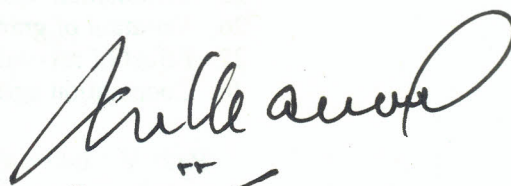


**MALAWI GOVERNMENT**

**Act**

**No. 28 of 2010**

I assent



PRESIDENT

01.04.2011

**ARRANGEMENT OF SECTIONS**

**SECTION**

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**An Act to make provision for the granting of legal aid in civil and criminal matters to persons whose means are insufficient to enable them to engage private legal practitioners and to other categories of persons where the interests of justice so require; to provide for the establishment of a Legal Aid Bureau; to provide for the establishment of a Legal Aid Fund; to allow for limited eligibility of other persons, besides legal practitioners, to provide legal aid for the purposes of this Act and to provide for matters connected therewith or incidental thereto**

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Legal Aid Act, 2010, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*. Short title and commencement

2. In this Act, unless the context otherwise requires— Interpretation

“Bureau” means the Legal Aid Bureau established under Part III of this Act;

“civic education” means civic education in legal literacy or the general dissemination of information about the law to the general public and conducted as part of legal aid service under this Act;

“contribution” means a contribution to the costs of the proceedings or matter in respect of which legal aid is or is to be given;

“cooperation agreement” means a contract or agreement entered into between the Legal Aid Bureau and a civil society organization or a person or body, engaged or interested in the provision of legal aid, for the rendering of legal aid services wholly by such organization, person or body or jointly with the Bureau;

“contingency fee agreement” means an agreement between the Bureau and a legally aided person by which the Bureau agrees to represent such person on condition that compensation to the Bureau shall be a percentage of the amount recovered in favour of such person.

“criminal investigations” means investigations relating to an offence or to a person accused or convicted of an offence;

“criminal proceedings” means proceedings before a court, tribunal, or other body against a person for—

(a) an offence;



(b) contempt of, or before, such court, tribunal or other body.

“Director” and “Deputy Director” means Director and Deputy Director of the Bureau appointed under section 9, respectively;

“legal advice” means oral or written advice on the application of written law or common law to any particular circumstances that have arisen in relation to the person seeking advice and as to the steps which that person might appropriately take having regard to the application of the law to those circumstances;

“legal aid” means service provided to persons under this Act by way of legal representation, legal advice or legal assistance;

“Legal Aid Advocate” means a person qualified as a legal practitioner appointed as a Legal Aid Advocate under section 12;

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“Legal Aid Assistant” means a person who is not qualified as a legal practitioner but has attained the requisite minimum level of legal education as may be prescribed by the Council of Legal Education under the Legal Education and Legal Practitioners Act to enable such person to be in full time employment with the Bureau or to provide services under any clinical law studies programme in partial compliance of the certification requirements for a legal practitioner under the Legal Education and Legal Practitioners Act;

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“Legal Aid Fund” or “Fund” means the Legal Aid Fund established under section 39;

“legal assistance” means assistance in taking any of the steps which a person might take, including steps with respect to proceedings, having regard to the application of the law to any particular circumstances that require legal action, whether by taking such steps on behalf of that person, including assistance by way of representation, or by assisting that person in taking such steps on his own;

“legally aided person” means a natural or legal person in receipt of legal aid in accordance with this Act;

“Public Appointments Committee” means the Public Appointments Committee of the National Assembly established under section 56 (7) of the Constitution; and

“Registrar” means the Registrar of the High Court of Malawi.

## PART II—LEGAL AID BUREAU

Establishment

3. There is hereby established the Legal Aid Bureau (in this Act otherwise referred to as the “Bureau”) which shall be a Department of the Government.



4.—(1) The duties and functions of the Bureau shall be to—

Duties and  
functions of  
the Bureau

- (a) provide legal aid in accordance with this Act;
- (b) determine—
  - (i) the persons or classes of persons in respect of whom legal aid may be granted; and
  - (ii) the matters or classes of matters in respect of which legal aid may be granted;
- (c) determine priorities in the provision of legal aid as between—
  - (i) different persons or different classes of persons; and
  - (ii) different matters or different classes of matters;
- (d) specify the guidelines to be applied in determining eligibility for legal aid;
- (e) specify the circumstances in which contributions towards legal aid shall be paid by legally aided persons and the way of calculating such contributions;
- (f) establish and manage offices of the Bureau in such places as it considers appropriate;
- (g) liaise and cooperate with civil society organizations or any other persons or bodies engaged or interested in the provision of legal aid;
- (h) compile and publish information in respect of the functions of the Bureau and in respect of other schemes of legal aid provided in Malawi;
- (i) undertake research into all aspects of legal aid including investigation and assessment of different methods of financing and providing legal aid;
- (j) prepare reports and make recommendations to the Minister on such matters relating to the functions of the Bureau as the Bureau considers appropriate or as the Minister may reasonably request;
- (k) exercise such other functions and duties as are conferred on the Bureau by or under this Act or any other written law.

5.—(1) The Bureau shall have the power to do such things as it considers necessary or desirable to secure the provision of legal aid under this Act or are calculated to facilitate or are incidental or conducive to the discharge of its functions.

Powers of the  
Bureau

(2) Without prejudice to the generality of its powers under subsection (1), the Bureau shall have power to—

(a) grant legal aid in accordance with this Act with or without conditions or vary, withdraw or revoke such grant;

(b) contract out legal aid work to legal practitioners in private practice on such terms and conditions as the Bureau may consider fit and appropriate;

(c) enter into cooperation agreements with civil society organizations or any other persons or bodies engaged or interested in the provision of legal aid;

(d) undertake any inquiry or investigation which the Bureau considers expedient in relation to the discharge of its duties and functions;

(e) receive donations of funds, materials and technical assistance in furtherance of its work;

(f) request and obtain the assistance of any public institution, Government Department, and other classes of institutions or bodies as may be necessary for carrying out the functions and duties under this Act;

(g) charge and collect fees in respect of programmes, publications, seminars, documents, and other services provided by the Bureau;

(h) disseminate or assist in the dissemination of information relating to the duties and functions of the Bureau;

(i) to develop *pro bono* programmes in conjunction with the Malawi Law Society; and

(j) do or perform all such acts or things as may be necessary or expedient for the discharge or exercise of its duties, functions and powers.

Independence  
of the Bureau

6.—(1) The Bureau shall exercise its powers and perform its duties and functions independent of the interference or direction of any person or authority.

(2) All organs of the Government shall accord the Bureau such assistance as may be reasonably required for the exercise of its powers and performance of its duties and functions and for the protection of the independence and impartiality of the Bureau.

### PART III—STAFF OF THE BUREAU

Director and  
Deputy  
Director  
Qualifications  
of a Director  
and Deputy  
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7. There shall be a Director and a Deputy Director of the Bureau whose offices shall be public offices.

8. No person shall be qualified to be appointed Director or Deputy Director unless he is entitled to practise as legal practitioner under the Legal Education and Legal Practitioners Act and has been entitled so to practise for a period of not less than ten years.



9.—(1) Nominations for appointment to the office of Director and Deputy Director shall be received from the general public following a public advertisement, and successful candidates shall be appointed by the Public Appointments Committee:

Appointment  
of the Director  
and Deputy  
Director

Provided that the Public Appointments Committee may, if it considers it appropriate so to do, and upon application by the officer concerned, consider an officer serving in the office of—

(a) Director or Deputy Director for re-appointment to the respective office;

(b) Deputy Director, for appointment to the office of the Director, without the requirement of a public advertisement.

10. The Director or Deputy Director shall be appointed for a term of five years and shall be eligible for re-appointment for such further terms not exceeding five years as the Public Appointments Committee may consider appropriate.

Term of office  
of Director  
and Deputy  
Director

11. A person appointed to the office of Director or Deputy Director shall not be removed from office except—

Removal from  
office

(a) for incompetence;

(b) for incapacity;

(c) for gross misconduct;

(d) where that person is compromised in the performance of his duties; and

(e) on reaching the retiring age prescribed generally for public officers other than judicial officers.

12.—(1) There shall be employed in the service of the Bureau, subordinate to the Director and Deputy Director, such Legal Aid Advocates, Legal Aid Assistants and such other support staff as may be required for the proper performance and exercise of its duties, functions, and powers, who shall be appointed by the Director and shall be officers in the public service.

Other  
employees of  
the Bureau

(2) In appointing officers subordinate to the Director and Deputy Director, the Director may be assisted by appropriate persons with expertise relevant to the appointments and shall ensure that all proper transparency procedures have been followed.

(3) The appointment of officers under this section shall not require the confirmation of the Public Appointments Committee.

13. The duties, functions and powers of the Director may be performed or exercised by—

Delegation of  
powers



- (a) the Director in person;
- (b) the Deputy director; or
- (c) any other officer of the Bureau or other person acting in accordance with the special directions from the Director.

Criteria for  
recruiting  
Legal Aid  
Assistants

14. In recruiting Legal Aid Assistants, the Bureau shall take into account academic qualifications, course work, training, and the experiential acquisition of knowledge and skills and shall have due regard to the need for Legal Aid Assistants to be able to—

- (a) communicate effectively;
- (b) assist legally aided persons to comply with procedural or administrative requirements;
- (c) have basic understanding of common legal concepts;
- (d) provide basic legal advice and legal assistance;
- (e) understand the circumstances in which it is appropriate to refer matters to a Legal Aid Advocate or to a legal practitioner; and
- (f) advise and educate members of communities on legal issues.

Terms and  
conditions of  
service

15. The terms and conditions of service of the staff of the Bureau shall be determined by Parliament on the recommendation of the Director after consultations with the Secretary to the Treasury.

#### PART IV—PROVISION OF LEGAL AID

Extent of legal  
aid

16. Legal aid shall consist of—

- (a) legal advice;
- (b) legal assistance;
- (c) representation in any court, tribunal or similar body or authority; and
- (d) the provision of civic education and information about the law.

Legal aid in  
criminal  
matters

17. The Bureau shall—

(a) develop and maintain a service to ensure that individuals against whom criminal proceedings have been instituted, who fulfil the requirements of section 18, have access to such legal aid as the interests of justice require;

(b) either on its own or through other actors under cooperation agreements, furnish such advice and assistance as may be considered by the Bureau or the cooperating partner to be appropriate—

- (i) for individuals who are arrested and held in custody at a police station, prison or other place of detention; and

(ii) for individuals facing criminal investigations in such other circumstances as may be prescribed.

18.—(1) A person shall be eligible for legal aid in criminal matters if—

Eligibility for legal aid in criminal matters

(a) it is in the interests of justice that such person should have legal aid provided in accordance with this Act with respect to those criminal investigations or criminal proceedings in respect of which he seeks legal aid; and

(b) he has insufficient means to enable him to obtain the services of a private legal practitioner.

(2) The factors to be taken into account by a competent authority in determining whether it is in the interests of justice that legal aid be granted in criminal matters shall include the following—

(a) the offence is such that if the applicant were convicted it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of his livelihood or to serious damage to his reputation;

(b) the determination of the case may involve consideration of a substantial question of law and adequate legal representation would make a material difference to the accused in receiving a fair trial;

(c) the accused may be unable to understand the proceedings or to state his own case because of his inadequate knowledge of the English language or due to mental illness or physical disability or on account of any other valid cause;

(d) the nature of the defence is such as to involve the tracing and interviewing of witnesses or to involve expert cross-examination of a witness for the prosecution;

(e) it is in the interests of someone other than the accused that the accused be represented; and

(f) the accused would, if convicted, be given the option of a fine and such fine would remain unpaid for more than one month after the imposition of sentence.

19.—(1) The Bureau shall develop and maintain a service to enable any person involved in civil proceedings as a litigant or as an interested party and who fulfils the requirements of section 20 to have access to—

Legal aid in civil matters

(a) general information about the law and procedure in civil matters and the provision of legal services;

(b) legal advice as to how the law applies in particular circumstances;



(c) legal assistance in preventing or in settling or otherwise resolving disputes; and

(d) legal representation in any civil matter before the courts.

*First Schedule* (2) Notwithstanding subsection (1), legal aid shall not be available in any civil matters listed in the First Schedule.

*First Schedule* (3) The Minister may, on the advice of the Bureau, amend the First Schedule by Order published in the *Gazette*.

*Eligibility for legal aid in civil matters* **20.** A person shall be eligible to receive legal aid in civil matters if, in the opinion of the Director, such person—

(a) has reasonable grounds for instituting or defending the matter for which he seeks legal aid; and

(b) has insufficient means to enable him to obtain the services of a legal private practitioner.

*Assessment of means of an applicant* **21.—**(1) In assessing the means of any person applying for legal aid under this Act, the Director shall take into account such evidence of income and disposable assets of the applicant, the spouse of the applicant and the parents or guardian of the applicant if the applicant is below the age of twenty-one years, in accordance with this Act:

Provided that if the applicant is above twenty-one years of age but continues to receive formal education, then the Director shall take into account such evidence of income and disposable assets of the applicants parent's or guardian.

(2) In assessing the means of any person pursuant to subsection (1), the Director shall make due allowance of the other commitments of that person as may be disclosed to the Director.

*Contributions towards legal aid* **22.—**(1) Where the Director is satisfied that a person who has applied for legal aid has sufficient means to enable him reasonably to make a contribution towards the total cost of the legal expenses incurred, the Director may require such person to make a contribution towards the costs.

(2) The amount of contribution required by the Director under subsection (1) shall not exceed in any case such sum as may be prescribed.

(3) An applicant shall have a right of appeal to the Registrar of the High Court against the requirement of the Director to make a contribution or against the level of the amount of contribution he is required to pay.



(4) Where in any proceedings an order or agreement for the recovery of any property, damages or other amount is made in favour of a legally aided person in such proceedings there shall be a first charge on such property, damages or other amount for the payment of any contribution due from such person in respect of such proceedings and for the payment of the amount by which such contribution is exceeded by the net liability of costs incurred on behalf of such person.

(5) Any sums recovered in proceedings by virtue of an order or an agreement for costs in favour of a legally aided person shall be paid to the Legal Aid Fund.

(6) For purposes of subsection (4), the following shall be immaterial—

(a) the nature of the property;

(b) the location of the property; or

(c) the charge on the property which includes—

(i) the rights of a person under any compromise or settlement arrived at to avoid the proceedings or to bring the proceedings to an end; or

(ii) any sums recovered by virtue of an order for costs made in favour of the legally aided person in the proceedings, not being sums payable to the Legal Aid Fund under subsection (5).

(7) The charge created by subsection (4) on any damages or costs shall not prevent a court from making an order allowing such damages or costs to be set off against other damages or costs in any case where a lien of the legal representative for costs would not prevent such order.

(8) If the contribution made by a person towards any legal expenses is more than the net liability for costs incurred on his behalf, the excess shall be repaid to that person.

(9) A person who in his application for legal aid, wilfully or knowingly fails to disclose his means or who wilfully or knowingly gives false information regarding his income and assets, commits an offence and shall be liable, on conviction, to a fine of fifty thousand Kwacha (K50,000) or to imprisonment for twelve months.

(10) In this section, references to the net liability for costs of any proceedings refer to the amount of the sums paid or payable on account of a legally aided person and not recouped by sums which are recovered by virtue of an order or agreement for costs made in favour of such person with respect to the proceedings.

Legal aid by  
courts

**23.—**(1) Any court may recommend to the Director that a person before it be granted legal aid where such court is satisfied that it is in the interests of justice to do so and that such person has insufficient means to enable him to obtain the services of a private legal practitioner.

(2) Where a court recommends the granting of legal aid, the Director may provide such legal aid if it is practicable to do so in all the circumstances.

(3) If the Director is unable to provide legal aid as recommended by a court under this section, he shall make the reasons for his inability known to such court, in writing, within seven days of the receipt of the recommendation and the court shall forthwith notify the Registrar of the High Court of the inability of the Bureau to grant legal aid.

Appeals  
against  
decision of  
Director

**24.—**(1) Where the Director refuses to grant legal aid, whether on an application made directly to the Bureau or upon a recommendation of the court for the grant of legal aid, the applicant or the person recommended for legal aid may appeal to the Registrar of the High Court in writing within fourteen days of the refusal.

(2) Upon receipt of a notification made under subsection (1), the Registrar of the High Court may, after considering the written grounds of appeal submitted by the appellant and the reasons of the Director in refusing to grant legal aid—

(a) dismiss the appeal summarily and give reasons in writing;  
or

(b) direct that legal aid be granted.

Termination  
and revocation  
of legal aid

**25.—**(1) The Director may terminate legal aid—

(a) at any time upon the request of the legally aided person;

(b) where the legally aided person has been required to make a contribution and any payment in respect thereof is more than sixty days in arrears;

(c) if he is satisfied that the proceedings for which legal aid was granted have already been disposed of or are in the process of being disposed of with the assistance of another legal practitioner or any other person, body or civil society organization providing legal aid;

(d) if he is satisfied that the legally aided person has caused the proceedings to be conducted unreasonably so as to incur unjustifiable expense to the Legal Aid Fund or has unreasonably caused or required the proceedings to be continued; or

(e) if the legally aided person has died.



(2) Legal aid shall not be terminated under this section until notice that the Director may do so has been served on the legally aided person in order that such person may show cause why legal aid should not be terminated.

(3) Where the Director is satisfied that a legally aided person has willfully failed to comply with any requirement as to the information furnished by him or, in furnishing any such information, has knowingly made a false statement or false representation, the Director may, if he thinks fit—

(a) where such failure or act occurred prior to the grant of legal aid, revoke such grant;

(b) where such failure or act occurred after the grant of legal aid, terminate legal aid from the date upon which such failure or act was discovered.

(4) Where the Director terminates legal aid or revokes the grant of legal aid, he shall forthwith issue a notice of revocation or termination, as the case may be, and shall send the notice to the legally aided person and copies thereof to the court and to the other party to the proceedings.

26.—(1) The Director may at any time vary the grant of legal aid so as to—

Variation of  
grant of legal  
aid

(a) alter the nature and extent of legal aid;

(b) make the grant of legal aid subject to a contribution or a further contribution; or

(c) remove the requirement to make a contribution,

if he is satisfied upon reasonable grounds that there has been a material change in the circumstances of the legally aided person.

(2) In the exercise of the power to vary the grant of legal aid, the Director may—

(a) make such inquiries as he thinks fit as to the means and circumstances of the legally aided person and of each person who is associated with the legally aided person for the purposes of assessing his means under section 21;

(b) require the legally aided person to furnish such information and to produce such books or documents as the Director may specify.

(3) Where the grant of legal aid is varied under this section, the Director shall record the reasons for the variation of the grant.



Effect of  
revocation and  
termination of  
legal aid

27.—(1) Subject to this section, a person whose grant of legal aid has been revoked shall be deemed never to have been a legally aided person in relation to the proceedings to which the grant related, and a person whose legal aid is terminated shall, from the date of the termination, cease to be a legally aided person in the proceedings.

(2) Upon receipt by him of notice of revocation of the grant or termination of legal aid by the Director, the retainer of any legal practitioner acting on behalf of the legally aided person in the proceedings to which legal aid relates shall forthwith determine.

(3) Where a grant of legal aid has been revoked or terminated—

(a) the costs of the proceedings to which the grant of legal aid related incurred on behalf of the legally aided person may, as soon as practicable thereafter, be taxed; and

(b) the Bureau shall remain liable to a legal practitioner instructed by the Director to represent the legally aided person for the payment of any costs so taxed which relate to work done or expenses incurred by that legal practitioner.

(4) Where the grant of legal aid has been revoked or terminated, those provisions of section 22 which provide for a charge upon property recovered by a legally aided person shall apply to any property recovered as a result of the formerly legally aided person continuing to take, defend or be a party to the proceedings to which the legal aid related.

(5) For the purposes of subsection (4), reference to a person whose legal aid has been terminated shall, where the legal aid has been terminated under section 25, include his personal representative or his trustee in bankruptcy or the official receiver, as the case may be.

(6) Where a grant of legal aid has been revoked, the Director shall have the right to recover from the person to whom legal aid was granted the costs taxed under subsection (3) (a) less any amount received from him by way of contribution.

(7) Where legal aid has been terminated, the legally aided person shall remain liable for the payment of his maximum contribution, if any, as ordered and where he continues to take, defend or be a party to the proceedings to which the grant of legal aid related, those provisions of section 22 which relate to sums recovered by virtue of an order or agreement for costs made in favour of a legally aided person shall apply in so far as the costs were incurred while he was a legally aided person.

28.—(1) The Bureau may enter into cooperation agreements with civil society organizations interested in the provision of legal aid.

Cooperation  
agreements

(2) A cooperation agreement shall stipulate the conditions applicable and shall place on the cooperating partner the responsibility of funding any activities carried out in partnership with the Bureau.

#### PART V—INSTRUCTION OF PRIVATE LEGAL PRACTITIONERS

29.—(1) Where the Director is unable personally or through a Legal Aid Advocate to act on behalf of any person under this Act, he may instruct a legal practitioner in private practice to act on behalf of the person, and may pay the legal practitioner such fees as are specified in the Second Schedule.

Instruction of  
private legal  
practitioners

(2) The Minister may, on the advice of the Bureau, amend the Second Schedule by Order published in the *Gazette*.

Second  
Schedule

30.—(1) The Director shall, pursuant to subsection (1), establish panels of legal practitioners to carry out legal aid work based on the expertise and areas of interest of the individual legal practitioners.

Second  
Schedule  
Panels of legal  
practitioners

(2) Any legal practitioner in private practice may apply to the Bureau for appointment to one or more panels and such application shall indicate the expertise of the legal practitioner and area of interest.

(3) The Bureau may, after consultation with the Law Society—

(a) refuse to appoint a legal practitioner to a panel for which the legal practitioner has made application;

(b) appoint a legal practitioner to a panel for which the legal practitioner has not made application where the Director is of the opinion that the expertise of the legal practitioner warrants it;

(c) suspend or remove a legal practitioner from a panel—

(i) if the legal practitioner has been found guilty of misconduct under this Act or under the Legal Education and Legal Practitioners Act; or

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(ii) where due to allegations of such misconduct or other sufficient cause, the Director is of the opinion that the legal practitioner is compromised in the performance of his work.

(4) Where the Bureau rejects an application for appointment to a panel, the Director shall give reasons to the concerned legal practitioner for the rejection.

(5) Before suspending or removing a legal practitioner from a panel, the Director shall give the legal practitioner a reasonable opportunity to be heard.



Conditions  
applying to  
members of a  
panel

31.—(1) A legal practitioner may be appointed to a panel for a period of five years, unless the legal practitioner is removed sooner from the panel at his request or in accordance with this Part.

(2) A legal practitioner may apply for re-appointment to a panel and may be so re-appointed in accordance with this Part.

(3) Any legal practitioner appointed to a panel shall enter into a service provision contract with the Bureau before being assigned any work by the Bureau.

(4) A service provision contract may make provision for or with respect to the following matters—

(a) the terms on which the legal practitioner is to provide services to a legally aided person;

(b) practice standards and compliance with practice standards;

(c) audits; and

(d) any other matter expedient to the provision of legal aid under the service provision contract.

(5) The Director may, after consultation with the Law Society, appoint a legal practitioner to act on behalf of a legally aided person if there are no legal practitioners registered in the area of expertise required or in any other exceptional circumstances in which such an appointment would be necessary.

Breach of  
service  
provision  
contract

32.—(1) The Bureau shall monitor implementation of all service provision contracts entered into with legal practitioners.

(2) If a legal practitioner appears to have breached a service provision contract, the Bureau may give written notice to the legal practitioner of the apparent breach and direct the legal practitioner to provide a written explanation to the Bureau.

(3) After a legal practitioner has provided a written explanation to the Bureau or, after having been given a reasonable opportunity to provide a written explanation to the Bureau and the legal practitioner has failed to provide that written explanation, the Bureau may—

(a) remove the legal practitioner from the panel;

(b) withdraw any work assigned to the legal practitioner; or

(c) not assign any work to the legal practitioner for a period of up to two years.

(4) A decision under subsection (3) may be made with or without conditions.



33.—(1) The Bureau may, at any time, in relation to any work assigned by the Bureau to a legal practitioner, (in this section referred to as an “assigned matter”), carry out an audit of the legal practitioner, or cause such audit to be carried out, in respect of any or more of the following—

Audits

- (a) claims for payment;
- (b) compliance with practice standards;
- (c) compliance with terms and conditions of a service provision contract;
- (d) compliance with the guidelines and policies of the Bureau and regulations made under this Act; and
- (e) complaints relating to service delivery.

(2) An audit shall not be carried out until after seven clear days have elapsed of the written notice of intention to carry out the audit has been given to the legal practitioner concerned and such notice shall state the purpose and scope of the audit.

(3) So far as practicable, an audit shall be carried out at a time that is convenient to the legal practitioner concerned, having regard to the needs of his practice, but in any case such audit shall be carried out within a reasonable period from the time of the issue of the notice.

(4) The relationship between a private legal practitioner and a legally aided person shall not operate to prevent or to limit an audit under this section.

(5) For the purposes of an audit, the Bureau or a person appointed in that behalf by the Bureau, may—

- (a) require the legal practitioner to produce for inspection of any files, records or documents relating to an assigned matter;
- (b) make copies of, or take extracts or notes or entries from, any such files, records or documents; and
- (c) require the legal practitioner to provide to the Bureau, or to the person so appointed, such information as is reasonably necessary for the purpose of the audit.

(6) If a record relating to an assigned matter is—

- (a) not in writing;
- (b) written in a language other than English; or
- (c) not decipherable on sight,

a requirement under subsection (5) (a) to produce the record, shall be a requirement to produce, in addition to the record if it is in writing, a statement, in the English language and decipherable on sight, that it contains all the information in the record.

(7) The Bureau shall reimburse a legal practitioner for disbursements and any other expenses reasonably incurred by the legal practitioner as a consequence of the audit.

(8) The production of a file, record, document or statement, or the giving of information under this section shall not subsequently affect any legal professional privilege to which, but for subsection (4), the file, record, document or statement would be subject.

(9) If a legal practitioner fails to cooperate in the carrying out of an audit under this section, the Bureau may do any of the following—

(a) terminate the services of the legal practitioner in relation to any assigned matter;

(b) remove the legal practitioner from a panel to which the legal practitioner is appointed; and

(c) refuse to pay the legal practitioner any money payable by the Bureau to the practitioner.

(10) Where an audit reveals evidence that a private legal practitioner carrying out legal aid work has grossly and unethically misconducted himself, the Director shall report the matter to the disciplinary committee of the Law Society as a disciplinary complaint against the legal practitioner under the Legal Education and Legal Practitioners Act.

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Confidentiality  
with regard to  
audit

**34.** Except in the performance of the duties, functions and powers conferred by this Act or by any other written law on the Director or any other employee or an agent of the Bureau, the Director or such employee or agent shall not disclose to any person any information that shall come to the attention of the Director or the employee pursuant to any audit carried out under this Act and all such information shall otherwise remain confidential.

#### PART VI—REGIONAL AND DISTRICT LEGAL AID CENTRES

Regional Legal  
Aid Centres

**35.—(1)** There may be established in every regional court administration centre, a Regional Legal Aid Centre.

(2) The Director may appoint a Legal Aid Advocate to a Regional Legal Aid Centre to—

(a) provide legal aid under this Act in that region;

(b) supervise the operations of Legal Aid Assistants providing legal aid in the District Legal Aid Centres of that region;

(c) provide technical support and assistance to the District Legal Aid Centres especially in matters that require legal representation or are beyond the competence of the Legal Aid Assistants.



36.—(1) There may be established in every district, a District Legal Aid Centre. District Legal Aid Centres

(2) The Director may appoint Legal Aid Advocates or Legal Aid Assistants to a District Legal Aid Centre who shall be responsible for the provision of legal aid in accordance with this Act, for such matters as are within their competence.

37. The placement or posting of a Legal Aid Advocate or Legal Aid Assistant in a regional or district centre shall not preclude that Legal Aid Advocate or Legal Aid Assistant from performing legal aid duties in any other regional or district centre. Competence of Legal Aid Advocates and Legal Aid Assistants

#### PART VII—FINANCIAL PROVISIONS

38.—(1) The Government shall adequately fund the Bureau to enable it to perform its duties and functions and exercise its powers so as to ensure its independence and impartiality. Funding of the Bureau

(2) The Bureau may receive donations of funds, materials and any other forms of assistance for the purposes of performing its duties and functions:

Provided that no such donation shall jeopardise or compromise the independence and impartiality of the Bureau.

39.—(1) There is hereby established a fund to be known as the Legal Aid Fund (in this Act otherwise referred to as the "Fund"). Legal Aid Fund

(2) The Fund shall consist of—

(a) sums appropriated by Parliament for the purposes of the Fund;

(b) any contributions made by legally aided persons;

(c) any deductions from awards to legally aided persons; costs awarded to legally aided persons;

(e) any sums accruing from contingency fee agreements entered into pursuant to this Act;

(f) any other sums that may vest or accrue to the Fund, whether through the provision of legal aid or otherwise or by way of donation, grant, gift or bequest.

(3) The Fund shall be administered by the Bureau in accordance with the purposes of this Act.

(4) The Fund shall be applied to the following—

(a) costs and expenses necessarily incurred in the provision of legal aid in accordance with this Act; and

- (b) any other purpose which the Bureau considers to be in the interests of the provision of legal aid in accordance with this Act.
- 40.** The Director shall, for the benefit of the Fund, deduct such amount as the Minister may, on the advice of the Bureau, prescribe by Order published in the *Gazette* from—
- (a) any damages or compensation awarded to a legally aided person by a court; and
- (b) any amount payable to a legally aided person pursuant to any settlement negotiated with assistance of legal aid provided under this Act.
- 41.**—(1) Where a court awards costs to a legally aided person, the costs shall, subject to subsection (3), accrue to the Fund.
- (2) For the purpose of receiving any costs payable under subsection (1), the Director shall take all such steps and pursue all such remedies as would have been taken by the person to whom such costs were awarded, and any expenses incurred in taking such steps or pursuing such remedies shall be recovered by the Director on behalf of the Fund.
- (3) Where a court awards costs to a legally aided person, the Director may authorize a refund to the legally aided person of any contributions made by such person under section 22.
- 42.** Notwithstanding any other written law, a court shall not award costs against a legally aided person.
- 43.** Any contributions, deductions from awards, contingency fees and costs awarded by the courts due to the Bureau may be paid directly to the Fund.
- 44.** The Bureau shall be accountable to Parliament for its funds in the manner applicable to Government departments and the accounts of the Bureau shall be liable to audit by the Auditor General.

#### PART VIII—GENERAL

- 45.**—(1) The Director may require parties to a dispute to submit to mediation as a precondition necessary for the grant of legal aid where both parties to the dispute apply for legal aid under this Act.
- (2) The mediation under subsection (1) may be carried out by the Director, Deputy Director, a Legal Aid Advocate or any private legal practitioner instructed by the Director under Part V.
- (3) Where the mediation is carried out pursuant to the Courts Act, a legally aided person shall be exempted from paying mediation fees.



46.—(1) The Bureau may enter into a contingency fee agreement with a person applying for legal aid where the Director considers it appropriate to do so.

Bureau to enter any person into contingency fee agreements

(2) A contingency fee agreement shall—

- (a) be in writing;
- (b) relate to proceedings which cannot be the subject of an unenforceable contingency fee agreement; and
- (c) state the percentage by which the amount of fees which would be payable if it were not a contingency fee agreement is to be increased.

(3) The proceedings which cannot be the subject of an enforceable contingency fee agreement are—

- (a) criminal proceedings; and
- (b) family proceedings.

(4) In this section “family proceedings” means proceedings under any or more of the following—

- (a) Deceased Estates (Wills, Inheritance and Protection) Act;
- (b) the Marriage, Divorce and Family Relations Act; and
- (c) Child Care, Protection and Justice Act.

Act No. . . . of 2010

Act No. . . . of 2010

Act No. 21 of 2010

47.—(1) Legal aid may be granted to any person for the purposes of any proceedings held before a board, council, body or any other authority, if such person may be so legally represented at such proceedings.

Legal aid in matters before a tribunal

(2) In granting legal aid pursuant to subsection (1), the Director shall have regard to the provisions of section 19.

48.—(1) The Minister may, on the advice of the Bureau, make regulations for the better carrying into effect of this Act and, in particular and without prejudice to the generality of the foregoing, such regulations may provide for the following—

Regulations

- (a) the forms of certificates issued for the grant of legal aid in accordance with this Act;
- (b) the forms of application for legal aid in accordance with this Act;
- (c) the amounts which a person may be required to contribute towards the costs of legal aid and the recovery of refund of such amounts;
- (d) procedure for the collection of funds payable to the Fund and the administration of the Fund;

(e) the assistance which may be required by the Director for the purposes of this Act from other public officers and from other classes of persons;

(f) the costs which are paid by or to either party to any civil proceedings including an appeal in respect of which legal aid is granted under this Act;

(g) appeals to the Registrar of the High Court against an order or direction for contribution; and

(h) the regulation of contingency fee agreements and generally for the percentage of fees that may be charged upon such agreements.

Repeals and  
savings  
Cap. 4:01

**49.**—(1) The Legal Aid Act is hereby repealed.

(2) Any subsidiary legislation and any order made under the Legal Aid Act repealed by subsection (1) and in force immediately before the commencement of this Act—

(a) shall remain in force and effect unless in conflict with this Act, and shall be deemed to be subsidiary legislation or an order made under this Act; and

(b) may be replaced by subsidiary legislation or an order made under this Act.

Transitional

**50.**—(1) Save as provided in subsection (2), all persons employed under the repealed Act and who are in service at the commencement of this Act shall continue in service under this Act.

(2) Upon the commencement of this Act, the Director and Deputy Director shall be appointed in accordance with the provisions of section 9; but if the person appointed to either of those offices was a serving officer under the repealed Act or in any part of the public service, his public service shall not be broken by reason only of his appointment to such office.

## FIRST SCHEDULE

(s. 19)

### CIVIL MATTERS INELIGIBLE FOR THE GRANT OF LEGAL AID

Legal Aid shall not be granted for the following matters—

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(a) election petitions under the Parliamentary and Presidential Elections Act or in relation to Local Government Elections;

(b) proceedings for, or consequent to the issue of judgment summons, and in the case of a defendant, proceedings where the only question to be brought before the court is as to the time and mode of payment by him of a debt (including liquidated damages) and costs;



- (c) insolvency proceedings;
- (d) foreclosure of mortgages;
- (e) drafting of documents for the registration of companies and firms;
- (f) transfer of property and conveyancing, except where such transfer of property or conveyancing is incidental to or arises out of a matter eligible for legal aid which is being handled by the Legal Aid Bureau;
- (h) proceedings incidental to any proceedings excepted by this Schedule; and
- (i) defamation.

## SECOND SCHEDULE

(s. 29 (1))

## FEES AND EXPENSES TO PRIVATE LEGAL PRACTITIONERS

1. Fees and expenses payable to a private legal practitioner shall be the prevailing party and party costs determined by the Registrar of the High Court in both civil and criminal cases as follows—
  - (a) in civil cases the maximum number of hours allowable in bills of costs shall be the party and party costs rate determined by the Registrar of the High Court from time up to one hundred hours;
  - (b) in criminal cases, private legal practitioners shall be paid a maximum of twenty thousand Kwacha (K20,000) per case regardless of the number of hours spent;
  - (c) the Director shall not allow costs higher than twenty thousand Kwacha (K20,000) in criminal cases unless the private legal practitioner applies to the Director in writing for prior approval;
  - (d) if in civil matters the legal practitioner has reason to believe that the matter will exceed one hundred hours, the Director shall not pay for the extra hours unless the legal practitioner applies to the Director in writing for prior approval;
  - (e) in both civil matters and criminal cases the Director shall only allow higher fees or an extension of time where the legal practitioner shows exceptional circumstances; and
  - (f) there shall be no brief fees payable.
2. All fees and expenses claimed by a private legal practitioner shall be subject to the approval of the Bureau before payment.

3. Disbursements made by private legal practitioners shall be refunded by the Director upon furnishing proof of incurring such disbursements, the Director shall not pay disbursements that exceed one-half of the professional fee payable without prior written authorization.

Passed in Parliament this second day of February, two thousand and eleven.



Clerk of Parliament

MALAWI PARLIAMENT  
LIBRARY