCTION

The general mandate of the special Law Commission on the Review of the Education Act was to review the Act and subsidiary legislation with a view to recommend an education law that reflects an organized and thorough education system.

Terms of Reference

The special Law Commission on the Review of the Education Act developed the following Terms of Reference—

- (a) to review the existing legislation on education with a view to developing a new law on matters of education that will—
 - (i) put into effect the principles of policy on education and the Malawi Growth Development Strategy;
 - (ii) alleviate problems faced by the education system, such as low quality of education;
- (b) to review the Education Act as against the Constitution, comparable foreign law and applicable international law;
- (c) to consider all education related legislation such as the Malawi National Examinations Board Act, (Cap. 30:04), the National Library Services Act, (Cap. 31:01), Local Government Act, (Cap. 22:01), Technical Entrepreneurial Vocational Education and Training, (Cap. 55:06), Government Teaching Service Commission Act, (Cap. 30:08), Employment Act, (Cap. 55:02) University Act (Cap. 30:02) and Mzuzu University Act, (Cap. 30:09), with a view to determining the effect of such statutes on education;
- (d) to consult with stakeholders with a view to eliciting their views on the findings and recommendations of the special Law Commission;
- (e) to recommend any other matters relating to education;
- (f) to produce a report containing findings and recommendations accompanied by draft legislation based on such recommendations to be submitted to Minister of Justice for laying in Parliament; and
- (g) to disseminate the Report through civic education to duty bearers and the general public.

Work Methodology

The Commission adopted the following methodology in reviewing the Act—

- (a) inviting submissions from members of the general public through notices in the local papers; and general written submissions were received;

- (b) holding Commission meetings and during these meetings the Commission scrutinized the whole Act provision by provision and examined comparable statutes from other regional jurisdictions;
- (c) hearing oral submissions from the sub-committees instituted by the Ministry on several aspects of education;
- (d) undertaking study visits to Namibia and Tanzania to share experience on education legislation in those countries;
- (e) holding three regional workshops and one national consultative workshop on the recommendations reached by the Commission, with participants from all the six education administrative divisions of the country and from various sections of stakeholders;
- (f) convening a meeting of the Commission to review the workshops deliberations and to incorporate the recommendations made at those workshops; and
- (g) then on the basis of the above, proceeding to produce this Report.

All submissions and comments that were received by the Commission were considered and debated and, have been used in developing the final recommendations contained in this Report.

Draft Legislation

In view of the extensive changes to the existing Act recommended by the Commission and the new areas recommended by the Commission, the Commission recommends the repeal of the present Act and its replacement with a new Act under the same title "Education Act." A draft Bill for the new Act is attached as part of the Report. Thus, in the narrative part of the Report, the Commission has not, for the most part, assigned Part numbers and section numbers for the new provisions being recommended since they will bear their proper Part numbers and section numbers in the draft legislation. However, subsection numbers for sections have been assigned to indicate the structure and full content of the recommended provision.

Structure of the Report

What follows in this Report is a brief overview of the current Education Act and a synopsis of the proposed new legislation. The bulk of the Report contains detailed findings and recommendations of the Commission. All matters recommended to be enacted are shown in bold. Draft legislation for the enactment of the Commission's recommendations is attached as part of the Report.

Overview of the Education Act (Cap.30:01)

The Education Act was enacted in 1962 to provide for the education of persons within Malawi. Since the Act came into force, the substance of the Act has largely remained the same.

The Act is presently divided into eleven Parts.

Part I consists of one section which provides for the general principles on the promotion of education by the Minister.

Part II makes provision for a general Advisory Council and special Advisory Councils and constitution of the Councils. Part III makes provision for the expenditure by the Minister of public funds available for the purposes of education.

Part IV makes provision for the establishment of Local Education Authorities, duties and powers of the Local Education Authority, constitution of the education committees of Local Education Authorities, duties of the executive officer, establishment of Local Education Boards, duties of Local Education Boards and powers of the Local Education Board.

Part V makes provision for the management of Government schools, establishment of Board of Governors of Government schools, responsibilities of the proprietor of a school, establishment and functions of school committees.

Part VI makes provision for the procedure for establishment of a school, procedure for dealing with complaints, powers of the Minister to close, reopen or take possession of the school, power to enter and inspect schools and general duties of the proprietor.

Part VII makes provision for the registration and licensing of teachers, the Teacher's Board of Appeal and offences relating to teachers.

Part VIII makes provision for the syllabus to be followed in schools and modalities for religious instructions in schools.

Part IX makes provision for the duty of pupils to obey the headmaster and also medical inspection of pupils.

Part X consists of one section which gives the Minister power to prescribe fees payable in schools.

Part XI makes provision for powers of the Minister to make rules, general penalty for offences and service of notices and other documents.

Synopsis of the Draft New Legislation

The draft Bill proposed by the Commission seeks to incorporate all aspects of education starting from, primary, secondary and teacher training.

The draft Bill introduces a number of other new areas that are aimed at improving efficiency and effectiveness in the provision of education. Among the new areas introduced, with appropriate provisions incorporated in this Report are the following—

- (a) provisions to create a body responsible for the development of the curriculum;

- (b) provision to establish and regulate an independent body for registration and licensing of teachers; and
- (c) provisions relating to registration, inspection of schools and teacher training colleges, including private schools and colleges.

SPECIFIC FINDINGS AND RECOMMENDATIONS

Long Title

The Commission considered the purport of the long title and recognized that the Act originally sought to provide for the education of persons within Malawi and for purposes ancillary thereto. The Commission thought that due to current developments in the provision of education, the long title is insufficient. The Commission therefore recommends that the long title be deleted and replaced with the following—

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

The Commission observed that the Education Act does not have the “Preliminary Part” which deals with short title, interpretation and application. The Commission was informed that it is standard format for Acts of Parliament to contain this part. As such the Commission recommends that a new part be introduced as follows and that the section numbers shown are as assigned in the draft Bill attached to this Report.

NEW PART . . . —PRELIMINARY

SECTION 1 [*Short title*]

The Commission recommends retention of the short title.

SECTION 2 [*Interpretation*]

“Advisory Council”

The Commission was of the view that the definition be amended by deleting the words “II” in view of the recommendation that Part I should be preliminary and replacing it with “III”.

“Board of Governors”

The Commission recommends retention subject to deleting the word “V” and substituting therefore with the word “VI” in view of the introduction of Part I.

“Local Education Authority”

In view of the recommendations contained in the Report, the Commission recommends deletion of this definition.

“Local Education Board”

In view of the recommendations contained in the Report, the Commission recommends deletion of the definition.

“Ministry”

The Commission noted that the purpose of defining this term was to clear confusion between the Ministry of Education and that of Local Government. In its view the Commission thought that defining the term at present is superfluous and therefore recommends deletion.

“Ministry officer”

The Commission recommends deletion.

“primary education”

The Commission considered the definition of “primary education” to be rigid and recommends that it should be made flexible by inserting the words “**at least**” after the word “means” and deleting the word “eight” and substituting therefor the word “**seven**”. The amended definition to read as follows—

“primary education” means at least the first seven (7) years of formal education”;

“pupil”

The Commission noted that the definition is only limited to primary school going children. To be an all encompassing definition the Commission recommends deletion of the word “pupil” and substituting therefor the word “student” so that the amended definition reads as follows—

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

“school”

The Commission recommends the deletion of the words “not less than ten pupils” for irrelevance and substituting therefor with the word “**student**” wherever these words appear.

The word “sanatoria” should be deleted and replaced with the word “**sick bay**” which is the term commonly used.

Further that the word “**laboratories**” should be inserted immediately after the words “staff quarters”.

Furthermore, it was also recommended that the word “correspondence” wherever it appears be deleted and replaced with the words “**open and distance learning**”.

“Teachers’ Board of Appeal”

In view of the recommendations contained in the relevant part of the Report, the Commission recommends deletion of this definition.

NEW DEFINITIONS

The Commission also recommends that in the light of various recommendations later in this Report some new definitions should be included under section 2 as follows—

“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 Part....;

“council” means a council of a university;

“Education Appeals Tribunal” means a tribunal established under section ...;

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

Cap. 30:08

“Institute” means the Malawi Institute of Education established under Part...;

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

APPLICATION OF THE ACT

The Commission observed that education as a concept is too wide and creates confusion in application relative to any of its forms. In that regard the Commission resolved that only formal education should be covered under the proposed law to include primary, secondary and teacher training. The issue of religious, social or recreational education was considered by the Commission as well. The Commission was of the view that if such institutions provide education which is partly religious and partly formal then the Act should apply to them. However, where the institutions solely provide religious, social or recreational education then the Act shall not apply.

For clarity, the Commission recommends that there should be a new provision prescribing the limitation in the application of the proposed law.

The new provision on Application of the Act is to read as follows—

Application This Act shall not apply to—

(a) a university established under any written law or any university recognized by the Minister;

(b) any education institution which is established, administered, controlled, licensed or supervised under the provision of any other written 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 which provides education that is solely of a religious, social or recreational nature.

PART I—GENERAL PRINCIPLES

SECTION 3 [*General principles*]

The Commission was of the view that the title is limited and thought of changing it to **PROMOTION OF EDUCATION**. The Commission further recommends that this Part should become Part II and is to read as follows—

“PART II—PROMOTION OF EDUCATION”

The Commission observed that a close reading of section 3 reveals that it focuses on the duties bestowed on the Minister. The Commission considered that duties, goals and general principles are inherent in the provision of education by the State and recommends that section 3 should be modeled on the footing of duties and powers. The Commission reached this decision taking into account the provisions of the Constitution, articles 28 and 29 of the Convention on the Rights of the Child, the Malawi Policy Investment Framework of 2002 and the goals as articulated in the Education for All Action Plan. This therefore entails a change in the marginal note.

The new section 3 shall read as follows—

General
duties and
powers
of the
Minister

3.—(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 transparent and accountable education system at all levels.

(2) In the exercise and performance of 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.

The Commission noted that the current law does not indicate the goals of the education system. The Commission was aware that such provisions are now standard practice in other SADC countries such as Zambia.¹ The Commission considered a provision to set goals pertinent. The Commission thus resorted to the Policy Investment Framework for guidance and recommends adoption of the following new provision—

**Goals of
education in
Malawi**

... (1) The purpose of education in Malawi shall be to equip the individual 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 behavior;

(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;

¹ See section 5 of the Education Act, Zambia.

(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 for 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 everyday 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 II—ADVISORY COUNCIL

This Part makes provision for a general Advisory Council and such number of special Advisory Councils to advise the Minister on matters affecting education generally or a special aspect of education.

Further, section 5 makes provision for the constitution of the Councils and procedures when transacting business. The provision also gives power to the Minister to revoke any appointment made.

In its earlier discussion, the Commission thought the Advisory Councils were irrelevant, however when the Commission consulted the Ministry it transpired that Advisory Councils are still required as they are relevant to the development of education especially in that their numbers comprise technocrats or people with expertise in the field of education. Of more importance in the deliberations was that the law needs to provide for a general Advisory Council, Advisory Council on Special Education and on Teacher Education and Development as the last two have been neglected for a long time.

However, suggestions from the consultations are that there is no need to have special Advisory Councils noting that the Advisory Council will have power to constitute committees to deal with specific aspects of education. The Commission was in full agreement with the suggestion and recommends that there should be only one Advisory Council.

The Commission observed that in the SADC Region that is the trend.²

On the basis of the two reasons, the Commission recommends the retention of the Part, however with modifications to the current provisions, and deletion of any reference to special Advisory Council.

The modified provisions shall read as follows—

Establishment and powers of an 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 reviews of overall effectiveness of particular aspect of the education system;

(e) foster public awareness and understanding of education policies; and

(f) provide the Minister with professional information, advice and judgment the Minister needs 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.

Composition of the Council and its procedure ... **(1) The Advisory Council shall, subject to this section, consist of fifteen (15) members who shall hold office for a period of three (3) 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.

² Section 3 of Namibian Education Act; section 16 of the Zambian Education Act; and section 6 of Tanzanian Education Act.

(3) The members of the Advisory Council shall be persons with interest in education or persons who have had experience in education or some special aspect of education.

(4) The Chairperson and Vice Chairperson of the Advisory Council shall be elected from among their number 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.

SECTION 6 [*Attendance at Meetings*]

The section gives power to an Advisory Council at the discretion of the Chairperson to invite any person or persons to attend any meeting of the Council or any of its committees. Such person or persons may take part in the proceedings of that meeting, however such person or persons shall not be entitled to vote.

The Commission found no fault with the provision and recommends retention subject, to deletion of the word “Chairman” and replacing it with the word “**Chairperson.**” The marginal note needs to change to “**Invited persons**” because that is the essence of the section.

SECTION 7 [*Reports*]

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

The Commission recommends retaining the spirit of the provision. However in view of its earlier recommendation that there should be only one Advisory Council the Commission recommends deletion of the word “each” and substituting therefor the word “**the**”.

SECTION 8 [*Orders to be published*]

The section provides that the order appointing an Advisory Council and every appointment, revocation of appointment and resignation of a member of the Advisory Council shall be notified in the *Gazette*. The Commission considered the provision to be a useful tool or mechanism for transparency and accountability.

The Commission recommends retention.

PART III—CENTRAL ADMINISTRATION

SECTION 9 [*Expenditure by the Minister*]

The section makes provision on how the Minister can make provision for money or financial assistance to education institutions within the meaning of the

Act. The Commission observed that the substance of the provision does not tally with the marginal note. The Commission also noted that the heading of this Part is misleading, as what is contained in the section does not have any bearing on central administration. The Commission therefore, recommends that the heading “Central Administration” be deleted and replaced with the words “**GRANTS AND LOANS IN AID OF SCHOOLS AND COLLEGES.**”

The Commission took special notice of paragraph (b) and recommends the retention of the paragraph noting that currently, Government policy has shifted towards the provision of boarding facilities in secondary schools.

Further, the Commission also recommends that paragraph (e) be amended by deleting the words “maintenance and transport”, “or proceeding to undergo”, “inside or outside” to be replaced with “**in**” and lastly deleting the words after “Malawi”.

In addition the Commission recommends that paragraph (c) be broken into two. The last part which deals with technical education should be a stand alone paragraph and to read as follows—

Cap. 55:06 ... 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.

PART IV—PRIMARY EDUCATION

SECTION 10 [*Local Education Authorities*]

The section provides for the establishment of Local Education Authorities for the area in which a local government authority has jurisdiction. The establishment of such Local Education Authorities is done after the Minister of Education consults with the Minister responsible for Local Government. This clearly indicates that the Education Act envisaged devolution of management, control and establishment of primary education to local authorities although along the way everything became centralized.

The Commission noted that there is a policy shift back towards devolving the management and control of primary education to the local government authorities. Thus, the Decentralization Policy adopted by Government in 1998 and the Local Government Act³ requires decentralization of primary education to local government authorities. The Commission thus recommends that a provision be adopted to replace section 10 that should indicate that primary education shall be the responsibility of local government authorities.

The Commission recognized that it might be necessary in some cases for a local government authority to manage a primary school outside its jurisdiction.

³ Section 14 of the Local Government Act, Cap. 22:01 requires a Local Government Authority to establish service committees which include the Education Committee.

The Commission was aware that the Local Government Act anticipates such joint ventures and has empowered local government authorities under section 16 to appoint a joint education committee, where necessary.

The Commission thus recommends that where such need arises, a concerned local government authority should be able to do so through the signing of a memorandum of association with the local government authority responsible for that area.

The Commission thus recommends adoption of the following two provisions—

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 that other local government authority.

FREE AND COMPULSORY PRIMARY EDUCATION

The Commission also noted that under section 13 (f) (ii) of the Constitution, the State is to actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving, among other things, the provision of adequate resources to the education sector and devising programmes in order to make primary education compulsory and free to all citizens of Malawi. The Commission further observed that the introduction of free primary education is a matter of policy without legal sanction. In view of that the Commission thought it appropriate that provision be made in the law regarding free and compulsory primary education.

In that regard the Commission recommends the following new provision—

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 (18) years of age**

SECTION 11 [*Education Committees to be Appointed*]

This section provides for the appointment of an education committee by the Local Education Authority to which it shall refer all matters relating to the performance of its duties and powers under the Act.

The Commission noted that this provision is in line with section 14 of Local Government Act which requires a local government authority to appoint an education committee. Further, the National Strategy for Community Participation anticipates the establishment of Education Committees by each local government authority.

The Commission however observed that section 32 of the Act requires school committees to be established by the Minister by order published in the *Gazette*. The Commission took the view that the need for the involvement of the Minister falls away in the light of the decentralization process which will leave management of primary schools to local government authorities.

Regarding reporting structures, the Commission recommends that the school management committee should report to the education committee of the local government authority established in accordance with the Local Government Act.

The Commission recommends retention of the provision subject to redrafting for better presentation

The new provision shall read as follows—

Appointment of education committee ... (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 and the officer shall attend all meetings of the education committee but shall not be entitled to vote.

(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 the committee before exercising any of its powers under this Act.

SECTION 12 [*Duties of Local Education Authorities*]

The section outlines several duties of the Local Education Authority.

Firstly, the Commission recommends deletion of the reference to “**Local Education Authorities**” and replacement with “local government authority” wherever the term appears in view of the recommendations under section 10.

Secondly, paragraph (a) requires a local education authority to assist in carrying out the Government policy in the area of such authority. The Commission observed that the word “assist” in this paragraph implies the offering of a helping hand to Government in the implementation of policies. The Commission considers this position unsatisfactory since the local education authorities are there to implement Government policies.

The Commission thus recommends deletion of the words “assist in carrying” and substituting therefor the word “**implement**”. The word “**primary**” be inserted after the word “Government” to emphasize that the responsibility relates to primary education.

Paragraph (c) requires the Local Education Authority to prepare and submit to the Minister, a development plan, showing the action the Local Education Authority proposes to undertake in order to further education in its area. The Commission considered the provision and recommends retention Subject to deleting the word “Scheme” and replacing it with word “**plan**”.

Thirdly, the Commission recommends deletion of paragraph (d) and substitution therefore the following new paragraph (d)—

(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 as the Local Government Authority shall publish from time to time;

Paragraph (f) obliges the Local Education Authority to prepare and submit annual estimates of revenue and expenditure to the Minister in respect of matters relating to education. The Local Education Authority is also required to compile financial records, keep financial books and other documents. The Local Education Authority is further required to make returns.

The Commission observed that the Constitution establishes the institution of the National Local Government Finance Committee⁴ which has the responsibility of administering finances of the Assemblies. The Local Government Act, Cap. 22:01 also recognizes the existence of this institution.

The Commission thus recommends that the word “Minister” be deleted and substituted with the words “**National Local Government Finance Committee**”.

The Commission further recommends that paragraph (f) be split into two paragraphs for better presentation—

(f) prepare and submit to the National Local Government Finance Committee annual estimates of revenue and expenditure in respect of matters relating to primary education in its area in such form as the Finance Committee may by rule prescribe;

(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 concurrence of the Minister responsible for finance may prescribe.

Paragraph (g) obliges the Local Education Authority to comply with orders and directions given to it by the Minister. The Commission was aware that this is not possible in a decentralized system. Rather, the authorities will be required to

⁴ Section 152 of the Constitution.

comply with policies and guidelines adopted and issued by the Minister from time to time.

Paragraph (g) should therefore be amended to read as follows—

(h) comply with all policies adopted and guidelines issued by the Minister in accordance with powers conferred on him by this Act;

The Commission observed that the provision is silent on the regulation of private primary schools and recommends the following new paragraph (h)—

(i) make recommendations to the Minister with respect to the ownership, management and, registration of private primary schools.

SECTION 13 [*Development Plans and Schemes*]

Subsection (1) gives powers to the Minister to direct what period the development plan should cover. The Commission considered including specific time frame. However, it was observed that different needs in each local government authority in so far as the provision of primary education is concerned would be determinant of the period. The Commission therefore did not recommend inclusion of time frames.

The Commission recommends retention of the provision subject to deletion of the words “Minister” and “direct” and substituting therefor the words “**local government authority**” and “**decide**” respectively.

Further, the reference to “schemes” in the marginal note should be deleted in view of earlier recommendations regarding that word.

Subsection (2) (a) requires a Local Education Authority before submitting its development plan to the Minister, to consult proprietors or persons representing such proprietors of all schools other than Government schools or schools belonging to the Local Education Authority. The Commission considers this as a good provision as it embraces democratic values of consultation before making any decision. The Commission however recommends redrafting the provision to take on board recommendations regarding the role of “Minister” and the reference to “Local Education Authority”.

The provision shall now read as follows—

(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;

Subsection (2) (b) mandates the Minister to give directions for securing sufficient particulars which are deemed to be missing from the development plan. The Commission considered the provision appropriate in that it underscores public scrutiny for purposes of checks and balances. The Commission recommends retention of the provision subject to aligning it to recommendations already made.

The provision shall now read as follows—

(3) Where a development plan has been prepared under this section, the 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 to ensure that sufficient particulars are furnished;

Subsections (3) and (4) were recommended for deletion in view of the decentralization concept which has been introduced into the proposed law.

Subsection (5) provides that every development scheme should be published by sending a copy of the scheme to the Local Education Authority or Local Education Board and to the proprietor of every primary school in its area.

In view of the recommendations as regards decentralization, the Commission recommends that the provision be amended by deleting the words “by sending a copy of the scheme to the Local Education Authority or Local Education Board concerned and”. Further, on the basis of the Commission’s recommendations above, subsection (5) shall become subsection (3) and read as follows—

(4) A local government authority shall make available a copy of the development plan to the proprietor of every primary school in its area.

SECTION 14 [*Effect of Development Scheme*]

The section provides that a development scheme shall have no operative effect on schools established or closed under Part VI which essentially regulates the registration of private schools.

The Commission recommends deletion of the reference to “scheme” in view of its earlier recommendations regarding that term. Further, the Commission considered that a development plan of any local government authority should affect all primary schools in the locality. The Commission thus recommends deletion of this provision on that basis.

SECTION 15 [*Powers of Local Education Authority*]

The section makes provision for powers to be exercised by the Local Education Authority in the fulfillment of its duties under the Act. The Commission recommends deletion of the reference to “Local Education Authority” and substituting therefor “**local government authority**” as recommended earlier.

Paragraph (a) empowers the Local Education Authority to receive subvention and grants-in-aid of primary education from public or private funds. The Commission observed that the paragraph provides two types of funding and two sources of funding respectively and recommends that it should be broken up into two paragraphs to highlight each source.

The two new paragraphs shall read as follows—

(a) receive such subvention or sums as Parliament shall appropriate for the purpose of primary education;

(b) seek and receive, with the approval of the Minister of Finance, grants-in-aid from public or private funds;

The Commission recommends deletion of paragraph (b) in view of the introduction of free primary education, in 1994.

The Commission recommends retention of paragraph (c) subject to deleting the word “provide” and substituting therefor the word “**allocate**” and deleting the words “boarding accommodation.”

Paragraph (d) makes provision for funds for scholarships, bursaries of education, maintenance and transport of pupils attending courses of instruction within the area of the Local Education Authority or outside. The Commission considers reference to scholarships or bursaries of education redundant since primary education is now free and recommends deletion. However the Commission considered the provision useful since needy or other deserving students may still access scholarships or bursaries for assistance in the other instances as envisioned by the provision apart from tuition fees. The Commission therefore recommends retention of the provision subject to deletion of the words “of education”

Paragraph (e) empowers the Local Education Authority to advise the Minister on the siting and establishment of new primary schools, additions to or closing of existing primary schools. Such activities would be done in connection with the preparation of the development plan or not. Further, the Local Education Authority is also empowered to advise the Minister responsible for education matters on equipment or lack of equipment and on the physical, mental and moral welfare of the pupils in schools under its jurisdiction. In view of the statutory position to devolve responsibility of primary schools to local government authorities, the Commission recommends redrafting of the provision as follows—

(e) determine the siting and establishment of primary schools, additions to or closing of existing primary schools, either in connection with the preparation of an education development plan or otherwise;

Similarly, in paragraph (f), the very last phrase which refers to the making of returns to the Minister should be deleted.

Furthermore, the Commission recommends deletion of paragraph (g) which deals with fees and tuition for primary schools for redundancy.

Paragraph (h) empowers the Local Education Authority to allocate funds provided by the Minister for primary schools in its area. The allocation of funds should be done in accordance with the rules made by the Minister. The Commission recommends retention subject to deleting the phrase “and any fees paid to it under the last preceding paragraph.”

In paragraph (i) the words “establish and” in the first line should be deleted and also the words “and boarding accommodation” in the second line.

Paragraph (j) empowers the Local Education Authority to inspect buildings, furniture, equipment, records, and books of accounts kept at all primary schools in its area and that the results of such inspections be reported to the Minister. The Commission considered that it will be necessary to submit such reports both to the local government authority, in view of decentralization and the Ministry for information. As such, the Commission recommends retention of the provision subject to the suggested amendments.

Paragraph (k) authorizes the Local Education Authority to withhold grants in aid to any assisted primary school on the directions of the Minister. The Commission recognized that this provision provides a check on the part of any assisted primary school in the event of non-compliance with rules or regulations governing the provision of education. Consequently, the Commission recommends retention subject to amending the provision by deleting the words “on the directions of the Minister.”

The Commission recommends deletion of paragraph (l) as primary education is free and the question of remitting of fees does not arise. Lastly, the Commission recommends retention of paragraph (m).

In view of its recommendations regarding deletion of some paragraphs under section 15, the Commission recommends renumbering of the remaining paragraphs.

SECTION 16 [*Constitution of Education Committees of Local Education Authorities*]

The section provides for the composition and appointment of members of the education committee of the Local Education Authority. It also makes provision for the removal of a member from the committee on the recommendation of the Minister. The section further makes provision for the filling of vacancies in the education committee and furthermore, the appointment of a ministry officer by the Minister to be executive officer of each education committee.

The Commission was aware that the involvement of the Minister in the appointment and general conduct of the committee will not be appropriate in view of the powers given to local government authorities to establish education committees under section 14 of the Local Government Act.

Further, local government authorities have been empowered to determine composition of any service committee that it establishes. The Commission thus recommends removal of any reference to the word “Minister” in this regard.

On the removal of a member from the education committee by a simple majority, an issue was raised as to what grounds should warrant removal of a committee member. The Commission considered that it was necessary to provide for removal of members through a procedure that is fair and expeditious. The Commission however noted that the provision was of importance as it was meant to instill discipline in the members.

The Commission therefore recommends that subsection (3) be amended by deleting the words “any member of such committee appointed from its own members and shall, on the recommendation of the Minister, remove from membership any member appointed from persons nominated by the Minister” and substituting therefor the words **“of an education committee any such member on reasonable grounds of which the member has had written notice of, not less than twenty-one (21) days.”**

Subsection (4), obliges the Local Education Authority to share the responsibility of appointing members of the education committee. Section 14 of the Local Government Act has entrusted this responsibility to local government authorities alone. The Commission thus recommends deletion of this subsection.

Similarly, subsections (5) and (6) should be deleted for the reasons given under subsection (4).

The amended provision shall now read as follows—

- | | |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Composition
of education
committee | <p>... (1) Every education committee shall consist of such number of members as may be appointed by a local government authority from time to time.</p> <p>(2) A chairperson of the committee shall be elected from among its members at the first meeting of the committee.</p> <p>(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 thereof, of not less than twenty-one (21) days.</p> <p>(4) Vacancies in the committee may be filled from time to time by appointing members from the local government authority.</p> <p>(5) An officer appointed as secretary of the committee shall attend all meetings of the committee but shall not be entitled to vote.</p> <p>(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.</p> |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

SECTION 17 [*Delegation of Duties and Powers to Education Committee*]

The section provides that every Local Education Authority shall delegate the performance of some of its duties under section 12 and the exercise of its powers under section 15 to its education committee. In view of its earlier recommendation, the Commission recommends that the word “Local Education Authority” be deleted and replaced with “**Local government authority.**”

Subsection (2) mandates the education committee to prepare for approval of the Local Education Authority draft annual estimates of revenue and expenditure relating to primary education and also draft development plans. The Commission recommends deletion of the phrase “of a Local Education Authority” in the first line. Reference to “Local Education Authority” in the second line should be substituted with “**local government authority.**”

SECTION 18 [*Duties of Executive Officer*]

This section makes provision for the duties of the executive officer of the education committee of the Local Education Authority. Such duties include undertaking preliminary preparation for the committee of its work including estimates, development plans, reports and other documents. The executive officer is also mandated to carry out inspections on behalf of the committee. The officer also plays an advisory role in the interpretation of Government educational policy.

The Commission was informed that ordinarily the secretary to the education committee would be the District Education Manager who will be the Director of Education at the local government authority level.

In view of the recommendation to replace “executive officer” with “secretary”, the Commission recommends amendments accordingly. Consequently, the marginal note should now read “**Duties of secretary.**” The Commission also recommends that wherever the words “Local Education Authority” appear in the section should be deleted and replaced with “**local government authority.**”

The Commission further recommends redrafting of the section for better presentation as follows—

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.

SECTION 19 [*Cancellation of Local Education Authority*]

The provision empowers the Minister in consultation with the Minister responsible for Local Government to cancel the establishment of a Local Education Authority if the Minister is satisfied that such Local Education Authority is not properly discharging its duties. The Commission recognized that local education authorities in the present constitutional set up which are the local government authorities established under the Constitution cannot be cancelled. The Commission thus recommends deletion of the section.

SECTION 20 TO 25 [*Local Education Boards*]

These sections provide for the establishment of Local Education Boards in areas where no Local Education Authority has been established. At present local government authorities are established under the Constitution and are available throughout Malawi. This therefore means that there will never be a need for the establishment of Local Education Boards in Malawi. Further, with the abolition of Local Education Authorities, these provisions have no application.

Furthermore, in view of the fact that primary education is the responsibility of the local government authorities, the Commission recommends deletion of the provision.

PART V—MANAGEMENT OF GOVERNMENT AND OTHER SCHOOLS

GENERAL OBSERVATION

The Part makes provision for the management of Government and other schools in Malawi. In general, the provisions state that management of Government schools is the responsibility of Government through a Board of Governors appointed by the Minister under section 26. In terms of management of all schools other than Government schools, section 28 makes provision that it shall rest in the proprietor of the school. In cases of Government assisted private schools, the Minister may, where necessary appoint a Board of Governors to assist the proprietor in the management of the school, in consultation with the proprietor. This is provided under section 29. The section makes provision that the proprietor of Government assisted school may initiate the appointment of Board of Governors by submitting proposals for that purpose to the Minister.

In its analysis of the provisions, the Commission observed that Part V makes provision for the management of both primary and secondary schools. The

Commission therefore reminded itself of the Government Policy to decentralize management of primary schools to local government authorities, which has been the direction the Commission, has implemented throughout the review process of the Act. The Commission therefore agreed that as far as a Government primary school is concerned, its management should rest in the hands of local government authorities. Therefore any reference to schools under this part should be understood to mean a secondary school.

The Commission further observed that the management of teacher training colleges is not specifically provided under this Part, neither is it provided under any legislation. The Commission was of the view that such a scenario cannot be left unaddressed. In view of this, the Commission recommends that the management of teacher training colleges should be incorporated. The Commission therefore recommends that the heading of this Part should be redrafted to reflect the issue as observed by the Commission and to read as follows—

“MANAGEMENT OF COLLEGES AND SECONDARY SCHOOLS”

SECTIONS 26—30

The Commission recommends retention of sections 26-30 and to insert the words “**secondary**” and “**college**” before and after the word “school” respectively wherever the word “school” appears in this Part. The provisions have been placed in the relevant Part of the Bill attached to this Report.

SECTION 31 [*Stamping and Registration*]

The Commission recommends retention of this section.

SECTION 32 [*School Committees*]

The section empowers the Minister to establish a school committee in respect of any Government school or assisted school where he considers it desirable. The Commission observed that indeed the Minister had established these committees under the “Primary Schools Committee Order”, *gazetted* as Government Notice No. 133/1963. Based on this order, the Commission was convinced that school committees should only be in respect to primary schools whether Government, assisted or private. The Commission recommends retention of this practice.

However, in light of the decentralization policy, the Commission recommends that the establishment of a school committee should fall within the purview of local government authorities.

The Commission therefore recommends deletion of section 32 and replacement of the same with a new provision and the Commission recommends

further that this provision be shifted to the appropriate part on Primary Education and it shall read as follows—

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.

During the discussion on school committees, the Commission also took note of the practice currently common in most primary and secondary schools whereby parents and teachers are forming associations called Parent-Teacher Associations (PTA). The question that exercised the Commissioners' minds was whether such associations should be recognized under the new legislation. After a long debate, the Commission resolved that although such associations are doing a tremendous job in assisting in school management issues, they should remain as voluntary associations and therefore should not be regulated by law. The Commission was convinced that the school management committee is a sufficient arrangement for community participation in primary school management.

SECTION 33 [*Contents of Order, School Committee*]

The section makes provision on what should be contained in an order establishing a school committee under section 32. In the main, the order establishing a school committee should make provision for—

(a) the number of members of the committee;

(b) the membership representing the proprietor, the Ministry, the Local Education Authority, the Local Education Board, the parents of pupils or the community served by the school or group of schools;

(c) the method of ensuring continuity of membership of the committee;

(d) the revocation of appointment of, retirement and resignation of members of the committee and the appointment of new members thereof in case of absence or inability to act of any member; and

(e) such other matters as the Minister may consider necessary in respect of the constitution, functions or procedure of the committee.

In its deliberations, the Commission noted, in view of its earlier recommendation, that a local government authority is to establish a school management committee, the power of the Minister to establish such a committee falls away. In its considered view, the Commission resolved that the Minister should have powers to publish by notice in the *Gazette* on the number of members of the committee, composition, method of ensuring continuity of membership, etc.

It was thought that such a practice would give directions on the establishment of the committee by a local government authority and would act as a check in the case of abuse of powers by a local government authority.

The Commission recommends the deletion of the section and replacement with a new provision to be shifted to the part on Primary Education and to read as follows—

Notice to be published **... The Minister shall, by a notice published in the *Gazette*, provide for—**

(a) the number of members of the school management committee;

(b) the membership representing the proprietor, the 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.

SECTION 34 [*Functions of School Committees*]

The section lists down the functions of a school committee. Among the functions, the school committee is supposed to assist the proprietor in such aspects as set out in subsection (2) and to advise the Minister and the Local Education Authority or Local Education Board on the matters mentioned in that

subsection. However, the appointments of a school committee shall not affect the responsibility of the proprietor for the management of a school, or confer on the committee any administrative powers.

Subsection (2) spells out the specific functions of a school committee.

In its deliberations the Commission resolved to retain the provision with necessary modifications in respect of the earlier recommendations made elsewhere in reference to the words “Minister”, “Local Education Authority”, “Local Education Board” and “school committee”.

Further, the Commission recommends that the provision should also be shifted to the part dealing with primary education and the marginal note should also be amended to read “Functions of school management committee”. The redrafted section 34 shall read as follows—

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 the 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 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) to 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.

SECTION 35 [*Obstruction of School Committee*]

The section empowers the Minister to suspend payment of any money due to be paid from public funds to a concerned school if the proprietor of such school is obstructing the work of the school committee or is persistently refusing to follow reasonable advice of the school committee.

When discussing this provision the Commission took cognizance of the fact that the school referred to here is an assisted primary school. This is the case because as a matter of law only Government primary schools and assisted primary schools are the ones for which a school committee should be established.

Following on the recommendation that the responsibility of primary education shall rest in a local government authority of the area in which such school is situated, the Commission recommends that the section be amended by deleting the word “Minister” and replacing it with the words “**local government authority**”.

Further the Commission recommends insertion of the word “**management**” between the words “school committee”. This also entails an amendment to the marginal note.

Furthermore, the Commission recommends that this section should also be shifted to the part under Primary Education.

The amended section 35 shall read as follows—

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—ESTABLISHMENT AND CONTROL OF SCHOOLS

The Commission noted that on the whole, the provisions under this Part relate to establishment and classification of schools.

Further, the Commission also took notice of the existence of teacher training colleges established by Government but the procedure for establishment is not provided for under any law. The same applies to teacher training colleges established by ordinary or juristic persons. The Commission was of the view that provisions should be introduced into the law to regulate the establishment of teacher training colleges as well.

In light of the foregoing, the Commission recommends that the heading of this Part be deleted and replaced with the following—

“ESTABLISHMENT, CLASSIFICATION AND REGISTRATION OF SCHOOLS AND COLLEGES”

SECTION 36 [*Registration and Classification of Schools*]

The section requires the Minister to establish and maintain a Register of Schools. In subsection (2) the Registrar shall adopt a system of classification to distinguish primary schools from other schools and also further distinguish, with appropriate nomenclature, according to the type of school, nature or form of highest education and different classes, standards or forms within the school.

The Commission noted that provisions on establishment of both Government and private schools are lumped together thereby creating confusion.

To avoid such a scenario, the Commission, recommends that provisions on the establishment and registration of both Government and private schools be elaborated.

The Commission also adopted the recommendation that the provisions should take into account teacher training colleges.

On classification of schools and colleges the Commission recommends as follows—

- (a) Government schools and Government colleges;**
- (b) assisted schools and assisted colleges; and**
- (c) private schools and private colleges.**

The Commission further took notice of the existence of Designated Schools. The Commission was informed that initially there was a Designated Schools Board to manage schools such as St. Andrews, Sir Harry Johnston and Bishop Mackenzie. The purpose of such schools was to cater for the education of children of expatriates and diplomats in accordance with the curriculum of their countries of origin.

The Commission was further informed that the Board disbanded and that currently each school has its own board.

In view of these revelations the Commission concluded that such schools should be regarded as private schools.

The Commission also considered coming up with the way in which primary schools should be organized. It was felt that a move in such direction would clear the misunderstanding about the provision of primary education at different stages. It was thus agreed that a primary school should be organized into progressive stages as follows—

- (a) infant section (standard 1-2);**

- (b) junior section (standard 3-4); and
 (c) senior section (standard 5-8).

The Commission noted that “standard” is used in reference to the syllabus and curriculum being taught to a specific class and therefore would retain usage of “standard” to refer to classes in the primary school.

As for secondary education the Commission was of the view that it should be organized progressively from Forms I, II, III, IV and in certain cases up to Forms V and VI.

In conclusion the Commission is of the view that these are matters of subsidiary legislation.

The Commission recommends introduction of provisions to cater for the establishment of Government schools and colleges and the new provisions on establishment and classification of schools shall read as follows—

Establishment of Government schools or Government colleges ... (1) **The Minister may, for the purpose of discharging his functions under this Act, establish and maintain such Government schools or Government colleges for the provision of education for students enrolled at such schools or colleges.**

(2) **The establishment of a Government school or Government 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.**

Classification of schools or colleges ... **All schools or colleges shall be classified as follows—**

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

The Commission was further informed that in practice all schools either Government or private must be registered.

The Commission then recommends that the provisions of section 36 be redrafted as it currently has great emphasis on private schools.

The redrafted provisions which are to include colleges shall read as follows—

Registration of schools or 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 shall distinguish schools offering primary education from other schools or colleges and which further distinguish, with appropriate nomenclature—

(a) different types of schools or colleges according to the nature or form or higher form of education to be provided;

(b) different classes, standards or forms within a school or college according to the stage, nature or method of education to be provided.

(3) Registration shall be so effected as to show the number and category of classes, standards and forms and the type of education which each school or college may provide and may restrict the highest form or type of education which may be provided.

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 or expense.

(2) No school or college other than a Government school or college shall be established except with the approval of the Minister.

SECTION 37 [*Duty of Proprietor to Conform to Registered Particulars*]

Subsection (1) makes it mandatory for education provided in any school to be in accordance with the particulars from time to time registered in respect of such school.

Subsection (2) creates an offence which the proprietor shall be guilty of when the proprietor deceives the public through any correspondence, advertisement or literature as to the type or classification under which the school is registered. Further, subsection (3) creates an offence where the proprietor misleads the public to believe that the school is registered.

The Commission considered the provision necessary for the purpose of quality control. The Commission thus recommends retention, subject to inserting the words “**or college**” after the word “school” wherever it appears.

SECTION 38 [*Procedure for Establishing a School*]

This section makes provision for the establishment of a school in that the person who wants to establish a school makes an application in accordance with the Act. The Commission recommends retention of subsection (1), subject to inserting the words “**or college**” after the word “school” wherever it appears.

Subsection (2) makes provision for the transitional operation of the schools that were registered under the Education Ordinance, 1945, before the coming into force of the 1962 Act. The Commission recommends deletion for irrelevance.

The Commission recommends retention of subsection (3) but that it should be a stand alone provision. The marginal note of this section shall read **“Registration of a school or college”**.

This entails that the subsequent subsections should be re-numbered in that subsection “(4)” becomes subsection “(2)” and subsection “(5)” becomes “(3)” and subsection “(6)” becomes subsection “(4)”.

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 the school or college in the prescribed manner and shall give particulars regarding—

(a) the classification of the school or college sought to be established;

**(b) the standards, forms and classes to be provided;
and**

(c) the name and address of proprietor of the school or college.

Subsection (4) gives absolute discretion to the Minister to refuse any application for the registration of a school, other than the schools which already existed under the Ordinance but before coming into force of the Act as provided for under subsection (2).

The registration of a school under subsection (2) shall however only be subject to the proprietor thereof being a resident of Malawi; and that the person is a fit and proper person to be responsible for a school of the classification and type in respect of the application. The Commission questioned who “is a fit and proper person”, and directions were sought from the case of *R. V- Hyde JJ (1912) 106 LT 52*, Lord Alverstone CJ defined “a fit and proper person” as follows—

“the applicant must be a fit and proper person to hold a licence and carry on the business of the licence-holder.”

Further in the case of *R v Holbom Licensing JJ, ex Parte Stratford Catering Co. Ltd (1926) 136 LT 278 at 279, 280*, Lord Hewart CJ, said something on the consideration to be taken into account when issuing the licence.

“One of the grounds which it is natural and proper to take into consideration upon the question whether the proposed transferee is a fit and proper person, is the kind or degree of his interest in the licensed premises and the good conduct of the licensed premises ... The question remains in every case whether the person put forward as manager has such a real and effective interest in the licensed premises as to be a fit and proper person to hold the licence.”

On the understanding of the above explanation, the Commission agreed to retain the provision and recommends as such.

Subsection (5) was also recommended for retention on the basis of the explanation, subject to redrafting and adding a new paragraph.

The redrafted subsection (5) which is now subsection (3) shall read as follows—

(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.

Subsection (6) prohibits any person to erect any building intended for use as a school or enroll pupils before approval of registration of the school is received.

This provision generated debate as to what happens to schools already existing. It was observed that the second line of the provision that talks of enrollment of pupils was explanatory of schools already existing as envisaged in subsection (2).

The Commission therefore recommends retention of the provision subject to breaking the current provision into two subsections as follows—

(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 has first registered the school or the college under this Act.

SECTION 39 [*Variation of Establishment*]

The section prohibits any variation of the establishment of a school without prior approval of the Minister. In subsection (1), the Commission observed that there is an omission of the word “**after**” in the third line and recommends insertion of this word after the word “only”.

The Commission further observed that the section does not make provision for the issuance of a certificate after the exercise of variation of establishment has taken place. The Commission thus recommends adoption of a new subsection (4) to address the omission. The new subsection (4) shall read as follows—

(4) 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.

The Commission also recommends that in line with the provisions on the registration of a school or college, when applying for variation of the establishment, the Minister should also be given powers to refuse the registration of variation of establishment. The subsection shall read as follows—

(5) The Minister may refuse any such application and shall give reasons for such refusal

SECTION 40 [*Publication of Names of Schools*]

The section requires the Minister to publish in the *Gazette*, at convenient intervals, the names of schools registered under the Act and any school the registration of which has been cancelled. The section is intended to notify the general public on the status of schools. The Commission was however aware that no such publication has ever taken place.

The Commission thus considered that there is need to adopt a new approach to ensure that the register is available for public viewing and recommends replacement of section 40 with the following—

Register
of schools
and colleges ... **(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 or 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.

The Commission also recognized that there is need to maintain the requirement of publishing any cancellation or de-registration of a school or college. The Commission therefore, recommends adoption of the following new provision—

De-registration of a school or colleges ... 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.

SECTION 41 [*Complaints*]

The section sets out the grounds upon which a complaint may be made to the Minister regarding any school and empowers the Minister to serve the owner of such school with a notice of complaint stating the grounds of complaint together with full particulars of the matters complained of. If the matters complained of are capable of being remedied or corrected, the notice of complaint should specify the measures, to be taken to remedy the complaint. The law further stipulates the period of six months after service of notice for correcting or remedying the complaint. The Minister is authorized to close the school or postpone the payment of grant-in-aid if the school fails to take necessary measures to remedy the complaint.

The Commission observed that the provision had good intention. However, the Commission noted that the law does not specify the person to lodge a complaint. The Commission recognized that these complaints are supposed to be raised by the inspector of schools through their reports to the Minister. If the Minister is then satisfied in that regard, a notice should be issued as explained above.

The Commission therefore recommends redrafting of subsection (1) for better presentation.

Complaints ... (1) If, after an inspection conducted at a registered private school or private college under section ... or following a complaint lodged by any person regarding a school or college and the Minister is satisfied that any 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 of 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 or where applicable, payment of grants-in aid be withheld or postponed if the measures necessary to remedy the complaint are not taken.

In subsection (2) under paragraph (a) the word “scheme” should be substituted with the word “**plan**”; further, paragraph (c) should be amended by replacing the word “pupils” with “**students**,” and in paragraph (e) by inserting the words “**fit and**” before the word “proper.”

Subsection (6) makes provision to the effect that any teacher named in the notice of complaint has the discretion to refer the matter to the Teachers Board of Appeal for adjudication. The Commission was aware that issues of teachers’ discipline are now covered under the Government Teaching Service Commission Act.⁵ In this vein, the Commission recommends amendment of subsection (6) to refer to the Teaching Service Commission. The amended subsection (6) is to read as follows—

(6) Any teacher named in a notice of complaint may refer the complaint to the Government Teaching Service Commission in accordance with the rules made under the Government Teaching Service Commission Act.

Cap. 30:08

SECTION 42 [*Reference to Appeals Tribunal*]

Firstly, the Commission observed that the Appeals Tribunal is an ad hoc arrangement. Further, subsection (1) provides for the appointment and composition of the Appeals Tribunal, which the Commission observed that all the members are to be appointed by the Minister and considered that this may compromise the independence of the Tribunal since appeals lie from the decision of the Minister.⁶ Consequently, the Commission recommends that while retaining the powers of the Minister to appoint the members, such appointment should be upon recommendation from the Government Teaching Service Commission. Thus, the amended provision is to read as follows—

Education Appeals Tribunal
Cap. 30:08

... (1) There is hereby established an Education Appeals Tribunal appointed by the Minister on recommendation from the Government Teaching Service Commission.

(2) The Education Appeals Tribunal shall elect a Chairperson from among the members at its first sitting.

(3) The Minister may make rules with respect to the hearing of complaints by the Tribunal and subject thereto the Education Appeals Tribunal shall have powers to determine its own special procedure.

⁵ Cap 30:08.

⁶ See section 41.

(4) The Minister may make such financial provision as the Minister may think fit for—

(a) the appointment of secretary and other staff, if any, for the Education Appeals Tribunal;

(b) the remuneration of members of the 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.

Subsection (2) empowers the Appeals Tribunal after affording all parties concerned an opportunity to being heard, and after considering the evidence given by the parties or their representatives to make orders which include closing down a school. The Commission recommends retention subject to making it a stand-alone new provision with a marginal note that reads: “Powers of the Education Appeals Tribunal” which shall read as follows—

**Power of the
Education
Appeals
Tribunal**

... Where a notice of complaint is referred to the Education Appeals Tribunal under section ..., the Tribunal shall, after affording to all parties concerned an opportunity to being 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 college in respect of which the notice of complaint was served be closed;

(c) to order that the school or 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.

SECTION 43 [Power to Close Schools]

This section provides for power of the Minister to close schools. The ground upon which the Minister could order a school to be closed include any other that the school is being conducted in a manner detrimental to the physical, mental or

moral welfare of the pupils attending the school; or that any instruction at the school is being imported to any pupil which is prejudicial to peace, good order or good government. The Commission expressed the view that the provision is well intended.

The Commission further observed that paragraph (d) empowers the Minister to close a school for using any publication deemed unsuitable. The Commission was aware that ever since the Act came into force no publication has been declared unsuitable for use in schools let alone a copy or extract thereof. Notwithstanding this observation, the Commission recommends retention as it considered this power necessary in appropriate cases, for example, the teaching of extremist ideologies and, use of hate language characterizing a religious or racist nature.

Subsection (2) allows the re-opening of a school ordered to be closed under this section and which has remained closed for a period of less than six months at the discretion of the Minister. The Commission considered the provision vague. The Commission therefore recommends redrafting the provision for clarity and also to include the words “**or college**”. The redrafted provision to read as follows—

(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 (6) months.

SECTION 44 [*Power to Re-open School and Payment of Compensation*]

Subsection (1) empowers the Minister to take over management of a school closed under section 42 where no appeal is lodged within the stipulated time and the school remains closed for a consecutive period of six months. The Minister is required to give notice to the proprietor before taking this action.

The Commission observed that the provision applies to private schools whether primary or secondary. In case of primary schools, the Commission recommends that the Minister should take possession and then handover the management to the local government authority within which the school is situated.

Subsection (4) makes provision for the situation where the proprietor of the school does not accept the offer for compensation or the proposal by which compensation may be settled. In such situation if the proprietor claims compensation, the payment of compensation shall be governed by the provisions of the same section. Whereas, in the event that no compensation is claimed, the amount, if any offered by the Minister shall be paid as compensation in such manner as is provided for under the Lands Acquisition Act.⁷

⁷ Cap 58:04 of the Laws of Malawi.

Section 9 of the Lands Acquisition Act states that the Minister shall pay fair compensation agreed or determined under the Act. Further, the Act provides that payment can either be in one lump sum or by installments at such times and rates of interest on the balances as the Minister in the exercise of his discretion would specify. The Commission was aware that the special Commission on the Review of Land Related Laws has recommended that “fair compensation”, should be replaced with “**appropriate compensation**” as is the position under section 44 (4) of the Constitution. Furthermore, the special Law Commission has also recommended that the payment of such compensation should be by way of lump sum rather than installments as the damage suffered by acquisition is great.

The Commission thus recommends retention on the understanding that necessary modifications have already been recommended subject to a minor change in paragraph (b) by deleting the word “acquisition” and replacing it with “**Acquisition.**”

Subsection (5) (b) refers to section 13 (d) and 14 of the Lands Acquisition Act. The Commission observed that the reference to section 13 (d) or section 14 of the Lands Acquisition Act is erroneous as no such provisions exist under that Act.⁸ The Commission thus recommends deletion of any reference to those provisions.

The Commission also recommends that subsection (6) (a) be broken into two subsections for a better presentation as follows—

(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 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.

Paragraph (b), should be renumbered subsection (8) and reference to the jurisdiction of the court regarding monetary awards should be deleted knowing as it is that such jurisdictional rules are determined by the Chief Justice under the Courts Act, as such, they keep on changing.

In subsection (8), the Commission observed that the second sentence deals with the whole section rather than subsection (8) alone. The Commission thus recommends that this should constitute a stand alone new subsection which should read as follows—

(11) In all proceedings under this section, the onus of proving the cost of the property and the amount contributed by the proprietor shall

⁸ These provisions existed under the repealed Acquisition of Land for Public Purposes Act, 1961.

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.

The Commission recommends that subsection (9) should be broken into three subsections for better presentation. Further, reference to the repealed “Acquisition of Land for Public Purposes Act” should be replaced with the “**Lands Acquisition Act.**” The new subsections are to read as follows—

(12) 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.

(13) 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.

(14) Where no dispute regarding ownership of moveable property has arisen, before the compensation agreed or awarded therefor 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.

SECTION 45 [*Power to Take Possession*]

This provision enables the Minister to take possession of the school or any part thereof in the event that the proprietor has not handed it over in accordance with the notice issued under section 44. The Commission recommends retention of the provision subject to minor amendments as follows—

(a) in subsection 1(e) delete the word “the” before the word “relation” for irrelevance;

(b) in subsection 1(f) delete the word “thereunder” for being archaic and substitute therefor the words “**under this Act.**”;

(c) in subsection (4) the Commission recommends widening of the ambit of the provision by including other utilities such as electricity and phone facilities. Thus the words “**or other utilities**” should be inserted after the words “water supply.”; and

(d) In subsection (5), the Commission recommends insertion of the words “commits **an offence**” after paragraph (b) and that the fine of “200” be deleted and substituted therefor with “**K100,000**” and two (2) years imprisonment”.

SECTION 46 [*Failure to Close School*]

This section makes it an offence to fail to close a school ordered to be closed under sections 42 and 43. The Commission recommends retention of the provision subject to deleting the words “shall be guilty of” and replacing them with the word “**commits**” after section 43 in the second line to complete the sense of the provision

SECTION 47 [*Unsuitable Publication*]

The section empowers the Minister to declare any publication or periodical as unsuitable by notice in the *Gazette*. The Commission recommends retention.

SECTION 48 [*Power to Enter and Inspect Schools*]

Section 48 of the Act provides that the Minister and any Ministry officer (including the executive officer of any Local Education Authority or Local Education Board) may enter and inspect any school or any place at which it is suspected that a school is being conducted. Persons conducting the inspection are also given powers to take copies of and extracts from any records or accounts maintained in relation to a school.

The Commission observed that the provisions regulating inspection are not adequate. Acknowledging the importance of inspection, the Commission recommends incorporation of elaborate provisions to regulate inspection.

The Commission also recommends that Inspectorate should be a separate directorate in the Ministry of Education. The Commission considers that the inspectorate would also greatly assist in the registration of schools and colleges.

The Commission thus recommends introduction of a new Part in the Act to provide for inspection so as to underscore the importance of matters of inspection in regulating standards and quality of education. The new Part is to be titled “**INSPECTION OF SCHOOLS AND COLLEGES**” and it shall read as follows—

NEW PART ...

INSPECTION OF SCHOOLS AND COLLEGES

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 or colleges.**

(2) Any person appointed under subsection (1) shall have relevant qualifications and not less than ten (10) years experience in teaching, administration and management of an education institution.

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 primary school.

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.

Powers of
inspectors

... (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 shall, upon conviction, be liable to a fine of one hundred thousand Kwacha (K100,000) and to imprisonment for twelve months.

SECTION 49 [*General Duties of Proprietor*]

The section makes provision for the general duties of a proprietor. Paramount among them is that the proprietor should conduct the school in accordance with the Act and the rules made under it. The proprietor is also under a duty to obey the lawful directions and requirements of the Minister given under the law. The general duties of the proprietor include keeping a record of teachers employed at the school and showing their qualifications; ensuring that the school is properly conducted and that it follows a curriculum approved by the Minister; and ensuring that funds provided by Government or any Local Education Authority for any purpose at the school are expended for the purpose specified or are refunded.

The Commission considered the provision and expressed the view that it serves a good purpose to ensure accountability and maintenance of quality and standards in the provision of education. As such the Commission recommends retention of the provision subject to minor amendments in subsection 1 (e) by deleting the words “Local Education Authority” and replacing with the words “**local government authority**” and also inserting the word “**or college**” after the word “school” wherever it appears.

Further, the Commission observed that the section does not specifically place a duty on the proprietor regarding administration of national examinations. The observation was made against the background of the recent rampant involvement of proprietors in malpractices in the administration of examinations. To the that effect, the Commission recommends the insertion of a new paragraph (f) in subsection (1) as follows—

Cap. 30:04

(f) ensure that National Examinations are conducted according to the Malawi National Examinations Board Act or any other written law as may be applicable.

The amended subsection (3) is to read as follows—

(3) 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 three hundred thousand Kwacha (K300,000) and to imprisonment for two (2) years.

SECTION 50 [*Conducting School without Consent of Minister*]

The section creates the offence of conducting a school without consent of the Minister. The Commission observed that though the section establishes an offence it does not provide for penalties. Further, the Commission noted that there is no general penalty provision to provide for a penalty for this offence as is common in other statutes. The Commission recommends that a penalty should be provided and recommends insertion of the following phrase “**and shall, upon conviction, be liable to fine of one million Kwacha (K1,000,000.00) and to imprisonment for five (5) years.**”

The Commission further noted that the proviso to section 50 was a transitional provision from the Education Ordinance of 1945 to the current Act. The Commission therefore recommends deletion of the proviso because its relevance expired.

SECTION 51 [*Refund of Grant in certain Cases*]

The section provides for situations in which a grant-in-aid should be refunded to Government. The Commission considers this a good provision and recommends retention subject to inserting the words “**or college**” after the word “school” whenever it appears.

PART VII—TEACHERS

The Commission noted that regulation 10 of the Government Teaching Service Commission Regulations provides that the Minister shall be responsible for the registration of teachers as is provided under section 52 of the Act. This responsibility is confined to teachers in the Public Service.

The Commission was aware that there have been attempts by the Ministry to create a professional body of all teachers in Malawi which should be responsible for registration of teachers. Such a professional body would regulate all teachers regardless of whether they are employed in the public or private sector.

The Commission recognized the need to divest the powers of registration from the Minister to an autonomous body to ensure objectivity and assist in regulation of teachers employed in the private sector and recommends accordingly.

Further, the Commission recommends that this body should have a say in the training of teachers for purposes of quality assurance.

In the light of the above, the Commission recommends that the professional body should be called the “**Teachers Council of Malawi**” and that it should be provided for under a new Part. The body shall have all powers of assuring quality

of teachers, registration of teachers, de-registration of teachers and all incidental powers. The Commission therefore recommends deletion of sections 52 to 59 and substituting therefor the following provisions—

PART VII—REGISTRATION OF TEACHERS

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 a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and subject to the provisions of this Act, of performing all such acts as bodies corporate may by law perform.**

Composition of the Council ... **(1) The Council shall consist of—**
(a) the following members appointed by the Minister—

(i) three (3) persons who have relevant knowledge, skill and experience in matters of education, in particular teacher training;

(ii) two (2) 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;

(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 (3)

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.

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 is absent, without permission of the Council, from three consecutive meetings, 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.

Meetings of the Council ... (1) The Council shall meet at such place, and at such time, as the Chairperson may determine and shall meet at least once in every four (4) months.

(2) An ordinary meeting of the Council shall be convened by the Chairperson by a notice in writing issued to the members fourteen (14) days prior to the date of the meeting.

(3) The Chairperson may, at his discretion, and shall at the written request of six (6) 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.

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.

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.

Power 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 a 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;

(e) to perform such other functions as may be prescribed or assigned to the Council by the Minister; and

(f) generally to do such things as the Council deems necessary or expedient to achieve the objects of this Act.

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, 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.

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 ... 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.

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 and other particulars of a registered or licensed person;

(c) erase from a Register of Teachers or the Roll of Licensed Teachers the name of a registered or licensed person who—

(i) dies;

(ii) applies for removal of his name from a 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 (5) 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, as the case may be, a record of the reasons.

(4) The Registrar shall publish any names erased or removed from the Register of Teachers or Roll of Licensed Teachers, as the case may be, in the *Gazette* and two widely circulated newspapers.

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 regard to the Registrar, to be registered as a teacher and shall be issued an authorization 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.

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, renew 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 teacher 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 (1) local newspaper with wide circulation in the country, the names of persons to whom a licence to teach has been issued.

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, upon conviction, be liable to a fine of three hundred thousand Kwacha (K300,000) and imprisonment for two (2) years.

Appeals

... (1) Any person aggrieved by—

(a) the refusal of the Council to register or license him or register any particulars which he wishes to be registered under this Act; or

(b) the removal from the Register or the Roll of Licensed 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 (3) 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 or Roll of Licensed Teachers; or

(c) may refer the matter back to the Council for further consideration.

Ofences
relating to
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 the person referred to in paragraph (c) 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 five hundred thousand Kwacha (K500,000) and to imprisonment for three (3) years.

Evidence of
entries in
Registers
and of other
records

... (1) Entries in the Register of Teachers or the Roll of Licensed Teachers and the contents of an authority 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.

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 persons.

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.

6 of 2003
7 of 2003
8 of 2003

Audit

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

PART VIII—CURRICULUM AND INSTRUCTION IN SCHOOLS

The Commission recommends amendment of the heading to include Colleges. It will thus read **CURRICULUM AND INSTRUCTION IN SCHOOLS AND COLLEGES**. The Commission further resolved that the word “college” be defined in the Act. College in this context should only relate to Primary Teacher Training College. The Commission recommends that the definition of college be as follows—

“college” means a teacher training college other than a university.

The Commission observed that though the heading refers to both curriculum and instruction, the provisions under this Part relate only to instruction in schools.

The Commission was aware that matters in relation to the development of curriculum are the responsibility of the Malawi Institute of Education as provided in the Order establishing the institute. The Commission recognized the need to

introduce provisions in the Act to elaborate on this aspect and recommends adoption of the provisions as follows—

National
curriculum for
schools and
colleges

... (1) The Minister shall promote the development of 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.

SECTION 60 [*Syllabus*]

The provision requires the Minister to exercise supervision and control over the instruction given in all schools to which the Act applies. Further, the Minister may also control the course of instruction in any school or category of schools by prescribing through rules the syllabus which shall be followed in the school or category of schools.

The Commission considered the provision and found that it is satisfactory and relevant to ensure quality and standards in the delivery of educational services. The Commission, therefore recommends retention subject to a minor amendment by inserting the words “**or college**” after the word “school” wherever it appears.

The Commission recommends retention.

NEW PROVISION ON TEACHER TRAINING CURRICULUM

To ensure that the new law is all encompassing and exhaustive, and observing that provisions relating to teacher training education are absent in the Act, the Commission recommends that a provision be introduced to cover teacher training curriculum to read as follows—

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.

LANGUAGE OF INSTRUCTION

The Commission observed that the law is silent on the language of instruction in schools. At the moment, the official position is that the medium of instruction for the first four classes of primary education is Chichewa. However, in practice the medium of instruction in such classes has been Chichewa and other local languages familiar to both the teachers and students. The Commission therefore considers that there is need to have a provision on language of instruction in schools. The Commission however observed that while such a provision is indeed necessary, the Act should leave the actual prescribing of the language to the Minister. In that regard the Commission recommends the following provision—

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 in the *Gazette*, prescribe the language of instruction in schools.

The Commission also observed that the Act does not provide for the assurance of quality of textbooks and other instructional materials and considers this unsatisfactory. The Commission therefore recommends adoption of a new provision to address this omission and to read as follows—

Textbooks and
other
instructional
materials

(1) The Institute shall be responsible for establishing and implementing a quality assurance process through the evaluation of textbooks, teacher's guides, other instructional materials and, shall prescribe the criteria for the publication of textbooks, teacher's 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 or colleges 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 teacher's guides, text 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 or colleges 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) There shall be 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 relationship occur.

(6) Procedures for the evaluation of textbooks shall take into account the necessary lead time for research, trialling 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 shall be responsible for the provision, in schools and colleges, of adequate instructional materials approved and selected in accordance with the provisions of this section.

ESTABLISHMENT OF MALAWI INSTITUTE OF EDUCATION

In 1979, Government under an Order called the Education (Malawi Institute of Education) Board of Governors established the Malawi Institute of Education with the view, among other things, to assist in the training of teachers, undertake, encourage and co-ordinate curriculum development, evaluation and research activities, and to arrange for the publication and production of teaching materials.

The Commission observed that issues of curricula development are at the centre and survival of an education system. The Commission considered that relegation of such issues to subsidiary legislation was unsatisfactory. The Commission thus recommends that the Institute of Education should be established in the Act under a separate part.

The Institute should be entrusted with the functions of coordinating, developing and evaluating the curriculum, among others as provided for in the Order establishing the Institute. The Commission therefore recommends the introduction of a new Part in the Act as follows—

“ESTABLISHMENT OF MALAWI INSTITUTE OF EDUCATION”.

The Commission then proceeded to analyze the provisions of the Order and made the following observations.

PARAGRAPH 2 [*Interpretation*]

This paragraph of the Order makes provision for the definition of some of the terms used. The Commission recommends that the definitions should be incorporated under the interpretation section of the Act. However, the Commission recommends changing of the definitions of the following terms—

“University” currently means the University of Malawi;

The Commission took notice of the fact that now there are two public universities in Malawi and further that some private universities are being introduced. It was observed that, in view of this development, the definition of the term “University” should be broad enough. The Commission therefore recommends that the new definition of “university” be as follows—

“university” means any university in Malawi recognized by the Minister;

“council” in the Order is defined as meaning Council of the University of Malawi. On the same reasoning as above, the multiplicity of universities also results in the multiplicity of councils. The new definition of “Council” shall be as follows—

“council” means the council of a university;

The definitions as modified shall form part of section 2 of the Act.

PARAGRAPH 3 [*Establishment of the Board*]

This paragraph establishes the Board of Governors of the Malawi Institute of Education. It further makes such Board a body corporate with the result that it

becomes a legal person capable of doing anything under law. The Commission considered the provisions and agreed that they be adopted as follows—

Establishment of the Board ... (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 a 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 Board shall be the governing body of the Institute and shall be responsible for the work and functions of the Institute, subject only to such limitations or restrictions as are prescribed in this Act.

PARAGRAPH 4 [*Responsibility of the Board*]

The Commission considers that the duties of the Board as spelt out in the Order are too limiting. The Commission thus recommends that the responsibility of the Board be expanded as follows—

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 textbooks, 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 assists 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 purposes of this section, “student” shall include participants in programmes and seminars conducted by the Institute.

PARAGRAPH 5 [*Powers of the Board*]

The Commission recommends retention of this paragraph and incorporation into the Act as follows—

Power 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 only 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 appoint 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;

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

(j) to issue certificates of attendance.

PARAGRAPH 6 [*Members of the Board*]

The paragraph provides for the membership of the Board. The Commission considered that the membership of the Principal Secretary for Education as the Chairperson may generate conflict of interest in that office. The Commission thus recommends that the **Vice Chancellor of a university** appointed by the Minister be the Chairperson and that a Vice Chairperson be elected by the members at their first meeting.

The Commission therefore recommends retention of this provision and that it should be incorporated in the Act with modifications as follows—

- 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 (2) persons with expertise in the field of finance or any other appropriate field;**
 - (iv) a representative of an organization of private schools; and**
 - (v) two (2) representatives from religious organization;**
 - (b) the following *ex officio* members—**
 - (i) the Secretary for Education or his designated alternate;**
 - (ii) the head of inspectorate and methods advisory;**
 - (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) Executive Director of the Malawi National Examination Board or his designated alternate.**

(2) Members of the Board, other than the *ex-officio* members, shall serve for a period of three (3) 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.

- Vacation of office ... A member of the Board other than an *ex-officio* member, shall cease to be 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.

PARAGRAPH 7 [*The Secretary to the Board*]

The Commission recommends retention and incorporation in the Act as follows—

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

PARAGRAPH 8 [*Meetings of the Board*]

The Commission recommends retention and incorporation in the Act as follows—

- Meetings of the Board ... (1) The Board shall meet in ordinary meetings at least three (3) times a year.
- (2) The Board may hold an extraordinary meeting at any time convened by the Chairperson on his own initiative or upon a written request of any three members thereof.
 - (3) Where the Chairperson convenes an extraordinary meeting of the Board, he shall give members at least seven (7) days prior notice in writing of the convening of the meeting, but if in his opinion the urgency of the matter to be considered at that meeting so requires, dispense with such notice and convene the meeting as soon as practicable.
 - (4) Every notice given under subsection (3) shall include the agenda of the matters to be considered at the meeting.

PARAGRAPH 9 [*Procedure at Board Meetings*]

The Commission recommends retention and incorporation in the Act as a new section to read as follows—

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 Vice-Chairperson are absent or otherwise unable to act, elect one of their number to preside.

(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..

PARAGRAPH 10 [*The Executive Director*]

The Commission recommends retention with a minor change by adding the words “Executive”. The new section will read as follows—

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.

PARAGRAPH 11 [*The Deputy Executive Director*]

The Commission recommends retention and incorporation in the Act as a new section. The new section will read as follows—

The 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.

PARAGRAPH 12 [*Other Staff*]

The Commission recommends retention and incorporation in the Act as a new section to read as follows—

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.

PARAGRAPH 13 [*Terms and Conditions of Service*]

The Commission recommends retention and incorporation in the Act as a new section to read as follows—

Terms and
Conditions of
Service

... The Executive Director, Deputy Executive Director and the 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.

PARAGRAPH 14 [*Proposals and Reports to the Board*]

The Commission recommends retention and incorporation in the Act as a new section to read as follows—

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.

PARAGRAPH 15 [*Suspension and Withdrawal of Students*]

The Commission recommends retention and incorporation in the Act as a new section to read as follows—

Withdrawal and suspension of students ...**(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.

PARAGRAPH 16 [*Finance Committee*]

The Commission recommends retention and incorporation in the Act as a new section subject to adding the audit function. The new section to read as follows—

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 Institute; 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.

PARAGRAPH 17 [*Control of Finance*]

The Commission recommends retention and incorporation in the Act as a new section to read as follows—

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 (3) times a year or as often as the Board may direct.**

PARAGRAPH 18 [*Accounts*]

The Commission recommends retention and incorporation in the Act as a new section. The new section will read as follows—

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.**

6 of 2003
7 of 2003

PARAGRAPH 19 [*Expenditure*]

The Commission recommends retention and incorporation in the Act as a new section. The new section will read as follows—

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.

PARAGRAPH 20 [*Appeals*]

The Commission recommends retention and incorporation in the Act as a new section. The new section will read as follows—

Appeals for public subscriptions **... 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.**

PARAGRAPH 21 [*Borrowing and Investment*]

The Commission recommends retention and incorporation in the Act as a new section to read as follows—

6 of 2003
Borrowing
and
investment

...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.

PARAGRAPH 22 [*Property of the Institute*]

The Commission recommends retention and incorporation in the Act as a new section. The new section will read as follows—

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 IX—PUPILS

This Part provides for how pupils are supposed to conduct themselves on entry into any school or any category of schools. With the recommendation that the term “pupil” should be replaced by “**student**”, this Part shall accordingly read **STUDENTS**.

SECTION 62 [*Duty to Obey Headmaster*]

The section obliges every pupil on entry to any school or any category of school to obey all rules and orders given by the headmaster.

It further mandates the Board of Governors, or in a case where there is no Board of Governors, the Minister to direct any headmaster to cancel or vary any standing order or rule made by him.

The Commission observed that the provision confines the making and issuing of rules and orders to the headmaster and considers this position unsatisfactory and recommends that issuing of rules and orders should be a collective responsibility of the school. Further, colleges should be incorporated under this section. Thus the amended provision is to read as follows—

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 which

are 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.

SECTION 63 [*Medical Inspection*]

The section makes it mandatory that every pupil attending any school submit to medical inspection.

The Commission was aware that the education policy regarding medical examination changed and the new policy requires that medical examination should be carried out with the informed consent of the person concerned. In the case of minors, this should be done with the full consent of the parents. The same practice has also developed in the SADC Region.⁹

In the light of the above, the Commission recommends deletion of the provision and recommends adoption of a new section to read as follows—

Medical examinations	... The Minister or a local government authority, as the case may be, may, after notification of parents, where applicable, cause a medical examination to be carried out in respect of students at any school or college but such notification 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 X—FEES

SECTION 64 [*Minister may Prescribe certain Fees*]

The section gives power to the Minister to make rules prescribing fees to be charged in any school except a school which is not in receipt of any grant-in-aid.

Further, the Minister is mandated to consult the Local Education Authority before prescribing fees to be charged in any primary school.

Subsections (3) and (4) provide that the Minister may prescribe fees for, among other things the instruction, including the instruction in special subjects. Furthermore, the Minister may fix fees for different categories of persons, pupils and schools in any rules made and may prescribe the circumstances in which fees may be refunded or remitted, whether in whole or in part; and may also prescribe the time or date when any fees shall be payable and the person to whom it shall be paid.

⁹ See section 65 of the Education Act of Namibia.

Lastly in subsection (5), the rules made by the Minister may prescribe payment of fees to the proprietor of a school or to a body constituted or established under the Act or to a person delegated to receive fees on behalf of such proprietor or on behalf of such body.

The Commission observed that currently, primary education offered by Government is free and there is a need to amend the provision to take into account this development. In that regard, the Commission recommends amending subsection (1) by deleting all words after the word “than” in the third line and replacing them with the words “**a government primary school**”.

Subsection (2) should be deleted for irrelevancy.

Lastly, the Commission considered the question of introducing fees in Teacher Training Colleges run by the Ministry. The advantages for moving towards this direction are cost sharing, commitment on the part of trainees, adding value to the teaching profession, sustainability of the service and improvement of the quality of the service. The disadvantages would include the reduction in the number of people joining the teaching profession since the conditions of service are not conducive, poor salary structure and lack of incentives coupled with poverty. All these would affect teacher training development.

Further, the Commission took note of the recommendations both in the 2002 Policy Investment Framework¹⁰ and in the National Strategy for Teacher Education Development¹¹ and conceded the importance of fees but that the fees charged should be reasonable to enable willing people to manage.

The Commission, therefore recommends amending the section to read as follows—

Minister may prescribe certain fee ... **(1) The Minister may, from time to time, make regulations prescribing the fees which shall be charged in any Government school or Government 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

¹⁰ See page 23 of Policy Investment Framework.

¹¹ See page of the National Strategy for Teacher Education Development.

(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 XI—SUPPLEMENTARY AND RULES

The Commission observed that the title to this Part as it appears is misleading in the sense that it presupposes that the Part is additional to the whole Act.

In view of this, the Commission recommends that the title of this part should read: “**MISCELLANEOUS PROVISIONS**”.

SECTION 65 [*Power of Minister to make Rules*]

The section gives power to the Minister to make rules prescribing for several matters under the Act in so far as the regulation of education is concerned. The Commission considered all the aspects in which the Minister is empowered to make rules and recommends as follows—

In paragraph (b) the words “**or college**” should be inserted after the word “school”.

Paragraph (c) should be amended to read as follows—

(c) the conditions under which funds—

(i) raised by local government authorities or other bodies for educational purposes may be expended for such purposes;

(ii) disbursed by central government for education purposes may be expended for such purposes;

In paragraph (f) by inserting the words “**of students**” after the word “attendance” and also deleting the word “schools” after the word “at” and replacing it with the words “**any primary school**”.

In paragraph (g) the word “schools” in the first line should be replaced with “**or college**”. Further the words “**or college**” should be inserted after the word “schools” in the last line. Paragraph (h) should be deleted and replaced as follows—

(h) the manner in which the inspection or supervision of schools or colleges shall be carried out;

Paragraph (j) retained.

Paragraph (k) should be redrafted as follows—

(k) the curriculum to be offered in any school or college and courses in such subjects and any syllabus to be followed in connection therewith;

Paragraph (l) should be deleted.

In paragraph (m), by inserting the words “**where applicable**”, at the very beginning of the paragraph.

Paragraph (n) be retained with an amendment by adding the words “**or colleges**” after the word “schools” in the second line.

In paragraph (o) by inserting the words “**or colleges**” after the word “schools” in the first line.

In paragraph (p) the words “and assisted schools” should be deleted.

Paragraph (q) should be broken into two paragraphs as follows—

(q) the qualifications required for registration in the Register of Teachers, the manner and form in which applications for registration as a teacher shall be made, the particulars to be entered in the Register of Teachers and the Roll of Licensed Teachers and the forms of authority to teach and licence to teach;

(r) the procedure to be followed on appeal to the Education Appeals Tribunal and on applications by any person to have the name restored to the Register of Teachers;

In paragraph (r) the words “**or college**” should be inserted after the word “schools”.

Paragraph (s) should be deleted.

Paragraph (t) should be deleted since corporal punishment is prohibited by the Constitution. In paragraph (u) the reference to “the Teachers Board of Appeal” should be deleted.

Paragraph (v) be retained.

The paragraphs under this section will accordingly be renumbered, in view of the recommended deletion.

SECTION 66 [*Delegation*]

The section allows the Minister to delegate to any person by name or office the exercise on his behalf of any power or to perform any duty which the Minister is authorized under the Act. However, such delegation shall be subject to such conditions, exceptions and qualifications as the Minister may specify.

However the section prohibits the Minister from delegating the power to make rules, to make an order, to close any school or the power to issue a notice of his intention to take possession of any school.

Firstly, the Commission observed that though the marginal note is “delegation” the word “depute” has been used in the substantive of the provision. The Commission considers the use of the word “depute” inappropriate and recommends that it should be replaced with “**delegate**”.

Further, the Commission also recommends amendment of paragraph (b) of the proviso by inserting the words “**or college**” after the word “school”.

SECTION 67 [*Saving*]

The section provides that no act or proceeding of any Board of Governors, Local Education Authority, school committee or other body constituted or established under the Act shall be questioned on account of the appointment of any member being defective.

The Commission observed that the marginal note does not tally with the substantive provision. The Commission therefore recommends that the marginal note should be amended by deleting the term “saving” and replacing it with the following words “**Defective appointment of member to be of no effect**”.

Further, the Commission recommends that the words “Local Education Board” be deleted and that the word “**management**” should be inserted between the words “school” and “committee”.

The provision as amended shall read as follows—

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.
-------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SECTION 68 [*General Penalty for Offences*]

The section stipulates a penalty for an offence against the Act for which no special penalty has been provided as being £100 and imprisonment for six months.

The Commission observed that the penalty is grossly on the lower side since according to the Decimal Currency Act which provides for the conversion of Pound Sterling to Malawi Kwacha,¹² the conversion of one Pound Sterling to Malawi Kwacha is one Pound Sterling to two Kwacha.

The Commission recommends that the fine should be enhanced to **K100,000 and imprisonment for 12 months**.

SECTION 69 [*Service of Notices and other Documents*]

The Commission recommends retention of the provision with an amendment in paragraph (c) by deleting the word “fifth” and substituting therefor “**twenty first**”.

¹² Cap. 45:02 of the Laws of Malawi.

SECTION 70 [*Representation in Legal Proceedings*]

The section states that legal proceedings under the Act may be brought in the name of the Minister and that it shall be lawful for the Minister to appoint any officer of the Ministry to conduct proceedings notwithstanding that he is not a legal practitioner.

Firstly, the Commission observed that all legal proceedings against Government Ministries and Departments are instituted against the Attorney General. Thus, proceedings cannot be brought in the name of the Minister of Education.

Secondly, the Commission was aware that the practice of law in Malawi is regulated by the Legal Education and Legal Practitioners Act.¹³ Section 9 of this Act provides that no person shall practice as a legal practitioner unless such person has been admitted to practice. Further, the Act defines a legal practitioner as a person who has been admitted to practice the profession of law before the High Court, or before any court subordinate thereto, and whose name has been inscribed upon the Roll.¹⁴

The Commission recommends deletion of the provision on this basis.

SECTION 71 [*Savings*]

The section seeks to save rules, orders and appointments made under the repealed Education Ordinance of 1945. But the Commission observed that the proposed Act shall also need rules, regulations and appointments made under the current Education Act. Therefore section 71 must be amended by replacing “Education Ordinance, 1945” with the phrase “**Education Act, 20...**” wherever it appears on the section.

REPEAL OF THE EDUCATION ACT

The Commission recommends that in view of the substantial changes recommended, the current Education Act must be repealed and replaced with the proposed Bill attached to the Report.

¹³ Cap. 3:04 of the Laws of Malawi.

¹⁴ See section 2.

APPENDIX:
EDUCATION BILL, 20...

EDUCATION BILL, 20...

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title
2. Interpretation
3. Application

PART II—PROMOTION OF EDUCATION

4. General duties and powers of the Minister
5. Goals of education in Malawi

PART III—ADVISORY COUNCILS

6. Establishment and powers of an advisory council
7. Composition of Council and its procedure
8. Invited persons
9. Reporting
10. Orders to be published

PART IV—GRANTS AND LOANS IN AID OF SCHOOLS AND OTHER
EDUCATION INSTITUTIONS

11. Expenditure by Minister

PART V—PRIMARY EDUCATION

12. Provision of primary education
13. Free and compulsory primary education
14. Appointment of education committees
15. Duties of local government authorities
16. Development plans
17. Powers of local government authorities
18. Composition of education committee
19. Delegation of duties and powers of education committees
20. Duties of secretary
21. Establishment of school management committee
22. Notice to be published
23. Functions of school management committee
24. Obstruction of school management committee

PART VI—MANAGEMENT OF COLLEGES AND SECONDARY SCHOOLS

25. Management of Government secondary schools and colleges
26. Contents of order, Government secondary schools or colleges

27. Responsibilities of proprietor of a secondary school or college
28. Board of Governors of assisted secondary schools and colleges
29. Contents of order, assisted secondary schools or colleges
30. Stamping and registration

PART VII—ESTABLISHMENT, CLASSIFICATION AND REGISTRATION OF
SCHOOLS AND COLLEGES

31. Establishment of Government schools and colleges
32. Establishment of private schools or colleges
33. Classification of schools or colleges
34. Registration of private schools or colleges
35. Duty of proprietor to conform to registered particulars
36. Procedure for establishing a school or college
37. Application for registration of a school or college
38. Variation of establishment
39. Register of Schools and Colleges, publication and inspection thereof
40. De-registration of a school
41. Complaints
42. Education Appeals Tribunal
43. Powers of the Education Appeals Tribunal
44. Power to close school or College
45. Power to re-open school or college and payment of compensation
46. Minister to handover possession to local government authority
47. Power to take possession
48. Failure to close school or college
49. Unsuitable publications

PART VIII—INSPECTION OF SCHOOLS AND COLLEGES

50. Appointment of inspectors
51. Inspection of schools and colleges
52. Functions of an inspector
53. Powers of inspectors
54. General duties of proprietor
55. Conducting school or college without consent of Minister
56. Refund of grant in certain cases

PART IX—ESTABLISHMENT OF THE TEACHERS COUNCIL OF MALAWI
AND REGISTRATION OF TEACHERS

57. Establishment of Council
58. Composition of the Council
59. Vacation of members from office
60. Meetings of the Council
61. Disclosure of interest
62. Functions of the Council

63. Powers of the Council
64. Committee
65. Appointment of Registrar and other staff
66. Duties of the Registrar
67. Qualifications and requirements for registration
68. Licence to teach
69. Teaching without licence or authority prohibited
70. Appeals
71. Offences relating to teachers
72. Evidence of entries in Registers of Teachers and of other records
73. Funds of the Council
74. Accounts
75. Audits

PART X—CURRICULUM AND INSTRUCTIONS IN SCHOOLS AND COLLEGES

76. National curriculum for schools and colleges
77. Teacher training curriculum
78. Language of instruction
79. Syllabus
80. Religious instruction
81. Textbooks and other instructional materials

PART XI—ESTABLISHMENT OF MALAWI INSTITUTE OF EDUCATION

82. Establishment of the Institute
83. Composition of the Board
84. Duties of the Board
85. Powers of the Board
86. Vacation of office
87. Secretary of the Board
88. Meetings of the Board
89. Procedure at Board meetings
90. Executive Director
91. Deputy Executive Director
92. Other staff
93. Terms and conditions of service
94. Proposals and reports to the Board
95. Withdrawal and suspension of students or participants
96. Finance and Audit Committee
97. Control of finances
98. Accounts
99. Expenditure
100. Appeals for public subscription
101. Borrowing and investment

102. Property of the Institute

PART XII—STUDENTS

103. Duty to obey school or college rules

104. Medical examinations

PART XIII—FEES

105. Minister may prescribe certain fees

PART XIV—MISCELLANEOUS PROVISIONS

106. Power of Minister to make regulations or rules

107. Delegation

108. Defective appointment of member to be of no effect

109. General penalty for offences

110. Service of notices and other documents

111. Repeal and savings

112. Transitional provisions

A B I L L

entitled

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.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

- | | |
|----------------|-------------------------------------------------------------------------------------------------|
| Short title | 1. This Act may be cited as the Education Act, ... |
| Interpretation | 2. 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 Malawi Institute of Education Board established under section 80 of this Act; |
| | “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 54;

“Education Appeals Tribunal” means a tribunal established under section 40;

“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 79;

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

“maintain”, in relation to a school or college means to pay the current out going and 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 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 (7) 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 under section 31;

“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 any university in Malawi recognized by the Minister.

Application

3. This Act shall not apply to—

(a) a university established under any written law or any university recognized by the Minister;

(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.—(1) It shall be the duty of the Minister to—

General
duties and
power of
Minister

(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 levels;

(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 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.—(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.

Goals of
education in
Malawi

(2) Without prejudice to the generality of subsection (1) the national goals of 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 behavior;

(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

Establishment
and powers of
an advisory
council

6.—(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 aspect of the education system;

(e) foster public awareness and understanding of education policies;

(f) provide the Minister with professional information, advice and judgment the Minister needs 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.—(1) The Advisory Council shall, subject to this section, consist of fifteen (15) members who shall hold office for a period of three (3) years and the members may be eligible for re-appointment at the expiry of that term for one more term.

Composition
of the
Council and
its procedure

(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 interest in education or persons who have experience of education or some special aspect of education.

(4) The Chairperson and Vice Chairperson of the Advisory Council shall be elected from among their number 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. 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.

Invited
persons

9. 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.

Reporting

10. 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*.

Orders to be
published

PART IV—GRANTS AND LOANS IN AID OF SCHOOLS AND COLLEGES

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

Expenditure
by the
Minister

(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

Cap.55:07 (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.

PART V—PRIMARY EDUCATION

Provision of primary education 12.—(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.

Free and compulsory primary education 13. The provision of primary education in Government schools shall be free of tuition to all and compulsory for every child below eighteen (18) years of age.

Appointment of education committees 14.—(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.

Duties of local government authorities 15. 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 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; Cap. 22:01

(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.—(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. Development plans

(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.

Powers of
local
government
authorities

17. 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 by the Minister, 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.—(1) Every education committee shall consist of such number of members as may be appointed by a local government authority from time to time.

Composition
of education
committee

(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 (21) 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.—(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.

Delegation of
duties and
powers to
education
committees

(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.

Duties of
secretary

20. 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.

Establishment
of school
management
committee

21.—(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.

Notice to be
published

22. 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.—(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.

Functions of
school
management
committee

(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. 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.

Obstruction
of school
management
committee

PART VI—MANAGEMENT OF COLLEGES AND SECONDARY SCHOOLS

Management of Government secondary schools or college

25.—(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 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.

Contents of order establishing a Board of Governors

26.—(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.—(1) The responsibility for the management of a secondary school or college other than Government owned, shall rest on the proprietor.

Responsibilities of proprietor of a secondary school or college

(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, if such a thing had been done or omitted by him personally shall be liable to the same penalty if such thing has been done or omitted by his co-proprietor, manager, servant or agent.

28.—(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.

Board of Governors of assisted secondary schools and college

(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.

Contents of
order, assisted
secondary
schools or
colleges

29.—(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) All or any property of the proprietor may be vested by an order made under section 28 in the Board of Governors thereby established 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.—(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:

Stamping and
registration

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.—(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

Establishment
of
government
schools and
colleges

(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.—(1) Subject to subsection (2), any person may establish and maintain a private school or college at his own cost and expense.

Establishment
of private
schools or
colleges

(2) No school or college other than a Government school or Government college shall be established except with the approval of the Minister.

- Classification of schools or colleges
33. 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.
- Registration of schools and colleges
- 34.—(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.
- Duty of proprietor to conform to registered particulars
- 35.—(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.
- Procedure for establishing a school or college
- 36.—(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 the college under this Act.

37. 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—

Application for registration of a school or college

(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.—(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.

Variation of establishment

(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.

Register of
Schools and
Colleges

39.—(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.

De-registration
of a school or
college

40. 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.

Complaints

41.—(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 (6) 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 (30) 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.

Cap. 30:08 (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.

Education Appeals Tribunal

42.—(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.

Powers of the Education Appeals Tribunal

43. Where a notice of complaint under section 41 is referred to the Education Appeals Tribunal, the Tribunal shall, after affording to all parties concerned an opportunity to being 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.

Cap. 30:08

44.—(1) The Minister may order any school or college to be closed in any case where he is satisfied that—

Power to
close schools
or colleges

(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 (6) 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.

Power to
re-open school
and payment of
compensation

45.—(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 (6) 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 connection 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 (3) 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

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.

(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.

Minister to
handover
possession to
local
government
authority
Power to take
possession

46. Where the Minister takes over possession of a primary school under this Act, he shall, within a period of six (6) months, handover the school to a local government authority of the area in which the school is situated.

47.—(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 connection 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;

Cap. 72:01

(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 (2) 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 one hundred thousand Kwacha (K100,000) and to imprisonment for two (2) years.

Failure to
close school
or college

48. 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 one hundred thousand Kwacha (K100,000) and in default of payment to imprisonment for two (2) years and to a further fine of ten thousand Kwacha (K10,000) 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

Unsuitable
publication

49.—(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.

Cap. 7:01

(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.

PART VIII—INSPECTION OF SCHOOLS AND COLLEGES

Appointment
of inspectors

50.—(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 (10) years experience in teaching, administration and management of an education institution.

Inspection of
schools and
colleges

51.—(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.

Functions of
an inspector

52. 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.—(1) An inspector may—

Powers of
inspector

(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 one hundred thousand Kwacha (K100,000) and to imprisonment for (12) twelve months.

54.—(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.

General
duties of
proprietor

(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 three hundred thousand Kwacha (K300,000) and imprisonment for (2) two years.

Conducting school or college without consent of Minister

55. 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 one million Kwacha (K1,000,000.00) and to imprisonment for (5) five years.

Refund of grant in certain cases

56.—(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—REGISTRATION OF TEACHERS AND ESTABLISHMENT OF
TEACHERS COUNCIL OF MALAWI

57. 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.

Establishment
of Council

58.—(1) The Council shall consist of—

Composition
of the
Council

(a) the following members appointed by the Minister—

(i) three (3) persons having relevant knowledge, skill and experience in matters of education, in particular teacher training;

(ii) two (2) 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 (3) 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.

Vacation of
members from
office

59.—(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 (3) 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.

Meetings of
the Council

60.—(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 (4) months.

(2) An ordinary meeting of the Council shall be convened by the Chairperson by notice in writing issued to the members fourteen (14) days prior to the date of the meeting.

(3) The Chairperson may, at his discretion, and shall at the written request of six (6) or more members and within seven (7) 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. 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.

Disclosure of
interest

62. 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—

Functions of
the Council

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

Powers of the
Council

(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

(h) generally to do such things as the Council deems necessary or expedient to achieve the objects of this Act.

Committees

64.—(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.

Appointment
of Registrar
and other
staff

65.—(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.—(1) The Registrar shall—

Duties of the
Registrar

(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 (5) 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.

Qualifications
and
requirements
for registration

67.—(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.

Licence to
teach

68.—(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 (1) local newspaper with wide circulation in the country, the names of persons to whom a licence to teach has been issued.

Teaching
without licence
or authority
prohibited

69.—(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 three hundred thousand Kwacha (K300,000) and imprisonment for two (2) years.

70.—(1) Any person aggrieved by—

Appeals

(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 (3) 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. Any person who—

Offences
relating to
teachers

(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 five hundred thousand Kwacha (K500,000) and to imprisonment for three (3) years.

Evidence of entries in Registers and of other records

72.—(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.

Funds of the Council

73.—(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.

Accounts

6 of 2003
7 of 2003
8 of 2003

74. 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.

Audits

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

PART X—CURRICULUM AND INSTRUCTION IN SCHOOLS AND COLLEGES

National curriculum for schools and colleges

76.—(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.—(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.

Teacher
training
curriculum

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

Language of
instruction

(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.

Syllabus

79. 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.

Religious instruction

80.—(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.—(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.

Textbooks
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, trialling 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 MALAWI INSTITUTE OF EDUCATION

82.—(1) There is hereby established a body to be known as the Malawi Institute of Education which shall—

Establishment
of the
Institute

(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.

Composition
of the Board

83.—(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 (2) persons with expertise in the field of finance or any other appropriate field;

(iv) a representative of an organization of private schools;

(v) two (2) 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 (3) 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.

Duties of the
Board

84.—(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.—(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.

Powers of the
Board

(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.

Vacation of office

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

(a) fails to attend three (3) 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.

Secretary of the Board

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

Meetings of the Board

88.—(1) The Board shall meet in ordinary meetings at least three (3) 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 (14) days prior to the date of the meeting.

(3) The Chairperson may, at his discretion, and shall at the written request of six (6) or more members and within seven (7) 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.

Procedure at Board meetings

89. (1) Subject to subsections (2) and (3), at any meeting of the Board—

(a) the quorum shall be formed by two-thirds ($\frac{2}{3}$) 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.—(1) There shall be an officer of the Institute who shall be designated as the Executive Director.

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.—(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.

The Deputy
Executive
Director

(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. 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.

Other staff

93. The Executive Director, Deputy Executive Director and other staff appointed by the Board shall be subject to such terms and

Terms and
conditions of
services

conditions of service as the Board shall, with the approval of the Minister, determine.

Proposals and reports to the Board

94.—(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.

Withdrawal and suspension of students

95.—(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.

Finance and Audit Committee

96.—(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;
- (d) the control of expenditure authorized by the Board; and
- (e) 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.

Control of finances

97. 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 (3) times a year or as often as the Board may direct.

Accounts

98. 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.

99.—(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. Expenditure

(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. 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. Appeals for public subscriptions

101. 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 Borrowing and investments 6 of 2003

(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.

102. 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. Property of the Institute

PART XII—STUDENTS

103.—(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. Duty to obey school or college rules

(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. 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. Medical examinations

PART XIII—FEES

Minister may
prescribe
certain fees

105.—(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

Power of
Minister to
make
regulations or
rules

106.—(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 connection 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.

Delegation

107. 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.

Defective appointment of member to be of no effect

108. 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.

General penalty for offences

109. 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 one hundred thousand Kwacha (K100,000) and to imprisonment for twelve (12) months.

Service of notices and other documents

110. 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 (21) days after the day when posted.

Repeal and savings
Cap. 30:01
Cap. 30:01

111.—(1) The Education Act is hereby repealed.

(2) Any subsidiary legislation made under the Education Act, repealed by subsection (1) and in force immediately before the

coming into force of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

(3) All appointments, registrations made or given under the Education 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.

112. 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 Education Act, repealed by section 111, shall ensure that he registers or is licensed as a teacher within six (6) calendar months;

(b) any proprietor of a private school or private college that is not registered under the Education Act, repealed by section 111, shall ensure that the school or the college, as the case may be, is registered within three (3) calendar months,

in accordance with the provisions of this Act.