

MALAWI GOVERNMENT



Act

No. 37 of 1981

I assent

A handwritten signature in black ink, appearing to read 'H. Kamuzu Banda', written over the printed name 'LIFE PRESIDENT'.

LIFE PRESIDENT

23.1.82

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SCHEDULES

An Act to provide for the establishment, functions and powers of the Local Government Service Commission, for the unification of the local government services of all local authorities into a Local Government Service, to regulate the appointment and terms and conditions of service of persons joining the Service, and to make provision for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malaŵi as follows—

PART I—PRELIMINARY

Short title
and
commence-
ment

1. This Act may be cited as the Local Government Service Act, 1981, and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Interpreta-
tion

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

“Commission” means the Local Government Service Commission established under section 9;

“contract officer” means an officer in the employment of a local authority under a written contract containing terms of service individual to such officer;

“employee” means a person employed by a local authority as an industrial class employee or as a temporary employee;

“local government officer” means a public officer employed by the Ministry of Local Government;

“officer” means a person employed by a local authority holding a rank higher than that of an industrial class employee.

Unification
of all local
government
services of
local
authorities

3.—(1) On and after the commencement of, and to the extent provided by, this Act, the local government services of all local authorities in Malaŵi shall be unified into one consolidated service, to be known as the Local Government Service (hereinafter called the Service).

(2) Subject to the provisions of this Act, every local government officer, officer and employee having elected pursuant to section 4 to join the Service shall be deemed to be an officer in, or employee of, the Service and shall thereafter at all times, and to the extent provided by this Act, be subject to the jurisdiction and control of the Service, and to all appropriate and relevant regulations and rules relating to officers or employees of the Service, as are from time to time made and in force under this Act.

(3) Subject to the provisions of this Act, no person other than an officer in the Service shall, after the date of commencement, be appointed to, or hold, any office on the permanent establishment of any local authority.

4. Any person who was a member of a local authority immediately prior to the commencement of this Act may, at any time within six months thereafter, by notice in writing to the Minister, elect to join the Service. Election to join the Service

5. After the expiry of six months from the date of commencement, no person to whom section 4 of this Act applies shall be entitled to elect to join or to join the Service by virtue of that section. No election to join the Service after six months

6. Any person who, pursuant to section 4, joins the Service shall enter the Service on such terms of employment and under such conditions of service applicable to the Service as are, at the time, made applicable to him by the relevant competent authority: Terms and conditions upon entry into the Service

Provided that in no case shall such terms of employment or conditions of service be less favourable than the terms and conditions that he enjoyed, or were applicable to him, in the local authority immediately prior to the commencement of this Act.

7. In calculating the pension or gratuity payable upon the retirement from the Service of any person who has joined the Service under the provisions of this Act, such part of the pension or gratuity, as the case may be, as is attributable to the length of service of such person in the local authority shall be calculated in accordance with the relevant and applicable provisions of that local authority in force immediately prior to the date of commencement of this Act, and such part of the pension or gratuity, as the case may be, as is attributable to the length of service of such person in the Service shall be calculated in accordance with such regulations made under this Act as are relevant and applicable thereto on the date of such person's retirement. Calculation of pensions and gratuities on retirement

8. Any person entitled to elect to join the Service pursuant to section 4 who does not do so within the time prescribed by that section, shall be deemed to have retired from his employment by a local authority on the day immediately before the date of commencement of this Act. Effect of non-election to join the Service

PART II—ESTABLISHMENT OF THE LOCAL GOVERNMENT SERVICE COMMISSION

Establishment and composition of the Service Commission

9.—(1) There is hereby established a Commission to be known as the Local Government Service Commission (hereinafter called the Commission).

(2) The Commission shall be a body corporate with perpetual succession and a seal and shall consist of—

(a) one member, who shall be the Chairman, appointed by the President, on the recommendation of the Minister;

(b) one member, who shall have had at least six years experience in local government administration, appointed by the Minister;

(c) three other members, appointed by the Minister.

(3) The names of all members of the Commission as first constituted and every change of membership thereof shall be notified in the *Gazette*.

Disqualification from membership of Commission

10. Any person who—

(a) is a member of the Council of a local authority;

(b) is a local government officer;

(c) is an officer in the public service;

(d) is a member of any body or association of persons, corporate or unincorporate, or of any trade union, having as one of its objects the controlling or influencing of appointments to, or of the determination of the scales of salaries or wages or other terms or conditions of service of, any class of local government officers or employees;

(e) is a member of any body or association of persons, corporate or unincorporate, or of any trade union which, under its constitution, objects or rules, or which by virtue of any agreement, is affiliated with any such body, association or trade union as is referred to in paragraph (d);

(f) is an undischarged bankrupt;

(g) has, within the three years immediately preceding, been convicted of an offence by any court and sentenced therefor to a term of imprisonment of six months or more without the option of a fine;

(h) has, within the six years immediately preceding, been convicted of an offence involving fraud or dishonesty,

shall be disqualified from being appointed to, or from continuing to hold, office as a member of the Commission.

11.—(1) Subject to subsections (3) and (4), every member of the Commission shall hold office as such member for such period, not exceeding two years from the date of his appointment, as may be specified in the instrument of his appointment.

Tenure of office of members of Commission

(2) Any retiring member of the Commission, other than a member who is disqualified under section 10, shall be eligible for re-appointment.

(3) Upon the expiry of the period for which a member is appointed he shall continue to hold office until his successor is appointed, but in no case shall such further period exceed three months.

(4) The office of a member of the Commission shall be vacated—

(a) upon his death;

(b) if, save through illness, he is absent from three consecutive meetings of the Commission without the permission of the Commission or the Minister;

(c) upon the expiry of one month's notice in writing of his intention to resign given by him to the Minister;

(d) upon his dismissal from the Commission by the Minister by notice given to him in writing:

Provided that, in the case of the Chairman, such notice of dismissal shall not be given without the prior approval of the President;

(e) if he becomes physically or mentally unfit, and the Minister and the Commission are of opinion that, by reason of such unfitness, he is no longer capable of performing his duties as a member of the Commission:

Provided that, in the case of the Chairman, this paragraph shall not apply if, upon the submission of the opinion of the Commission and the Minister to the President by the Minister, the President does not approve of its application;

(f) if he becomes disqualified from membership of the Commission under section 10.

12. The Chairman and other members of the Commission shall receive such remuneration and allowances as may, from time to time, be approved by the Minister.

Remuneration and allowances of members of Commission

PART III—ADMINISTRATION

13.—(1) There shall be a Secretary to the Commission (hereinafter called the Secretary) who shall be designated as Secretary by the Minister.

Secretary to the Commission

(2) The Secretary shall be the principal executive of the Commission and shall be responsible for the administration and management of the affairs of the Commission, and shall be in charge of all administrative, executive and other staff as may be assigned for service with the Commission by the Minister.

(3) The Secretary shall not be a member of the Commission, nor have any vote in its deliberations.

Deputy
Secretary to
the
Commission

14. There shall be a deputy Secretary to the Commission designated as such by the Minister who shall, in the absence of the Secretary, act in his place and stead.

PART IV—FUNCTIONS AND POWERS OF THE COMMISSION

Functions
and powers
of the
Commission

15.—(1) Subject to subsection (2), the Commission has power to appoint persons to the Service.

(2) In the exercise of its power under subsection (1) the Commission shall pay regard to the maintenance of the high standard of efficiency necessary in the Service and, subject thereto, when considering the appointment of persons to the Service, shall—

(a) where, in the opinion of the Commission, an officer is qualified and suitable to fill a vacancy, give preference to that officer over any person not in the Service;

(b) where, in the opinion of the Commission, no serving officer is qualified and suitable to fill a vacancy, accept applications from outside the Service and give preference to the appointment of any applicant or other person who has been specially trained for the post; and

(c) where more than one officer may be suitable to fill a vacancy, take into account seniority in Government Service, qualifications, experience and merit and shall, unless there is reason to the contrary, give preference to a permanent officer over a contract officer.

(3) The Commission shall have the powers set out in the First Schedule.

(4) The Minister may, at any time, by notice published in the *Gazette*, amend the Schedule.

PART V—FUNDS OF THE COMMISSION

Funds of the
Commission

16. The Funds of the Commission shall consist of—

(a) such sums as may be payable to the Commission from moneys appropriated by Parliament for the purpose;

(b) such sums or assets as may accrue to, or vest in, the Commission whether in the course of the exercise of its functions or powers, or otherwise;

(c) such sums or assets as may accrue to, or vest in, the Commission by way of grants, subsidies, bequests, donations, gifts, subscriptions, rents, interest or royalties, from the Government or any other person;

(d) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Commission;

(e) such sums as are received by the Commission by way of voluntary contributions;

(f) such sums or assets as may be donated to the Commission by any foreign government, international agency or other such body.

17. The Commission shall draw up, in respect of each financial year, an annual budget showing the estimated expenditure on capital and revenue account, and shall submit the budget annually for the approval of the Minister. Annual budget

18.—(1) The Commission shall cause to be kept proper books of account and other books in relation thereto. Books, accounts, audit and reports

(2) The accounts of the Commission shall be audited annually by professional auditors appointed by the Commission with the approval of the Minister. The expenses of, and incidental to, any audit shall be paid from the funds of the Commission.

(3) The Commission shall, as soon as is practicable, but not later than six months after the end of each financial year, submit to the Minister an annual report upon its work and operations.

(4) Such report shall include a balance sheet, an income and expenditure account and the annual report of the auditors and shall be laid by the Minister before the National Assembly pursuant to section 32F of the Finance and Audit Act. Cap. 37:01

PART VI—MISCELLANEOUS

19. The Minister may, by notice published in the *Gazette* make regulations for the better carrying into effect of this Act. Regulations

20. The provisions of this Act shall not apply to—

(a) any Mayor, Deputy Mayor or Councillors who are elected or appointed, as the case may be, pursuant to Parts III and IV of the Local Government (Urban Areas) Act; Non-application of Act
Cap. 22:01

(b) any Chairman, Honorary Chairman, Vice-Chairman or Councillors who are elected or appointed, as the case may be, pursuant to Part III of the Local Government (District Councils) Act. Cap. 22:02

21. The provisions of Part VI of the Local Government (Urban Areas) Act, and of Part V of the Local Government (District Councils) Act, are amended in the manner prescribed in the Second Schedule. Amendments to Cap. 22:01 and Cap. 22:02

FIRST SCHEDULE

(s. 15 (3))

POWERS OF THE COMMISSION

1. To appoint and employ, with the approval of the Minister, such professional, technical and administrative officers, clerks and other staff of the Commission as it may deem requisite.

2. To pay to persons in the employment of the Commission such salary, wages or other remuneration as it may deem fit, and to grant to those persons such leave as it may deem fit.

3. To provide for persons in the employment of the Commission or their dependants, by means of insurance with an insurance company or a pension or provident fund or in any other manner whatsoever, pecuniary benefits upon retirement, death or termination of service or in the event of any sickness or injury.

4. To make rules prescribing measures for the discipline of staff.

5. To do all things incidental or conducive to the performance of its powers or functions under this Act.

SECOND SCHEDULE

(s. 21)

AMENDMENTS

Provisions of Part VI of Cap. 2:01

<i>Provision</i>	<i>Manner of Amendment</i>		
PART VI	<i>Insert, immediately before the existing section 61, the following—</i>		
	<table border="0"> <tr> <td style="vertical-align: top;">“Inter-pretation of Part</td> <td>61. In this Part “Commission” means the Local Government Service Commission established by section 9 of the Local Government Service Act, 1981.”.</td> </tr> </table>	“Inter-pretation of Part	61. In this Part “Commission” means the Local Government Service Commission established by section 9 of the Local Government Service Act, 1981.”.
“Inter-pretation of Part	61. In this Part “Commission” means the Local Government Service Commission established by section 9 of the Local Government Service Act, 1981.”.		
section 61 (1)	<i>Delete and substitute—</i>		
	<table border="0"> <tr> <td style="vertical-align: top;">“Appoint-ment of Town Clerk, etc.</td> <td>61A.—(1) The Commission shall, from time to time, appoint as full-time or part-time officers, fit and proper persons to be respectively Town Clerk, Medical Officer of Health, Town Treasurer, and Town Engineer.”.</td> </tr> </table>	“Appoint-ment of Town Clerk, etc.	61A.—(1) The Commission shall, from time to time, appoint as full-time or part-time officers, fit and proper persons to be respectively Town Clerk, Medical Officer of Health, Town Treasurer, and Town Engineer.”.
“Appoint-ment of Town Clerk, etc.	61A.—(1) The Commission shall, from time to time, appoint as full-time or part-time officers, fit and proper persons to be respectively Town Clerk, Medical Officer of Health, Town Treasurer, and Town Engineer.”.		
section 62	<i>Delete and substitute—</i>		
	<table border="0"> <tr> <td style="vertical-align: top;">“Appoint-ment of other officers</td> <td>62. The Commission may, in addition to the officers appointed under section 61A (1), appoint such other officers as may be necessary.”.</td> </tr> </table>	“Appoint-ment of other officers	62. The Commission may, in addition to the officers appointed under section 61A (1), appoint such other officers as may be necessary.”.
“Appoint-ment of other officers	62. The Commission may, in addition to the officers appointed under section 61A (1), appoint such other officers as may be necessary.”.		
section 63	<i>Delete and substitute—</i>		
	<table border="0"> <tr> <td style="vertical-align: top;">“Appoint-ment of seconded officers</td> <td>63. The Commission may second any public officer to any office in a Local Authority.”.</td> </tr> </table>	“Appoint-ment of seconded officers	63. The Commission may second any public officer to any office in a Local Authority.”.
“Appoint-ment of seconded officers	63. The Commission may second any public officer to any office in a Local Authority.”.		
section 64	<i>Delete</i>		
section 65 (1)	<i>Delete</i> “unless and until such removal has been decided upon at a meeting specially convened for the purpose, by a majority of the total number of councillors of the Local Authority and unless and until the Minister has notified to the Local Authority” <i>and substitute</i> “unless and until the Minister has notified to the Commission”.		

<i>Provision</i>	<i>Manner of Amendment</i>
section 65 (2) (b)	<i>Delete</i> "Minister" where the word first occurs <i>and substitute</i> "Commission".
section 65 (2) (c)	<i>Delete</i> "this subsection, such officer shall be deemed to have been removed from his office from the date of such suspension." <i>and substitute</i> "that subsection, such officer shall be deemed to have been removed from his office from the date on which the notification is received by the Commission."
section 68	<i>Delete</i> the words— (i) "employed by it, whether under this or any other written law," (ii) "officer employed by it," <i>and substitute</i> — (i) "assigned to it," (ii) "officer assigned to it,"
section 70 (1)	<i>Delete</i> "employed, whether under this Act or any other written law, by" <i>and substitute</i> "assigned to".
section 70 (2)	<i>Delete</i> "officer of" <i>and substitute</i> "officer assigned to".
section 71	<i>Delete</i> "connexion with or in the course of his employment by a Local Authority," <i>and substitute</i> "the course of, or in connexion with, his duties as such officer,".
section 72	<i>Delete.</i>
section 73	<i>Delete.</i>
section 74	<i>Delete.</i>
	Provisions of Part V of Cap. 22:02
PART V	<i>Insert, immediately before the existing section 24, the following—</i> "Inter-pretation of Part 24. In this Part "Commission" means the Local Government Service Commission established by section 9 of the Local Government Service Act, 1981."
section 24 (1)	<i>Delete and substitute—</i> "Appoint-ment of officers 24A.—(1) The Commission shall appoint— (a) a clerk of the Council; (b) a treasurer; and

<i>Provision</i>	<i>Manner of Amendment</i>
	(c) such other officers of the Council as may be necessary.
	(2) Subject to this section, no person holding the office of clerk of the Council or treasurer shall be removed from his office unless and until such removal has been authorized by the Commission and has been approved by the Minister:
	Provided that—
	(a) the Commission may suspend any such officer from the duties and emoluments of his office for incapacity, negligence or misconduct, pending the decision of the Minister as to his removal, and the Commission shall, as soon as may be, inform the Council of such suspension;
	(b) the removal of any such officer from office shall take effect from the date on which notification of the approval of the Minister is received by the Commission;
	(c) where any such officer has been suspended but subsequently reinstated, all the emoluments pertaining to his office shall be restored to him with effect from the date of his suspension.
	(3) The Commission may second any public officer to any office in a Council.”.
section 26 (1)	<i>Delete and substitute</i> “26.—(1) Every person who, in the course of his duties, receives or disburses money on behalf of a Council is in this section referred to as a “collector”.”.
section 26 (3)	<i>Delete and substitute</i> “(3) The date when any such person ceases to be a collector is in this section referred to as “the termination date”.”.

Passed in Parliament this seventeenth day of December, one thousand, nine hundred and eighty-one.


Clerk of Parliament