STATUTORY INSTRUMENTS

1964 No. 916

AFRICA

The Malawi Independence Order 1964

Made - - - -	*23rd June* 1964
Laid before Parliament	*29th June* 1964
Coming into Operation	*Immediately before 6th July* 1964.

At the Court at Buckingham Palace, the 23rd day of June 1964

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act 1890(**a**), the Malawi Independence Act 1964(**b**) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

Citation and commencement.

1.—(1) This Order may be cited as the Malawi Independence Order 1964.

(2) This Order shall come into operation immediately before 6th July 1964 :

Provided that where the Governor-General has power by or under this Order to make any appointment, or make any order (other than an order under section 4(2) of this Order relating to any Act of the Parliament of the United Kingdom or any Order of Her Majesty in Council) or to do any other thing for the purposes of this Order, that power may be exercised by the Governor and Commander-in-Chief of Nyasaland at any time after 29th June 1964 to such extent as may, in his opinion, be necessary or expedient to enable the Constitution of Malawi established by this Order to function as from 6th July 1964.

(3) Save where the context otherwise requires, expressions used in sections 1 to 18 (inclusive) of this Order have the same meaning as in the Constitution set out in Schedule 2 to this Order and the provisions of section 110 of that Constitution shall apply for the purposes of interpreting those sections as they apply for the purposes of interpreting that Constitution.

Revocations.

2. The Orders specified in column 1 of Schedule 1 to this Order are revoked to the extent specified in column 2 of that Schedule.

Establishment of Constitution.

3. Subject to the provisions of this Order, the Constitution set out in Schedule 2 to this Order (hereinafter referred to as " the Constitution ") shall come into effect in Malawi at the commencement of this Order.

(a) 53 & 54 Vict. c. 37. (b) 1964 c. 46.

Existing laws.

4.—(1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the provisions mentioned in Schedule 1 to this Order, continue in force after the commencement of this Order as if they had been made in pursuance of this Order but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(2) The Governor-General may by order made at any time before 6th January 1965 make such amendments to any existing law or to any Act of Parliament of the United Kingdom or Order of Her Majesty in Council (other than the Malawi Independence Act 1964 or this Order) having effect as part of the law of Malawi or any part thereof immediately before the commencement of this Order as may appear to him to be necessary or expedient for bringing that law, Act of Parliament or Order into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(3) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the commencement of this Order, by or under the provisions revoked by section 2 of this Order, that prescription or provision shall, as from the commencement of this Order, have effect as if it had been made under the Constitution by Parliament, or as the case may be, by the other authority or person.

(4) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(5) For the purposes of this section, the expression "the existing laws" means all Ordinances, laws, rules, regulations, resolutions, orders or other instruments having the effect of law made or having effect as if they had been made in pursuance of the provisions revoked by section 2 of this Order and having effect as part of the law of Malawi or any part thereof immediately before the commencement of this Order or any Act of the Parliament of the United Kingdom so having effect by virtue of the provisions revoked by section 2 of this Order.

Existing offices.

5.—(1) Where any office has been established by or under the provisions revoked by section 2 of this Order and the Constitution establishes a similar or an equivalent office, any person who immediately before the commencement of this Order holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed to have been appointed, elected or designated as from the commencement of this Order to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken any necessary oath under the Constitution:

Provided that—

(*a*) any person who under the provisions revoked by section 2 of this Order or under any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age;

(*b*) if any person holds the office of Director of Public Prosecutions immediately before the commencement of this Order who was appointed to that office for a fixed period he shall vacate that office at the expiration of that period instead of upon the attainment of the age prescribed for the purposes of section 98 of the Constitution.

(2) The provisions of this section shall be without prejudice to—

(*a*) the provisions of section 7 of this Order ; and

(*b*) any powers conferred by or under this Order upon any person or authority to make provision for the abolition of offices and the removal of persons holding or acting in any office.

(3) In this section " existing law " means such a law as is referred to in section 4(5) of this Order.

Citizenship.

6. Until Parliament prescribes the manner in which an application shall be made for the purpose of section 2(1), 2(4), 3(1), 3(2), 3(3), 3(4), 3(5) or section 6 of the Constitution, an application under that provision need not be in any particular form but the application shall be sufficient if it is made to the Minister responsible for matters relating to citizenship of Malawi and if it discloses the name, address and national status of the applicant and grounds upon which the applicant is entitled to registration under that provision.

Parliament.

7.—(1) The National Assembly constituted by the provisions revoked by section 2 of this Order (hereinafter in this section referred to as " the existing National Assembly ") shall be the National Assembly during the period beginning with the commencement of this Order and ending with the first dissolution of Parliament thereafter.

(2) The persons who, immediately before the commencement of this Order, are the members of the existing National Assembly shall continue to be the members of the National Assembly and, as from the commencement of this Order, shall be deemed to have been elected to the National Assembly to represent the same constituencies as the constituencies for which they were respectively elected under the provisions revoked by section 2 of this Order, and shall hold their seats in the National Assembly in accordance with section 8 of this Order and section 39 of the Constitution.

(3) The persons who, immediately before the commencement of this Order, are the Speaker and the Deputy Speaker of the existing National Assembly shall continue to be, respectively, the Speaker and the Deputy Speaker of the National Assembly after the commencement of this Order and as from that time shall be deemed to have been elected as such in accordance with the provisions of the Constitution and shall hold office in accordance with those provisions.

(4) The rules and orders of the existing National Assembly as in force immediately before the commencement of this Order shall, until it is otherwise provided under section 52 of the Constitution, be the rules and procedure of the National Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring those rules into conformity with the Constitution.

(5) Subject to the provisions of section 57(4) of the Constitution, Parliament shall, unless sooner dissolved, stand dissolved on 25th May 1969.

(6) Any person who, under the provisions of this section, continues to be Speaker, Deputy Speaker or a member of the National Assembly

after the commencement of this Order shall be deemed to have taken any necessary oath under the Constitution.

Qualifications and disqualifications for membership of National Assembly.

8.—(1) During the period commencing on 6th July 1964 and ending on 5th July 1965 any person who, being a member of the National Assembly immediately before the commencement of this Order, is not a citizen of Malawi may, notwithstanding the provisions of section 34(1)(*a*) and 39(2)(*a*) of the Constitution, hold his seat in the Assembly, but any such person shall, if he is not a citizen of Malawi on 6th July 1965, vacate his seat in the Assembly on that day.

(2) Until Parliament otherwise provides in pursuance of section 35(4) of the Constitution, a person shall be disqualified for membership of the National Assembly if he holds or is acting in any public office or he belongs to any of the armed forces of the Crown and, for the purposes of this subsection, a person shall not be considered as belonging to the armed forces of the Crown by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service in such forces.

Constituencies.

9.—(1) Until other provision is made under section 41 of the Constitution, the boundaries of the general roll constituencies and the boundaries of the special roll constituencies into which Malawi is divided by section 41 of the Constitution shall be the boundaries of the constituencies established under the provisions revoked by section 2 of this Order, as delimited immediately before the commencement of this Order.

(2) For the purposes of section 41 of the Constitution, the date upon which the Electoral Commission shall be deemed to have last reviewed the boundaries of the general roll constituencies and the boundaries of the special roll constituencies into which Malawi is divided for the purposes of that section shall be 1st April 1964.

Emergency Powers Orders in Council 1939 to 1964.

10. The Emergency Powers Orders in Council 1939(**a**) to 1964(**b**) shall cease to have effect as part of the law of Malawi on 6th July 1966 or such earlier date as Parliament may prescribe:

Provided that section 6(2)(*d*) and section 8 of the Emergency Powers Order in Council 1939 shall cease to have effect as part of the law of Malawi as from the commencement of this Order.

Appeals in respect of certain decisions affecting pensions and like benefits.

11.—(1) The following provisions of this section shall have effect for the purpose of enabling any officer to whom this section applies or his personal representatives to appeal against a decision to which this section applies, that is to say, a decision within any of the following classes:—

(*a*) a decision of the appropriate Commission to give such concurrence as is required by section 106 of the Constitution in relation to the refusal, withholding, reduction in amount or suspension of any benefits in respect of such an officer's service as a public officer;

(*b*) a decision by any authority to remove such an officer from office if the consequence of the removal is that any benefits cannot be granted in respect of the officer's service as a public officer;

(*c*) a decision by any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is to reduce the amount of any benefits that may be granted in respect of the officer's service as a public officer.

(**a**) *See* S.I. 1952 I, at p. 621.
(**b**) S.I. 1956/731, 1963/88, 1633 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084).

(2) Where any decision such as is referred to in subsection (1) of this section is taken by any authority, the authority shall cause to be delivered to the officer concerned, or his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made to an authority within the time stated in such a notice as is mentioned in subsection (2) of this section for a case to be referred to an Appeals Board, the authority shall notify the Prime Minister in writing of that application and thereupon the Prime Minister shall appoint an Appeals Board for that purpose consisting of—

(*a*) one member selected by the Prime Minister ;

(*b*) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant ; and

(*c*) one member selected by the two other members jointly (or, in default of agreement between those members, by the Judicial Service Commission) who shall be the Chairman of the Board.

(4) Such an Appeals Board shall inquire into the facts of the case that is referred to it, and for that purpose the Board—

(*a*) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request ;

(*b*) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case ; and

(*c*) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When such an Appeals Board has completed its consideration of the case, then—

(*a*) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (*a*) of subsection (1) of this section, the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice ;

(*b*) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (*b*) or (*c*) of subsection (1) of this section, the Board shall not have power to advise the authority responsible for making the decision to affirm, reverse or modify the decision but the Board may advise the authority responsible for granting the benefits in question—

(i) where the officer has been removed from office, to grant all or part of the benefits for which the officer concerned would have been eligible under any law if he had retired voluntarily at the date of the dismissal ; or

(ii) where some other disciplinary action has been taken in relation to the officer, that on the grant of any benefits under any law in respect of the officer's service such benefits shall

be increased by such amount, or shall be calculated in such manner, as the Board may specify in order to offset all or any part of the reduction in the amount of such benefits that, in the opinion of the Board, would or might otherwise be a consequence of the action,

and that authority shall act in accordance with that advice and the provisions of that law shall have effect accordingly.

(6) In this section—

"the appropriate Commission" has the meaning assigned to it in section 106 of the Constitution;

"pensions benefits" has the meaning assigned to it in section 105 of the Constitution.

(7) This section applies to any officer who is the holder of a pensionable public office and—

(*a*) is designated under the Overseas Service Aid Scheme;

(*b*) is a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or

(*c*) whose conditions of service include an entitlement to free passages from Malawi for the purpose of leave of absence upon the completion of a tour of duty.

Compulsory retirement to facilitate appointment of local candidates.

12.—(1) If the Prime Minister so requests, the authorities having power to make appointments in any branch of the public service shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in, that branch than there are vacancies in that branch that could appropriately be filled by such local candidates; and those authorities, if satisfied that such is the case, shall, if so requested by the Prime Minister, select officers in that branch to whom this subsection applies and whose retirement would in the opinion of those authorities cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the Prime Minister of the number of officers so selected; and if the Prime Minister specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), those authorities shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) Any notice given under subsection (1) of this section requiring any officer to retire from the public service shall—

(*a*) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify the date upon which he shall so retire which shall be not earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, when it would otherwise expire; and

(*b*) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives the notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that, with the consent of the officer, the notice may specify an earlier date or, as the case may be, a shorter period.

(3) This section applies to any officer who holds a pensionable public office and—

(*a*) is designated under the Overseas Service Aid Scheme ;

(*b*) is a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary ;

(*c*) whose conditions of service include an entitlement to free passages from Malawi for the purpose of leave of absence upon the completion of a tour of duty ; or

(*d*) is an overseas officer who, after the commencement of this Order, is appointed to any public office (otherwise than on promotion or transfer from another public office) and who is notified at the time of his appointment that this section will apply to him.

(4) In this section " overseas officer " means an officer in the public service who is, either individually or as a member of a class, declared by the appropriate Commission to be an overseas officer, and " the appropriate Commission " means—

(*a*) in relation to an officer who can be removed from his office by the Judicial Service Commission, that Commission ;

(*b*) in relation to an officer who can be removed from his office by the Police Service Commission, that Commission ; and

(*c*) in any other case, the Public Service Commission.

Legal proceedings.

13.—(1) All proceedings that, immediately before the commencement of this Order, are pending before any court established by or under the provisions revoked by section 2 of this Order may be continued and concluded after the commencement of this Order before the corresponding court established by or under the Constitution.

(2) Any decision given before the commencement of this Order by any such court as aforesaid shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the corresponding court established by or under the Constitution.

Appeals to Her Majesty in Council.

14.—(1) Subject to the provisions of subsection (2) of this section, no appeal shall lie to Her Majesty in Council (whether as of right or by leave either of Her Majesty in Council or of any court established for Malawi) from any decision given in any civil or criminal matter by any such court.

(2) Any appeal to Her Majesty in Council from a decision given by the existing Supreme Court of Appeal, being an appeal that is pending immediately before the commencement of this Order and in which the records have been registered in the Office of the Privy Council before the commencement of this Order, shall continue to lie to Her Majesty in Council and may be prosecuted and disposed of in accordance with the law regulating the procedure in appeals to Her Majesty in Council from decisions given by that Court that is in force immediately before the commencement of this Order.

Exercise of jurisdiction of High Court and other courts.

15. Until Parliament otherwise provides—

(*a*) the civil and criminal jurisdiction of the High Court and of all subordinate courts shall, subject to the provisions of this Order and of any law in force in Malawi, be exercised in conformity

with the statutes of general application in force in England on the 11th August 1902 and the substance of the English common law and doctrines of equity;

(*b*) in cases in which all parties are Africans of Malawi, that is to say, members of a tribe or race of Africa which ordinarily resides in Malawi or persons who ordinarily reside in Malawi as members of such a tribe or race, and in such other cases as may be prescribed by any law in force in Malawi the High Court and any subordinate court shall, in the exercise of their civil and criminal jurisdiction, be guided by customary law so far as it is applicable and is not repugnant to justice or morality or inconsistent with any law in force in Malawi and shall decide such cases according to substantial justice without regard to technicalities of procedure.

Remuneration of certain offices.

16. Until other provision is made in that behalf by Parliament in accordance with the provisions of section 91(1) of the Constitution, and subject to the other provisions of that section, there shall be paid to the holders of the offices to which that section applies the salaries payable to the holders of the corresponding offices immediately before the commencement of this Order.

Public land and minerals.

17.—(1) All public land (as defined in the Nyasaland Protectorate (African Trust Land) Order in Council 1950(a) shall, as from the commencement of this Order, vest in the Governor-General subject to any rights and interests which, before the commencement of this Order, have by or under any law in force in the former Nyasaland Protectorate, or otherwise, been granted to, or recognised as vested in, any other person (not being the Governor of the said Protectorate).

(2) All rights in respect of minerals and mineral oils on or under any land which is not—

(*a*) public land; or

(*b*) African trust land (as defined in the said Order)

shall, as from the commencement of this Order, vest in the Governor-General unless, before the commencement of this Order, they have by or under any law in force in the former Nyasaland Protectorate, or otherwise, been granted to, or recognised as vested in, any other person (not being the Governor of the said Protectorate).

(3) Subject to the provisions of any law in force in Malawi, the Minister responsible for land matters or any public officer for the time being authorised by that Minister, may make and execute grants, leases or other dispositions of public land.

(4) The provisions of subsections (1), (2) and (3) of this section shall have effect until Parliament makes other provision.

Alteration of this Order.

18. Parliament may alter any of the provisions of this Order in the same manner as it may alter any of the provisions of the Malawi Independence Act 1964.

W. G. Agnew.

(a) S.I. 1950/1183 (1950 II, p. 156).

SCHEDULE 1 TO THE ORDER

Section 2

PROVISIONS REVOKED BY THIS ORDER

Column 1	Column 2
The Nyasaland (Constitution) Order in Council 1961(a).	Sections 82(2), 82(3), 84 and 86.
The Nyasaland (Constitution) Order in Council 1963(b).	The whole Order.
The Nyasaland (Constitution) (No. 2) Order in Council 1963(c).	The whole Order.
The Nyasaland (Constitution) (Amendment) Order 1964(d).	The whole Order.

SCHEDULE 2 TO THE ORDER

Section 3

THE CONSTITUTION OF MALAWI

ARRANGEMENT OF SECTIONS

CHAPTER I

CITIZENSHIP

Section
1. Persons who become citizens on 6th July 1964.
2. Citizens of former Federation of Rhodesia and Nyasaland.
3. Other persons entitled to be registered as citizens.
4. Persons born in Malawi after 5th July 1964.
5. Persons born outside Malawi after 5th July 1964.
6. Marriage to Malawi citizen.
7. Dual citizenship.
8. Commonwealth citizens.
9. Powers of Parliament.
10. Interpretation.

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

11. Fundamental rights and freedoms of the individual.
12. Protection of right to life.
13. Protection of right to personal liberty.
14. Protection from slavery and forced labour.
15. Protection from inhuman treatment.

(a) S.I. 1961/1189 (1961 II, p. 2218). (b) S.I. 1963/883 (1963 II, p. 1435).
(c) S.I. 1963/2092 (1963 III, p. 4608). (d) S.I. 1964/493 (1964 I, p. 824).

Section

16. Protection from deprivation of property.
17. Protection for privacy of home and other property.
18. Provisions to secure protection of law.
19. Protection of freedom of conscience.
20. Protection of freedom of expression.
21. Protection of freedom of assembly and association.
22. Protection of freedom of movement.
23. Protection from discrimination on the grounds of race, etc.
24. Derogation from fundamental rights and freedoms.
25. Enforcement of protective provisions.
26. Declaration of emergency.
27. Interpretation and savings.

CHAPTER III

THE GOVERNOR-GENERAL

28. Establishment of office of Governor-General.
29. Discharge of Governor-General's functions during vacancy, etc.
30. Oaths to be taken by Governor-General.

CHAPTER IV

PARLIAMENT

PART 1

Composition of Parliament

31. Establishment of Parliament.
32. National Assembly.
33. Election of members of National Assembly.
34. Qualifications for election to National Assembly.
35. Disqualifications for election to National Assembly.
36. Speaker.
37. Deputy Speaker.
38. Right of attendance of Ministers.
39. Tenure of office of members of National Assembly.
40. Electoral Commission.
41. Constituencies.
42. Determination of questions as to membership of National Assembly.
43. Clerk to National Assembly and his staff.
44. Interpretation.

PART 2

Legislation and Procedure in National Assembly

45. Power to make laws.
46. Alteration of Constitution.
47. Oath to be taken by Speaker and members.
48. Presiding in National Assembly.
49. Quorum in National Assembly.
50. Voting in National Assembly.
51. Unqualified person sitting or voting.
52. Regulation of procedure in National Assembly.

Section
53. Official language.
54. Mode of exercise of legislative power.
55. Restrictions with regard to certain financial measures.

PART 3

Summoning, Prorogation and Dissolution

56. Sessions of Parliament.
57. Prorogation and dissolution of Parliament.

CHAPTER V

EXECUTIVE POWERS

58. Executive authority of Malawi.
59. Ministers of Government of Malawi.
60. Tenure of office of Ministers.
61. Cabinet.
62. Responsibility of Ministers.
63. Performance of functions of Prime Minister during absence or illness.
64. Exercise of Governor-General's functions.
65. Governor-General to be informed concerning matters of government.
66. Parliamentary Secretaries.
67. Oaths to be taken by Ministers, etc.
68. Permanent Secretaries.
69. Secretary to Cabinet.
70. Director of Public Prosecutions.
71. Constitution of offices.
72. Prerogative of mercy.
73. Advisory Committee.
74. Functions of Advisory Committee.

CHAPTER VI

THE JUDICATURE

PART 1

The High Court

75. High Court.
76. Appointment of judges of High Court.
77. Tenure of office of judges of High Court.
78. Oaths to be taken by judges of High Court.

PART 2

The Supreme Court of Appeal

79. Supreme Court of Appeal.

PART 3

Appeals

Section

80. Appeals to Judicial Committee.
81. Appeals to Supreme Court of Appeal.
82. Appeals from subordinate courts.
83. Supervisory jurisdiction of High Court.
84. Supplementary.

PART 4

Judicial Service Commission

85. Judicial Service Commission.
86. Appointment, etc., of judicial officers.

CHAPTER VII

FINANCE

87. Payments into and withdrawals from public funds.
88. Authorization of expenditure.
89. Authorization of expenditure in advance of appropriation.
90. Contingencies Fund.
91. Remuneration of certain officers.
92. Public debt.
93. Auditor-General.

CHAPTER VIII

THE PUBLIC SERVICE

94. Public Service Commission.
95. Appointment, etc. of public officers.
96. Appointment of Director of Public Prosecutions.
97. Appointment of Auditor-General.
98. Tenure of office of Director of Public Prosecutions and Auditor-General.
99. Principal representatives of Malawi abroad.
100. Appointment of permanent secretaries, etc.
101. Police Service Commission.
102. Appointment of Commissioner and Deputy Commissioner of Police.
103. Appointment, etc. of police officers.
104. Laws with respect to police discipline.
105. Pensions laws and protection of pension rights.
106. Power of Commissions in relation to pensions, etc.

CHAPTER IX

MISCELLANEOUS

107. Performance of functions of Commissions.
108. Resignations.
109. Re-appointments and concurrent appointments.
110. Interpretation.

The Schedule to the Constitution—Qualifications and disqualifications for registration as a voter.

CHAPTER I

CITIZENSHIP

Persons who become citizens on 6th July 1964.

1.—(1) Every person who, having been born in the former Nyasaland Protectorate, is on 5th July 1964 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Malawi on 6th July 1964:

Provided that a person shall not become a citizen of Malawi by virtue of this subsection if neither of his parents was born in the former Nyasaland Protectorate.

(2) Every person who, having been born outside Malawi, is on 5th July 1964 a citizen of the United Kingdom and Colonies or a British protected person shall, if his father becomes, or would but for his death have become, a citizen of Malawi in accordance with the provisions of subsection (1) of this section, become a citizen of Malawi on 6th July 1964.

Citizens of former Federation of Rhodesia and Nyasaland.

2.—(1) Any person who was on 31st December 1963 a citizen of the former Federation of Rhodesia and Nyasaland and who has a substantial Malawi connection (as defined in subsection (2) of this section) shall be entitled, upon making application before 6th July 1965 in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi.

(2) For the purposes of subsection (1) of this section a person has a substantial Malawi connection if, and shall not be regarded as having such a connection unless,—

(*a*) he was born in the former Nyasaland Protectorate;

(*b*) his father was born in the former Nyasaland Protectorate;

(*c*) he was, immediately before he became a citizen of the former Federation, a citizen of the United Kingdom and Colonies by virtue of his having been registered or naturalised as such in the former Nyasaland Protectorate under the British Nationality Act 1948(a) or his father had at the time of that person's birth been so registered or naturalised there under that Act;

(*d*) he was registered or naturalised as a citizen of the former Federation, having been ordinarily resident in the former Nyasaland Protectorate at the time of such registration or naturalisation or his father had at the time of that person's birth been so registered or naturalised and had been so resident at the time of the registration or naturalisation;

(*e*) he or his father was, as a minor child, registered as a citizen of the former Federation, the responsible parent or the guardian upon whose application he was so registered being ordinarily resident in the former Nyasaland Protectorate at the time of the registration;

(*f*) he is, or his father was (his father also being or having been a citizen of the former Federation), the adopted child of a citizen or of citizens of the former Federation who or all of whom were resident and domiciled in the former Nyasaland Protectorate at the time of the adoption;

(a) 11 & 12 Geo. 6. c. 56.

(*g*) he was, or his father had at the time of that person's birth been, registered, by virtue of, *inter alia*, his possession of associations with the former Nyasaland Protectorate as a citizen of the former Federation under section 16A of the Citizenship of Rhodesia and Nyasaland and British Nationality Act 1957(**a**) as inserted by the Citizenship of Rhodesia and Nyasaland and British Nationality Amendment Act 1959(**b**); or

(*h*) his or his father's name had been included by virtue of section 13(7) of the Electoral Act 1958(**c**) in the list of general voters registered in the former Nyasaland Protectorate.

(3) In any proceedings to determine whether any person has become a citizen of Malawi by virtue of subsection (2)(*g*) of this section, a certificate signed by the Minister responsible for matters relating to citizenship of Malawi shall be conclusive evidence of whether the registration of that person or his father as a citizen of the former Federation was by virtue, *inter alia*, of the possession of associations with the former Nyasaland Protectorate.

(4) Any woman who was on 31st December 1963 a citizen of the former Federation of Rhodesia and Nyasaland and who does not become a citizen of Malawi on 6th July 1964 under any other provision of this Chapter shall be entitled, upon making application before 6th July 1965 in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi, if—

(*a*) she was, immediately before she became a citizen of the former Federation, married to a person who becomes or would, but for his death have become, entitled to be registered as a citizen of Malawi under subsection (1) of this section by virtue of any connection with Malawi that is described in subsection (2) of this section;

(*b*) she was, immediately before she became a citizen of the Federation, the widow of a person who would, but for his death, have become entitled to be registered as a citizen of Malawi under subsection (1) of this section by virtue of such a connection with Malawi as is described in subsection (2)(*a*) or (2)(*c*) of this section; or

(*c*) she was, immediately before she became a citizen of the Federation, the widow of a person whose father becomes, or would but for his death have become, entitled to be registered as a citizen of Malawi under subsection (1) of this section by virtue of such a connection with Malawi as is described in subsection (2)(*a*) or (2)(*c*) of this section.

Other persons entitled to be registered as citizens.

3.—(1) Any person who, but for the proviso to section 1(1) of this Constitution would be a citizen of Malawi by virtue of that subsection, shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(**a**) Act No. 12 of 1957 of the Federation of Rhodesia and Nyasaland.
(**b**) Act No. 13 of 1959 of the Federation of Rhodesia and Nyasaland.
(**c**) Act No. 6 of 1958 of the Federation of Rhodesia and Nyasaland.

(2) Any woman who, on 5th July 1964, is or has been married to a person—

(*a*) who becomes a citizen of Malawi by virtue of section 1 of this Constitution ; or

(*b*) who, having died before 6th July 1964 would, but for his death, have become a citizen of Malawi by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi.

(3) Any woman who, on 5th July 1964, is married to a person who subsequently becomes a citizen of Malawi by registration under subsection (1) or (5) of this section shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi.

(4) Any woman who, on 5th July 1964, has been married to a person who becomes, or would, but for his death, have become entitled to be registered as a citizen of Malawi under subsection (1) or (5) of this section, but whose marriage has been terminated by death or dissolution shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi.

(5) Any person who, on 5th July 1964, is a citizen of the United Kingdom and Colonies, having become such a citizen by virtue of his having been naturalised or registered in the former Nyasaland Protectorate under the British Nationality Act 1948, shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi :

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under this subsection but an application may be made on his behalf by his parent or guardian.

(6) In this section " the specified date " means—

(*a*) in relation to a person to whom subsection (1) of this section refers, 6th July 1965 ;

(*b*) in relation to a woman to whom subsection (3) of this section refers, the expiration of such period after her husband is registered as a citizen of Malawi as may be prescribed by or under an Act of Parliament ;

(*c*) in relation to a woman to whom subsection (4) of this section refers, 6th July 1965 ; and

(*d*) in relation to a person to whom subsection (5) of this section refers, 6th July 1965,

or such later date as may in any particular case be prescribed by or under an Act of Parliament.

Persons born in Malawi after 5th July 1964.

4. Every person born in Malawi after 5th July 1964 shall become a citizen of Malawi at the date of his birth :

Provided that a person shall not become a citizen of Malawi by virtue of this section if at the time of his birth—

(*a*) neither of his parents is a citizen of Malawi and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Malawi ; or

(*b*) his father is a citizen of a country with which Malawi is at war and the birth occurs in a place then under occupation by the enemy.

Persons born outside Malawi after 5th July 1964.

5. A person born outside Malawi after 5th July 1964 shall become a citizen of Malawi at the date of his birth if at that date his father is a citizen of Malawi otherwise than by virtue of this section or section 1(2) of this Constitution.

Marriage to Malawi citizen.

6. Any woman who has been married to a citizen of Malawi shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Malawi.

Dual citizenship.

7.—(1) Any person who, upon the attainment of the age of twenty-one years, is a citizen of Malawi and also a citizen of some country other than Malawi shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Malawi upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who was born outside the former Nyasaland Protectorate or Malawi, made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(2) Any person who—

(*a*) has attained the age of twenty-one years before 6th July 1964; and

(*b*) becomes a citizen of Malawi on that day by virtue of the provisions of section 1 of this Constitution; and

(*c*) is immediately after that day also a citizen of some country other than Malawi,

shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Malawi upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Malawi by virtue of section 1(2) of this Constitution, made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(3) A citizen of Malawi shall cease to be such a citizen if—

(*a*) having attained the age of twenty-one years, he acquires the citizenship of some country other than Malawi by voluntary act (other than marriage); or

(*b*) having attained the age of twenty-one years, he otherwise acquires the citizenship of some country other than Malawi and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(4) A person who—

(*a*) becomes a citizen of Malawi by registration under the provisions of section 2, 3 or 6 of this Constitution; and

(*b*) is immediately after the day upon which he becomes a citizen of Malawi also a citizen of some other country,

shall, subject to the provisions of subsection (7) of this section, cease to be a citizen of Malawi upon the specified date unless he has

renounced the citizenship of that other country, taken the oath of allegiance, and made and registered such declaration of his intentions concerning residence as may be prescribed by Parliament.

(5) For the purposes of this section, where, under the law of a country other than Malawi a person cannot renounce his citizenship of that other country, he need not make such renunciation but he may instead be required to make such declaration concerning that citizenship as may be prescribed by Parliament.

(6) In this section " the specified date " means—

(*a*) in relation to a person to whom subsection (1) of this section refers, the date on which he attains the age of twenty-two years or 6th July 1965, whichever is the later ;

(*b*) in relation to a person to whom subsection (2) of this section refers, 6th July 1965 ;

(*c*) in relation to a person to whom subsection (3)(*b*) of this section refers, the expiration of one year after the date on which he acquired the citizenship of the country other than Malawi ; and

(*d*) in relation to a person to whom subsection (4) of this section refers, at the expiration of three months after the date upon which he became a citizen of Malawi,

or, in the case of a person of unsound mind, such later date as may be prescribed by or under an Act of Parliament.

(7) Provision may be made by or under an Act of Parliament for extending beyond the specified date the period in which any person may make a renunciation of citizenship, take an oath or make or register a declaration for the purposes of this section, and if such provision is made that person shall not cease to be a citizen of Malawi upon the specified date but shall cease to be such a citizen upon the expiration of the extended period if he has not then made the renunciation, taken the oath or made or registered the declaration, as the case may be.

Commonwealth citizens.

8.—(1) Every person who under this Constitution or any Act of Parliament is a citizen of Malawi or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948, or who continues to be a British subject under section 2 of that Act, shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may be otherwise provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Tanganyika and Zanzibar, Jamaica, Trinidad and Tobago, Uganda, Kenya and Southern Rhodesia.

Powers of Parliament.

9.—(1) Parliament may make provision for the acquisition of citizenship of Malawi by persons who are not eligible or who are no longer eligible to become citizens of Malawi under the provisions of this Chapter.

(2) Parliament may make provision for depriving of his citizenship of Malawi any person who is a citizen of Malawi otherwise than by virtue of section 1(1) or section 4 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Malawi.

Interpretation.

10.—(1) In this Chapter "British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948.

(2) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 5th July 1964 and the birth occurred after 6th July 1964 the national status that the father would have had if he had died on 6th July 1964 shall be deemed to be his national status at the time of his death.

CHAPTER II

Protection of Fundamental Rights and Freedoms of the Individual

Fundamental rights and freedoms of the individual.

11. Whereas every person in Malawi is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) life, liberty, security of the person and the protection of the law;

(*b*) freedom of conscience, of expression and of assembly and association; and

(*c*) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitation of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life.

12.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Malawi of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the

result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection of right to personal liberty.

13.—(1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say—

(*a*) in execution of the sentence or order of a court, whether established for Malawi or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) in execution of the order of a court of record punishing him for contempt of that court or of a court inferior to it;

(*c*) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) for the purpose of bringing him before a court in execution of the order of a court;

(*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Malawi;

(*f*) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;

(*g*) for the purpose of preventing the spread of an infectious or contagious disease;

(*h*) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) for the purpose of preventing the unlawful entry of that person into Malawi, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malawi or for the purpose of restricting that person while he is being conveyed through Malawi in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Malawi or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Malawi in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Malawi,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Protection from slavery and forced labour.

14.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression " forced labour " does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(*d*) any labour required during any period when Malawi is at war or a declaration of emergency under section 26 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment.

15.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the former Nyasaland Protectorate on 5th July 1964.

Protection from deprivation of property.

16.—(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary or expedient—

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or

(ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community; and

(*b*) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Malawi.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that the law in question authorizes—

(*a*) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or

(*b*) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

(*a*) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, rate or due;

(ii) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of Malawi;

(iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants;

(vi) in consequence of any law with respect to the limitation of actions; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(*b*) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property;

(ii) property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

Protection for privacy of home and other property.

17.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community;

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

(*c*) that authorizes an officer or agent of the Government of Malawi, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be;

(*d*) that authorizes, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions to secure protection of law.

18.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or

(*b*) may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) subsection (2)(*a*) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) subsection (2)(*d*) or 2(*e*) of this section to the extent that the law in question prohibits legal representation in a local court;

(*c*) subsection (2)(*e*) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*d*) subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection 2(*d*) and (*e*) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) Nothing contained in subsection (2)(*d*) of this section shall be construed as entitling a person to legal representation at public expense.

(15) In this section "criminal offence" means a criminal offence under the law of Malawi.

Protection of freedom of conscience.

19.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that is not his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion

without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of expression.

20.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(*b*) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of assembly and association.

21.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(*b*) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(*c*) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of freedom of movement.

22.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Malawi, the right to reside in any

part of Malawi, the right to enter Malawi and immunity from expulsion from Malawi.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for the imposition of restrictions on the movement or residence within Malawi of any person that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Malawi, except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society;

(*b*) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Malawi;

(*c*) for the imposition of restrictions upon the movement or residence within Malawi of public officers; or

(*d*) for the removal of a person from Malawi to be tried outside Malawi for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Malawi of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection (3)(*a*) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Malawi, appointed by the Chief Justice:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the High Court.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction, to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

Protection from discrimination on the grounds of race, etc.

23.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression " discriminatory " means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) for the appropriation of public revenues or other public funds ;

(*b*) with respect to persons who are not citizens of Malawi ;

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law ;

(*d*) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons ; or

(*e*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 17, 19, 20, 21 and 22 of this Constitution, being such a restriction as is authorized by section 17(2), 19(5), 20(2), 21(2) or 22(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Derogation from fundamental rights and freedoms.

24.—(1) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with or in contravention of section 13 or 23 of this Constitution to the extent that the Act authorizes the taking, during any period when Malawi is at war or any period when a declaration of a state of public emergency

under section 26 of this Constitution is in force, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period.

(2) Where a person is detained by virtue of such an authorization as is referred to in subsection (1) of this section and as is inconsistent with section 13 of this Constitution the following provisions shall apply—

(*a*) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(*b*) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorized;

(*c*) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;

(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person;

(*e*) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations, concerning the necessity or expediency of continuing his detention, to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(4) Nothing contained in subsection (2)(*d*) or (2)(*e*) of this section shall be construed as entitling a person to legal representation at public expense.

Enforcement of protective provisions.

25.—(1) Subject to the provisions of subsection (7) of this section, if any person alleges that any of the provisions of sections 11 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section;

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing

the enforcement of any of the provisions of sections 11 to 24 (inclusive) of this Constitution:

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 11 to 24 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the subordinate court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under this Constitution to the Supreme Court of Appeal or to the Judicial Committee, in accordance with the decision of the Supreme Court of Appeal or, as the case may be, of the Judicial Committee.

(5) Where any provision of any law is held by a competent court to be inconsistent with any of the provisions of sections 11 to 24 (inclusive) of this Constitution any person detained in custody under that provision may, as of right, make application to a competent superior court for the purpose of questioning the validity of his further detention, notwithstanding that he may previously have appealed against his conviction or sentence or that any time prescribed for the filing of such an appeal may have expired.

(6) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(7) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

Declaration of emergency.

26.—(1) The Governor-General may at any time, by Proclamation published in the Gazette, declare that a state of public emergency exists for the purpose of the provisions of this Chapter.

(2) A declaration of a state of public emergency under this section, if not sooner revoked, shall cease to have effect—

(*a*) in the case of a declaration made when Parliament is sitting or has been summoned to meet within five days, at the expiration of a period of five days beginning with the date of publication of the declaration;

(*b*) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration,

unless, before the expiration of that period, it is approved by a resolution passed by the National Assembly.

(3) Subject to the provisions of subsection (4) of this section, a declaration of a state of public emergency approved by resolution of

the National Assembly under subsection (2) of this section shall continue in force until the expiration of a period of six months beginning with the date of its being so approved or until such earlier date as may be specified in the resolution:

Provided that the National Assembly may, by resolution, extend its approval of the declaration for periods of not more than six months at a time.

(4) The National Assembly may by resolution at any time revoke a declaration of a state of public emergency approved by the Assembly under this section.

Interpretation and savings.

27.—(1) In this Chapter, unless the context otherwise requires—

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law having jurisdiction in Malawi, other than a court established by a disciplinary law, and includes the Judicial Committee and in sections 12 and 14 of this Constitution a court established by a disciplinary law;

"disciplinary law" means a law regulating the discipline of any disciplined force;

"disciplined force" means—

(*a*) a naval, military or air force;

(*b*) the Malawi Police Force;

(*c*) a police force established by Parliament; or

(*d*) a prison service;

"legal representative" means a person entitled to practise in Malawi as an advocate;

"member", in relation to a disciplined force, includes any person who, under the law regulating the descipline of that force, is subject to that discipline.

(2) In relation to any person who is a member of a disciplined force raised under a law in force in Malawi, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 12, 14 and 15.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Malawi, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER III

THE GOVERNOR-GENERAL

Establishment of office of Governor-General.

28. There shall be a Governor-General and Commander-in-Chief who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Malawi.

Discharge of Governor-General's functions during vacancy, etc.

29. Whenever the office of Governor-General is vacant or the holder of the office is absent from Malawi or is for any reason unable to perform the functions conferred upon him by this Constitution, those functions shall be performed by such person as Her Majesty may appoint or, if there is no person in Malawi so appointed and able to perform those functions, by the Chief Justice.

Oaths to be taken by Governor-General.

30. A person appointed to or assuming the functions of the office of Governor-General shall, before entering upon that office, take and subscribe the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

CHAPTER IV

PARLIAMENT

PART I

Composition of Parliament

Establishment of Parliament.

31. There shall be a Parliament which shall consist of Her Majesty and a National Assembly.

National Assembly.

32. The National Assembly shall consist of fifty-three members elected in accordance with the provisions of section 33 of this Constitution.

Election of members of National Assembly.

33.—(1) Malawi shall, in accordance with the provisions of section 41 of this Constitution, be divided into general roll constituencies and into special roll constituencies, and each constituency shall elect one member to the National Assembly in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

(2) The qualifications and disqualifications for registration as a voter in a general roll constituency and as a voter in a special roll constituency shall be as set out in the Schedule to this Constitution.

(3) Every person who is registered in any constituency as a voter in elections of members to the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions of any law in that behalf ; and no other person may so vote.

(4) The registration of voters in elections of members of the National Assembly and the conduct of such elections shall be subject to the direction and supervision of the Electoral Commission.

Qualifications for election to National Assembly.

34.—(1) Subject to the provisions of subsection (2) of this section and of section 35 of this Constitution, a person shall be qualified to be elected as a member of the National Assembly if, and shall not be so qualified unless, he—

(*a*) is a citizen of Malawi who has attained the age of twenty-one years ; and

(*b*) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language well enough to take an active part in the proceedings of the Assembly.

(2) A person shall not be qualified to be elected in a general roll constituency unless he is an African or an Asian and is registered as a voter in some general roll constituency, and a person shall not be qualified to be elected in a special roll constituency unless he is registered as a voter in some special roll constituency.

Disqualifications for election to National Assembly.

35.—(1) No person shall be qualified to be elected as a member of the National Assembly who—

(*a*) is under a declaration of allegiance to some country other than Malawi ;

(*b*) is, under any law in force in Malawi, adjudged or otherwise declared to be of unsound mind ;

(*c*) is under sentence of death imposed on him by any court in Malawi or the former Nyasaland Protectorate or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court ;

(*d*) is detained under a detention order or is subject to a control order or a restriction order ; or

(*e*) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Malawi.

(2) Parliament may provide that a person who holds or is acting in any office that is specified by Parliament and the functions of which involve responsibility for, or in connection with, the conduct of any election to the National Assembly or the compilation of any register of voters for the purposes of such an election shall not be qualified to be elected as a member of the Assembly.

(3) Parliament may provide that a person who is convicted by any court of any offence that is prescribed by Parliament and that is connected with elections of the members of the National Assembly or who is reported guilty of such an offence by the court trying an election petition shall not be qualified to be nominated for election as a member of the Assembly for such period (not exceeding five years) following his conviction or, as the case may be, following the report of the court as may be so prescribed.

(4) Parliament may provide that, subject to such exceptions and limitations (if any) as may be prescribed, a person shall be disqualified for membership of the National Assembly by virtue of—

(*a*) his holding or acting in any office or appointment that may be prescribed ;

(*b*) his belonging to any of the armed forces of the Crown that may be prescribed ; or

(*c*) his belonging to any police force.

Speaker.

36.—(1) There shall be a Speaker of the National Assembly who shall be elected by the members of the Assembly from among persons who are members of the Assembly or who are qualified to be elected as such.

(2) A Minister or a Parliamentary Secretary shall not be qualified to be elected as Speaker.

(3) The Speaker shall vacate his office—

(*a*) if, having been elected from among the members of the National Assembly, he ceases to be a member of the Assembly otherwise than by reason of a dissolution of the Assembly;

(*b*) if any circumstances arise that, if he were not Speaker, would disqualify him for election as such;

(*c*) when the Assembly first sits after any dissolution of Parliament; or

(*d*) if he is removed from office by a resolution of the Assembly supported by the votes of not less than two-thirds of all the members thereof.

(4) No business shall be transacted in the National Assembly (other than an election to the office of Speaker) at any time when the office of Speaker is vacant.

Deputy Speaker.

37.—(1) There shall be a Deputy Speaker of the National Assembly who shall be elected from among the persons who are members of the Assembly other than Ministers or Parliamentary Secretaries.

(2) The members of the National Assembly shall elect a person to the office of Deputy Speaker when the Assembly first sits after any dissolution of Parliament and, if the office becomes vacant otherwise than by reason of the dissolution of Parliament, at the first sitting of the Assembly after the office becomes vacant.

(3) The Deputy Speaker shall vacate his office—

(*a*) if he ceases to be a member of the National Assembly;

(*b*) if he becomes a Minister or a Parliamentary Secretary;

(*c*) if he is elected as Speaker; or

(*d*) if he is removed from office by a resolution of the Assembly supported by the votes of not less than two-thirds of all the members of the Assembly.

Right of attendance of Ministers.

38. A Minister who is not a member of the National Assembly may attend and take part in the proceedings of the Assembly or of any committee of the Assembly, but nothing in this section shall entitle a person who is not a member of the Assembly to vote in the Assembly or any of its committees.

Tenure of office of members of National Assembly.

39.—(1) Every member of the National Assembly shall vacate his seat in the Assembly upon a dissolution of Parliament.

(2) A member of the National Assembly shall vacate his seat in the Assembly—

(*a*) if he ceases to be a citizen of Malawi;

(*b*) if he is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in the rules of procedure of the Assembly;

(*c*) if he is sentenced by a court in Malawi to death or to imprisonment (by whatever name called) for a term exceeding twelve months; or

(*d*) subject to the provisions of subsection (3) of this section, if any circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election as such under section 35(1)(*a*)(*b*)(*d*) or (*e*) of this Constitution or

under any law made in pursuance of section 35(2), 35(3) or 35(4) of this Constitution.

(3) Parliament may, in order to permit any member of the National Assembly who has been sentenced to death or imprisonment, adjudged or declared to be of unsound mind, adjudged or declared bankrupt or convicted or reported guilty of any offence prescribed under section 35(3) of this Constitution to appeal against the decision in accordance with any law, provide that, subject to such conditions as may be prescribed by Parliament, the decision shall not have effect for the purposes of this section until such time as may be so prescribed.

(4) For the purposes of this section two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, and if any one of such sentences exceeds that term they shall be regarded as one sentence.

Electoral Commission.

40.—(1) There shall be an Electoral Commission which shall consist of a Chairman and not less than two or more than four other members.

(2) The members of the Electoral Commission shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(3) A person shall not be qualified to hold the office of a member of the Electoral Commission if he is a Minister, a member of the National Assembly or a public officer.

(4) Subject to the provisions of this section, a member of the Electoral Commission shall vacate his office—

(*a*) at the expiration of four years from the date of his appointment; or

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) A member of the Electoral Commission may be removed from office by the Governor-General, acting in accordance with the advice of the Prime Minister, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(6) In the exercise of its functions under this Constitution the Electoral Commission shall not be subject to the direction or control of any other person or authority.

Constituencies.

41.—(1) For the purposes of elections to the National Assembly Malawi shall—

(*a*) be divided into fifty general roll constituencies;

(*b*) be divided into three special roll constituencies,

in such manner as the Electoral Commission, acting with the approval of the National Assembly signified by resolution, may prescribe.

(2) So far as appears to the Electoral Commission practicable and subject to subsection (3) of this section—

(*a*) every general roll constituency shall contain the number of voters registered on the general roll that is equal to the electoral quota in respect of the general roll;

(*b*) every special roll constituency shall contain the number of voters registered on the special roll that is equal to the electoral quota in respect of the special roll.

(3) The Electoral Commission may depart from the principles specified in subsection (2) of this section to such extent as it considers expedient in order to take account of—

(*a*) the density of population;

(*b*) the means of communication;

(*c*) geographical features; and

(*d*) the boundaries of existing administrative areas.

(4) The Electoral Commission shall review the boundaries of the general roll constituencies and the boundaries of the special roll constituencies at intervals of not less than eight nor more than ten years, and may alter the boundaries of the general roll constituencies and the boundaries of the special roll constituencies in accordance with the provisions of this section.

(5) Any alteration of the constituencies under this section shall come into effect upon the next dissolution of Parliament after the alteration has been approved by the National Assembly.

(6) For the purposes of this section the electoral quota in respect of a roll of voters shall be the number ascertained by dividing the number of voters for the time being registered throughout Malawi on that roll by fifty in the case of the general roll or three in the case of the special roll.

Determination of questions as to membership of National Assembly.

42.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

(*a*) any person has been validly elected as a member of the National Assembly or the seat of any such member has become vacant;

(*b*) any person has been validly elected as Speaker of the Assembly from among persons who are not members of the Assembly or, having been so elected, has vacated the office of Speaker.

(2) Parliament may make provision with respect to—

(*a*) the persons who may apply to the High Court for the determination of any question under this section;

(*b*) the circumstances and manner in which and the conditions upon which any such application may be made; and

(*c*) the powers, practice and procedure of the High Court in relation to any such application.

(3) The determination by the High Court of any question under this section shall not be subject to appeal.

Clerk to National Assembly and his staff.

43.—(1) There shall be a Clerk to the National Assembly.

(2) Unless Parliament otherwise provides, the office of the Clerk to the National Assembly and the offices of the members of his staff shall be public offices.

Interpretation.

44. In this part of this Chapter—

(*a*) references to a sentence of imprisonment shall be construed as including a sentence of imprisonment the execution of which is suspended but not as including a sentence of imprisonment imposed in default of payment of a fine ;

(*b*) references to a detention order, a control order or a restriction order are references to a detention order, control order or restriction order made under the Preservation of Public Security Ordinance 1960(a) or any law amending or replacing that Ordinance.

PART 2

Legislation and procedure in National Assembly

Power to make laws.

45. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Malawi.

Alteration of Constitution.

46.—(1) Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Malawi) any of the provisions of the Malawi Independence Act 1964 :

Provided that a bill for an Act of Parliament under this section shall not be passed by the National Assembly unless it is supported on the second and third readings by the votes of not less than two-thirds of all the members of the Assembly.

(2) The provisions of this Constitution or (in so far as it forms part of the law of Malawi) the Malawi Independence Act 1964 shall not be altered except in accordance with the provisions of this section.

(3) In this section—

(*a*) references to any of the provisions of this Constitution or the Malawi Independence Act 1964 include references to any law that amends or replaces that provision ; and

(*b*) references to the alteration of any of the provisions of this Constitution or the Malawi Independence Act 1964 include references to the amendment, modification or re-enactment, with or without amendment or modification, of that provision, the suspension or repeal of that provision and the making of different provision in lieu of that provision.

Oath to be taken by Speaker and members.

47. The Speaker, before assuming the duties of his office, and every member of the National Assembly before taking his seat therein, shall take and subscribe before the Assembly the oath of allegiance.

Presiding in National Assembly.

48. There shall preside at any sitting of the National Assembly—

(*a*) the Speaker ;

(*b*) in the absence of the Speaker, the Deputy Speaker ; or

(*c*) in the absence of the Speaker and the Deputy Speaker, such member of the Assembly (not being a Minister or a Parliamentary Secretary) as the Assembly may elect for that sitting.

Quorum in National Assembly.

49. If objection is taken by any member of the National Assembly present that there are present in the Assembly (besides the person presiding) less than one fourth of all the members of the Assembly and, after such interval as may be prescribed in the rules of procedure

(a) Ordinance No. 1 of 1960.

of the Assembly, the person presiding ascertains that the number of members present is still less than one fourth of all the members of the Assembly, he shall thereupon adjourn the Assembly.

Voting in National Assembly.

50.—(1) Save as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the members present and voting.

(2) The Speaker shall not have an original vote, but if upon any question before the National Assembly the votes are equally divided, he shall have and exercise a casting vote.

(3) Any member of the National Assembly, other than the Speaker, shall, when presiding in the Assembly, retain his original vote as a member and shall also have and exercise a casting vote where the votes are equally divided.

(4) The rules of procedure of the National Assembly may make provision under which a member who votes upon a question in which he has a direct pecuniary interest shall be deemed not to have voted.

Unqualified person sitting or voting.

51. Any person who sits or votes in the National Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding twenty-five pounds or such other sum as may be prescribed by Parliament for each day on which he so sits or votes in the Assembly, which shall be recoverable by action in the High Court at the suit of the Attorney-General.

Regulation of procedure in National Assembly.

52.—(1) Subject to the provisions of this Constitution, the National Assembly may regulate its own procedure.

(2) The National Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after any dissolution) and the presence or participation of any person not entitled to be present or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

Official language.

53. The business of the National Assembly shall be conducted in English.

Mode of exercise of legislative power.

54.—(1) The power of Parliament to make laws shall be exercised by bills passed by the National Assembly and assented to by the Governor-General on behalf of Her Majesty.

(2) When a bill is presented to the Governor-General for assent, he shall signify that he assents or that he withholds assent.

(3) When a bill that has been duly passed is assented to in accordance with the provisions of this Constitution it shall become law and the Governor-General shall thereupon cause it to be published in the Gazette as a law.

(4) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

Restrictions with regard to certain financial measures.

55. Except upon the recommendation of the Governor-General signified by a Minister, the National Assembly shall not—

(*a*) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—

(i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) for the imposition of any charge upon the public revenues or public funds of Malawi or the alteration of any such charge otherwise than by reduction;

(iii) for the payment, issue or withdrawal from the public revenues or public funds of Malawi of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or

(iv) for the composition or remission of any debt due to the Government of Malawi;

(*b*) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes; or

(*c*) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

PART 3

Summoning, Prorogation and Dissolution

Sessions of Parliament.

56.—(1) Each session of Parliament shall be held at such place within Malawi and shall commence at such time as the Governor-General may appoint.

(2) There shall be a session of Parliament at least once in every year so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.

(3) Whenever Parliament is dissolved a general election of members of the National Assembly shall be held within sixty days of the date of the dissolution and a session of Parliament shall be appointed to commence within thirty days of the date of that election.

(4) If, after a dissolution and before the holding of the general election of members of the National Assembly, the Prime Minister advises the Governor-General that, owing to the existence of a state of war or of a state of emergency in Malawi, it is necessary to recall Parliament, the Governor-General shall summon the Parliament that has been dissolved to meet, but, unless the life of Parliament is extended under the provisions of section 57(4) of this Constitution, the general election of members of the National Assembly shall proceed and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the date appointed for the nomination of candidates in that general election.

Prorogation and dissolution of Parliament.

57.—(1) The Governor-General may at any time prorogue Parliament.

(2) The Governor-General, acting in accordance with the advice of the Prime Minister, may at any time dissolve Parliament:

Provided that—

(*a*) if the Prime Minister recommends a dissolution and the Governor-General considers that the government of Malawi can be carried on without a dissolution and that a dissolution would not be in the interests of Malawi, the Governor-General may refuse to dissolve Parliament;

(*b*) if the National Assembly passes a resolution that it has no confidence in the Government of Malawi and the Prime Minister does not within three days either resign from his office or advise a dissolution, the Governor-General may dissolve Parliament; and

(*c*) if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the National Assembly, the Governor-General may dissolve Parliament.

(3) Subject to the provisions of subsection (4) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

(4) At any time when Malawi is at war, Parliament may from time to time extend the period of five years specified in subsection (3) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

CHAPTER V

EXECUTIVE POWERS

Executive authority of Malawi.

58.—(1) The executive authority of Malawi shall vest in Her Majesty.

(2) Subject to the provisions of this Constitution, the executive authority of Malawi may be exercised on behalf of Her Majesty by the Governor-General, either directly or through officers subordinate to him.

(3) Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the Governor-General.

Ministers of Government of Malawi.

59.—(1) There shall be a Prime Minister who shall be appointed by the Governor-General.

(2) The office of Attorney-General shall be the office of a Minister.

(3) There shall be, in addition to the office of Prime Minister and the office of Attorney-General, such other offices of Minister as may be established by Parliament or, subject to the provisions of any Act of Parliament, by the Governor-General, acting in accordance with the advice of the Prime Minister.

(4) The Governor-General shall appoint as Prime Minister the member of the National Assembly who appears to him best able to command the support of the majority of the members of the Assembly

and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers from among the members of the Assembly or, subject to the provisions of subsection (5) of this section, from among persons who are not members of the Assembly.

(5) A person who is not a member of the National Assembly shall not be appointed to the office of a Minister at any time when three other offices of Minister are held by persons who are not members of the Assembly.

(6) For the purposes of this section, during any period when Parliament is dissolved a person who was a member of the National Assembly immediately before that dissolution shall be regarded as continuing as a member of the Assembly.

Tenure of office of Ministers.

60.—(1) The Governor-General may remove the Prime Minister from office—

(*a*) if a vote of no confidence in the Government of Malawi is passed by the National Assembly; or

(*b*) if at any time between the holding of a general election and the first sitting of the Assembly thereafter the Governor-General considers that, in consequence of changes in the membership of the Assembly resulting from that election, the Prime Minister will not be able to command the support of a majority of the members of the Assembly:

Provided that the Governor-General shall not remove the Prime Minister from office when a vote of no confidence has been passed by the Assembly unless three days have elapsed and the Governor-General has decided not to dissolve Parliament under section 57 of this Constitution.

(2) The office of the Prime Minister or other Minister who is a member of the National Assembly shall become vacant—

(*a*) if the holder of the office ceases to be a member of the National Assembly otherwise than by reason of a dissolution of Parliament; or

(*b*) if, at the first sitting of the Assembly after any dissolution of Parliament, the holder of the office is not a member of the Assembly.

(3) The office of a Minister (other than the Prime Minister) shall become vacant—

(*a*) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs;

(*b*) if the Prime Minister resigns from office within three days after the passage by the National Assembly of a resolution of no confidence in the Government of Malawi or is removed from office under subsection (1) of this section; or

(*c*) upon the appointment of any person to the office of Prime Minister.

Cabinet.

61.—(1) There shall be a Cabinet of Ministers, consisting of the Prime Minister and the other Ministers.

(2) The function of the Cabinet shall be to advise the Governor-General in the Government of Malawi and the Cabinet shall be collectively responsible to Parliament for any advice given to the

Governor-General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of subsection (2) of this section shall not apply in relation to—

(*a*) the appointment and removal from office of Ministers and Parliamentary Secretaries, the assigning of responsibility to any Minister under section 62 of this Constitution or the authorization of another Minister to perform the functions of the Prime Minister during absence or illness;

(*b*) the dissolution of Parliament; and

(*c*) the matters referred to in section 72 of this Constitution (which relates to the prerogative of mercy).

Responsibility of Ministers.

62.—(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may, by directions in writing, assign to the Prime Minister or any other Minister responsibility for any business of the government of Malawi, including the administration of any department of government.

(2) The Attorney-General shall be the principal legal adviser to the Government of Malawi.

Performance of functions of Prime Minister during absence or illness.

63.—(1) Whenever the Prime Minister is absent from Malawi or is by reason of illness unable to perform the functions conferred on him by this Constitution, the Governor-General may authorize some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Governor-General considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice.

Exercise of Governor-General's functions.

64.—(1) In the exercise of his functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of any person or authority other than the Cabinet:

Provided that the Governor-General shall act in accordance with his own deliberate judgment in the performance of the following functions—

(*a*) in the exercise of the powers relating to the dissolution of Parliament conferred upon him by the proviso to section 57(2) of this Constitution;

(*b*) in the exercise of the power to appoint the Prime Minister conferred upon him by section 59(4) of this Constitution;

(*c*) in the exercise of the power to remove the Prime Minister from office conferred upon him by section 60(1) of this Constitution;

(*d*) in the exercise of the powers conferred on him by section 63 of this Constitution (which relates to the performance of the functions of the Prime Minister during absence or illness) in the circumstances described in the proviso to subsection (2) of that section; and

(*e*) in signifying his concurrence, for the purposes of section 95(4) of this Constitution, in appointments to offices on his personal staff.

(2) Where the Governor-General is required by this Constitution to act in accordance with the advice of any person or authority, the question whether he has received, or acted in accordance with, such advice in any case shall not be enquired into in any court.

Governor-General to be informed concerning matters of government.

65. The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of Malawi and shall furnish him with such information as he may require with respect to any particular matter relating to the government of Malawi.

Parliamentary Secretaries.

66.—(1) The Governor-General, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the National Assembly to assist Ministers in the performance of their duties:

Provided that, if occasion arises for making appointments while Parliament is dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed as a Parliamentary Secretary.

(2) The office of a Parliamentary Secretary shall become vacant—

(*a*) if the Governor-General, acting in accordance with the advice of the Prime Minister, so directs;

(*b*) if the Prime Minister resigns from office within three days after the passage by the National Assembly of a resolution of no confidence in the Government of Malawi or is removed from office under section 60(1) of this Constitution;

(*c*) upon the appointment of a person to the office of Prime Minister;

(*d*) if the holder of the office ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament; or

(*e*) if, at the first sitting of the Assembly after any dissolution of Parliament, the holder of the office is not a member of the Assembly.

Oaths to be taken by Ministers, etc.

67. A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

Permanent Secretaries.

68. Where any Minister has been charged with responsibility for any department of government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary, whose office shall be a public office:

Provided that two or more government departments may be placed under the supervision of one Permanent Secretary and one government department may be placed under the supervision of two or more Permanent Secretaries.

Secretary to Cabinet.

69.—(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet shall have charge of the Cabinet office and shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the

business for, and keeping the minutes of, the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority and shall have such other functions as the Prime Minister may direct.

Director of Public Prosecutions.

70.—(1) There shall be a Director of Public Prosecutions, whose office shall be a public office.

(2) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do—

(*a*) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(*b*) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(*c*) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by subsections (2)(*b*) and (*c*) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(5) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court in Malawi or to the Judicial Committee shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (2)(*c*) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(6) In the exercise of the powers conferred on him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that where the exercise of any such power in any case may, in the judgment of the Director, involve general considerations of public policy the Director shall, before deciding whether to exercise that power, bring the case to the notice of the Attorney-General and shall have regard to any views expressed by the Attorney-General relating to those considerations.

Constitution of offices.

71. Subject to the provisions of this Constitution and of any Act of Parliament, the Governor-General may constitute offices for Malawi, make appointments to any such office and terminate any such appointment.

Prerogative of mercy.

72.—(1) The Governor-General may—

(*a*) grant to any person concerned in or convicted of any offence a pardon, either free or subject to lawful conditions;

(*b*) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;

(*c*) substitute a less severe form of punishment for any punishment imposed on any person for any offence; or

(*d*) remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the Crown on account of any offence.

(2) Subject to the provisions of subsection (3) of this section, the powers of the Governor-General under subsection (1) of this section shall be exercised by him acting in accordance with the advice of such Minister as may be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.

(3) In relation to persons convicted by courts-martial, the Governor-General, acting in accordance with the advice of the Prime Minister, may designate a Minister other than the Minister designated under subsection (2) of this section, and at any time when there is another Minister so designated the powers of the Governor-General under subsection (1) of this section shall, in relation to such persons, be exercised in accordance with the advice of that other Minister.

Advisory Committee.

73. There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of the Minister for the time being designated under section 72(2) of this Constitution, who shall be Chairman, and such other Ministers as may be designated by the Governor-General, acting in accordance with the advice of the Prime Minister.

Functions of Advisory Committee.

74.—(1) Where any person has been sentenced to death (otherwise than by a court-martial) for any offence, the Minister for the time being designated under section 72(2) of this Constitution shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as he may require, to be considered at a meeting of the Advisory Committee; and after obtaining the advice of the Committee he shall decide in his own deliberate judgment whether to advise the Governor-General to exercise any of his powers under section 72(1) of this Constitution.

(2) The Minister for the time being designated under section 72(2) of this Constitution may consult with the Advisory Committee before tendering any advice to the Governor-General under that subsection but the Minister shall not be obliged to act in accordance with the advice of the Committee.

(3) The Advisory Committee may regulate its own procedure.

CHAPTER VI

THE JUDICATURE

PART 1

The High Court

High Court.

75.—(1) There shall be a High Court for Malawi which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2) The judges of the High Court shall be—

(*a*) the Chief Justice;

(*b*) such number of other judges, not being less than two (hereinafter referred to as "the puisne judges"), as may be prescribed by Parliament.

(3) The office of a puisne judge shall not be abolished while there is a substantive holder thereof.

(4) The High Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

Appointment of judges of High Court.

76.—(1) The Chief Justice shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) The puisne judges shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial Service Commission.

(3) (*a*) A person shall not be qualified for appointment as a judge of the High Court unless—

(i) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or a court having jurisdiction in appeals from any such court; or

(ii) he is entitled to practise as an advocate in such a court and has been entitled for not less than five years to practise as an advocate or a solicitor in such a court.

(*b*) For the purposes of this subsection, a person shall be regarded as entitled to practise as an advocate or a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or solicitors) notwithstanding that—

(i) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or

(ii) he does not hold a practising certificate or has not satisfied any other like condition to his being permitted to practise.

(4) If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office, or until the person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the Justices of Appeal or the puisne judges or such other person qualified for appointment as a judge of the High Court as the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint:

Provided that a person who is not a Justice of Appeal or a puisne judge may be so appointed notwithstanding that he has attained the age prescribed for the purposes of section 77(1) of this Constitution.

(5) If the office of any puisne judge is vacant or if any such judge is appointed to act as Chief Justice, or is for any reason unable to perform the functions of his office, or if the Chief Justice advises the Governor-General that he is satisfied that the state of business in the High Court requires that the number of judges of the court should be temporarily increased, the Governor-General, acting in accordance

with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the High Court to act as a puisne judge of that court:

Provided that a person may act as a puisne judge notwithstanding that he has attained the age prescribed for the purposes of section 77(1) of this Constitution.

(6) Any person appointed under subsection (5) of this section to act as a puisne judge shall, subject to the provisions of section 77(3) and 77(4) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Governor-General, acting in accordance with the advice of the Judicial Service Commission:

Provided that the Governor-General, acting in accordance with the advice of the Judicial Service Commission, may permit a person whose appointment to act as a puisne judge has expired or been revoked to continue to act as such a judge for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

Tenure of office of judges of High Court.

77.—(1) Subject to the provisions of this section, a person holding the office of a judge of the High Court shall vacate that office on attaining the prescribed age:

Provided that the Governor-General, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who has attained that age to continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A person holding the office of judge of the High Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(3) A judge of the High Court shall be removed from office by the Governor-General if the question of his removal has been referred to the Judicial Committee under subsection (4) of this section and the Judicial Committee has advised the Governor-General that the judge ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the Prime Minister represents to the Governor-General that the question of removing a judge under this section ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General, acting in accordance with the advice of the Prime Minister, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he should request that the question of the removal of that judge from office should be referred by him to the Judicial Committee; and

(*c*) if the tribunal so recommends, the Governor-General shall refer the question to the Judicial Committee which shall then advise the Governor-General thereon.

(5) If the question of removing a judge from office has been referred to a tribunal under subsection (4) of this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor-General, acting in accordance with the advice of the Prime Minister, and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Governor-General that the question of the removal of the judge from office should not be referred to the Judicial Committee; or

(*b*) if the Judicial Committee advises the Governor-General that the judge ought not be removed from office.

(6) The prescribed age for the purposes of subsection (1) of this section shall be the age of sixty-two years or such other age as may be prescribed by Parliament:

Provided that a law made by Parliament, to the extent that it alters the age at which a judge of the High Court shall vacate his office, shall not have effect in relation to a judge after his appointment unless he consents that it should have effect.

(7) The provisions of this section shall be without prejudice to the provisions of section 76(6) of this Constitution.

Oaths to be taken by judges of High Court.

78. A judge of the High Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by any law.

PART 2

The Supreme Court of Appeal

Supreme Court of Appeal.

79.—(1) There shall be a Supreme Court of Appeal which, subject to the provisions of this Constitution, shall have such jurisdiction and powers as may be conferred on it by this Constitution or by any other law.

(2) The judges of the Supreme Court of Appeal shall be—

(*a*) the Chief Justice, as President;

(*b*) such number of Justices of Appeal (if any) as may be prescribed by Parliament;

(*c*) the puisne judges for the time being of the High Court.

(3) The office of a Justice of Appeal shall not be abolished while there is a substantive holder thereof.

(4) The Supreme Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(5) When the Supreme Court of Appeal is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of judges, not being less than three.

(6) The provisions of sections 76(2), 76(3), 76(5), 76(6), 77 and 78 of this Constitution shall apply in relation to a Justice of Appeal as they apply in relation to a puisne judge of the High Court.

PART 3

Appeals

Appeals to Judicial Committee.

80.—(1) An appeal shall lie from decisions of the Supreme Court of Appeal to the Judicial Committee as of right in the following cases—

(*a*) where the matter in dispute on the appeal to the Judicial Committee is of the value of £500 or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of £500 or upwards, final decisions in any civil proceedings;

(*b*) final decisions in proceedings for dissolution or nullity of marriage;

(*c*) final decisions in any civil or criminal proceedings on questions as to the interpretation of this Constitution; and

(*d*) in such other cases as may be prescribed by Parliament.

(2) An appeal shall lie from decisions of the Supreme Court of Appeal to the Judicial Committee with the leave of the Supreme Court of Appeal in the following cases—

(*a*) where in the opinion of the Supreme Court of Appeal the question involved in the appeal is one that, by reason of its great general public importance or otherwise, ought to be submitted to the Judicial Committee, decisions in any civil proceedings; and

(*b*) in such other cases as may be prescribed by Parliament.

(3) An appeal shall lie to the Judicial Committee with the special leave of the Judicial Committee from decisions of the Supreme Court of Appeal given in any civil or criminal matter.

Appeals to Supreme Court of Appeal.

81.—(1) Subject to the provisions of section 42(3) of this Constitution, an appeal shall lie as of right to the Supreme Court of Appeal from decisions of the High Court in which if the decision were a decision of the Supreme Court of Appeal an appeal would lie as of right to the Judicial Committee under section 80(1) of this Constitution.

(2) An appeal shall lie as of right to the Supreme Court of Appeal from final decisions of the High Court in exercise of the jurisdiction conferred upon the High Court by section 25 of this Constitution.

Appeals from subordinate courts.

82. An appeal shall lie as of right to the High Court from final decisions given by any subordinate court in any case in which, if the decision of the subordinate court were a decision of the Supreme Court of Appeal, an appeal would lie as of right to the Judicial Committee under section 80(1) of this Constitution:

Provided that an appeal shall not lie direct to the High Court from a decision given by a subordinate court in any such case if, under any law, an appeal lies as of right from that decision to another subordinate court.

Supervisory jurisdiction of High Court.

83.—(1) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any court to which this section applies and may make such orders, issue such writs and give such directions as it may consider appropriate for the purposes of ensuring that justice is duly administered by any such court.

(2) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by subsection (1) of this section.

(3) This section applies to any subordinate court (other than a local court) and to such local courts and such courts-martial as may be prescribed by Parliament.

Supplementary.

84.—(1) The provisions of the Judicial Committee Act 1833(a) and of any rules made thereunder from time to time shall apply in relation to proceedings before the Judicial Committee under this Chapter but only in so far as those provisions relate to the powers of the Judicial Committee and the procedure to be adopted with respect to such proceedings and for that purpose they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary by reason of the nature of those proceedings or otherwise to bring them into conformity with the provisions of this Constitution.

(2) Subject to the provisions of this Chapter, provision may be made by or under an Act of Parliament regulating the procedure to be adopted by the Supreme Court of Appeal with respect to any appeal to the Judicial Committee under this Chapter or by the parties to any such appeal.

(3) Any decision given by the Judicial Committee in any appeal under this Chapter shall be enforced in like manner as if it were a decision of the court from whose decision the appeal to the Judicial Committee was made.

(4) Subject to the provisions of subsection (3) of this section, the Judicial Committee shall, in relation to any appeal to it under this Chapter in any case, have all the jurisdiction and powers possesssed in relation to that case by the Supreme Court of Appeal.

PART 4

Judicial Service Commission

Judicial Service Commission.

85. There shall be a Judicial Service Commission which shall consist of—

(*a*) the Chief Justice, who shall be Chairman ;

(*b*) the Chairman of the Public Service Commission or such other member of that Commission as may for the time being be designated in that behalf by the Chairman of that Commission ; and

(*c*) such Justice of Appeal or puisne judge as may for the time being be designated in that behalf by the Governor-General, acting in accordance with the advice of the Chief Justice.

(a) 3 & 4 Will. 4. c. 41.

Appointment, etc., of judicial officers.

86.—(1) Power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments) to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Judicial Service Commission.

(2) The Judicial Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission, any judge of the High Court, or to any person holding or acting in any office to which this section applies.

(3) The offices to which this section applies are—

(*a*) the office of Registrar or Deputy Registrar of the Supreme Court of Appeal or of the High Court;

(*b*) the office of Resident Magistrate or Magistrate; or

(*c*) such other offices of president or member of any court of law or connected with any court of law as may be prescribed by Parliament.

CHAPTER VII

FINANCE

Payment into and withdrawal from public funds.

87.—(1) All revenues or other moneys raised or received for the purposes of the Government of Malawi shall be paid into the public funds of Malawi.

(2) No money shall be withdrawn from any public fund of Malawi for the purposes of meeting any expenditure except upon the authority of a warrant under the hand of the Minister responsible for finance.

(3) No such warrant shall be issued for the purposes of meeting any expenditure unless—

(*a*) the expenditure is charged upon the revenues or public funds of Malawi by this Constitution or any other law;

(*b*) the expenditure has been authorized for the financial year during which the withdrawal is to take place—

(i) by an Appropriation Act; or

(ii) by a supplementary Appropriation Act or a resolution approving a supplementary estimate passed in accordance with the provisions of section 88(3) of this Constitution; or

(*c*) the expenditure has been authorized in accordance with the provisions of section 89 or 90 of this Constitution.

(4) No money shall be withdrawn from the public funds of Malawi for a purpose other than the purpose of meeting expenditure—

(*a*) unless the issue of that money is authorized by or under a law; and

(*b*) except in the manner prescribed by Parliament.

Authorization of expenditure.

88.—(1) The Minister responsible for finance shall cause to be prepared and laid before the National Assembly, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Malawi for that financial year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the revenues of Malawi by this Constitution or any Act of Parliament) shall be included in a bill or bills to be known as Appropriation bills which shall be introduced into the National Assembly to provide for the issue from the public funds of Malawi of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

(3) If in respect of any financial year it is found—

(*a*) that the amount appropriated by an Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by any Appropriation Act; or

(*b*) that any monies have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by an Appropriation Act or for a purpose for which no amount has been appropriated by any Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the National Assembly and the heads of expenditure shall be included in a supplementary Appropriation bill, or in a motion or motions approving such expenditure, which shall be introduced into the Assembly.

(4) Where any supplementary expenditure has been approved in a financial year by a resolution of the National Assembly in accordance with the provisions of subsection (3) of this section, a supplementary Appropriation bill shall be introduced in the National Assembly, not later than six months after the commencement of the financial year next following, providing for the appropriation of the sums so approved.

Authorization of expenditure in advance of appropriation.

89. Parliament may make provision under which, if the Appropriation Acts in respect of any financial year have not come into operation by the beginning of that financial year, the Minister responsible for finance may authorize the withdrawal of monies from the public funds of Malawi for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Acts, whichever is the earlier.

Contingencies Fund.

90.—(1) Parliament may make provision for the establishment of a Contingencies Fund and for authorizing the Minister responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be presented a soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

91.—(1) There shall be paid to the holders of the offices to which this section applies such salary and such allowances as may be prescribed by Parliament.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the revenues of Malawi.

(3) The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances, shall not be altered to his disadvantage after his appointment.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the offices of the Governor-General, judge of the Supreme Court of Appeal, judge of the High Court, member of the Public Service Commission, member of the Police Service Commission, the Director of Public Prosecutions and the Auditor-General.

Public debt.

92.—(1) There shall be charged on the revenues and public funds of Malawi all debt charges for which Malawi is liable.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans on the security of the revenues of the former Nyasaland Protectorate or of Malawi and on the service and redemption of debt thereby created.

Auditor-General.

93.—(1) There shall be an Auditor-General whose office shall be a public office.

(2) The public accounts of Malawi and of all officers, courts and authorities of the Government of Malawi shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any person authorized by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts.

(3) The Auditor-General shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before the National Assembly.

(4) In the exercise of his functions under this Constitution the Auditor-General shall not be subject to the direction or control of any other person or authority.

CHAPTER VIII

The Public Service

Public Service Commission.

94.—(1) There shall be a Public Service Commission which shall consist of a Chairman and not less than three nor more than five other members.

(2) The members of the Public Service Commission shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(3) A person shall not be qualified for appointment as a member of the Public Service Commission if he is a Minister, a member of the National Assembly or a public officer.

(4) Subject to the provisions of this section, the office of a member of the Public Service Commission shall become vacant—

(*a*) at the expiration of four years from the date of his appointment; or

(*b*) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) A member of the Public Service Commission may be removed from office by the Governor-General, acting in accordance with the advice of the Prime Minister, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(6) If the office of Chairman of the Public Service Commission is vacant or if the person holding that office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the other members of the Commission as may be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.

(7) If at any time there are less than three members of the Public Service Commission besides the Chairman or if any such member is appointed to act as Chairman or is for any reason unable to perform the functions of his office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person who is qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (4) of this section, continue to act until the office in which he is acting is filled or, as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the Governor-General, acting in accordance with the advice of the Prime Minister.

Appointment, etc. of public officers.

95.—(1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.

(2) The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or to any public officer.

(3) The provisions of this section shall not apply in relation to any of the following offices—

(*a*) the office of any judge of the Supreme Court of Appeal or of any judge of the High Court;

(*b*) the offices of Director of Public Prosecutions or Auditor-General;

(*c*) any office to which section 86 (which relates to judicial offices), section 99 (which relates to the offices of representatives of Malawi abroad) or section 100 of this Constitution (which relates to the offices of Permanent Secretaries and the office of the Secretary to the Cabinet) applies; or

(*d*) any office in the Malawi Police Force.

(4) No person shall be appointed under this section to or to act in any office on the personal staff of the Governor-General except with the concurrence of the Governor-General.

(5) Before exercising any of its powers in relation to the Clerk or Clerk-Assistant of the National Assembly, the Public Service Commission shall consult the Speaker of the Assembly.

(6) Before the Public Service Commission appoints to or to act in any public office any person holding or acting in any office the power to make appointments to which is vested by this Constitution in the Judicial Service Commission or the Police Service Commission, it shall consult that Commission.

Appointment of Director of Public Prosecutions.

96.—(1) Power to appoint persons to hold the office of Director of Public Prosecutions shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) A person shall not be qualified for appointment to hold or to act in the office of Director of Public Prosecutions unless he is qualified to be appointed as a judge of the High Court.

(3) If the office of Director of Public Prosecutions is vacant or if the Director of Public Prosecutions is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person to act as Director of Public Prosecutions, and any person so appointed shall, subject to the provisions of sections 98(1), 98(3) and 98(5) of this Constitution, continue to act until a person has been appointed to the office of Director of Public Prosecutions and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

(4) Before tendering any advice for the purposes of this section, the Prime Minister shall consult the Public Service Commission.

Appointment of Auditor General.

97.—(1) Power to appoint persons to hold the office of Auditor-General shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) If the office of Auditor-General is vacant or if the Auditor-General is for any reason unable to exercise the functions of his office, the Governor-General, acting in accordance with the advice of the Prime Minister, may appoint a person to act as Auditor-General, and any person so appointed shall, subject to the provisions of sections 98(1), 98(3) and 98(5) of this Constitution, continue to act until a person has been appointed to the office of Auditor-General and has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

(3) Before tendering any advice for the purposes of this section, the Prime Minister shall consult the Public Service Commission.

Tenure of office of Director of Public Prosecutions and Auditor-General.

98.—(1) Subject to the provisions of this section, the Director of Public Prosecutions shall vacate his office when he attains the prescribed age.

(2) The Director of Public Prosecutions may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) The Director of Public Prosecutions shall be removed from office by the Governor-General if the question of his removal from office has been referred to a tribunal appointed under subsection (4) of this section and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the Prime Minister represents to the Governor-General that the question of removing the Director of Public Prosecutions ought to be investigated, then—

(*a*) the Governor-General shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Governor-General, acting in accordance with the advice of the Prime Minister, from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; and

(*b*) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the person ought to be removed under this section.

(5) If the question of removing the Director of Public Prosecutions has been referred to a tribunal under this section, the Governor-General, acting in accordance with the advice of the Prime Minister, may suspend the Director of Public Prosecutions from performing the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in accordance with the advice of the Prime Minister, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the person should not be removed.

(6) The prescribed age for the purposes of subsection (1) of this section shall be the age of fifty-five years or such other age as may be prescribed by Parliament:

Provided that an Act of Parliament, to the extent that it alters the age at which the Director of Public Prosecutions shall vacate his office, shall not have effect in relation to a Director of Public Prosecutions after his appointment unless he consents that it should have effect.

(7) The foregoing provisions of this section shall apply in relation to the Auditor-General as they apply in relation to the Director of Public Prosecutions.

Principal representatives of Malawi abroad.

99.—(1) Power to appoint persons to hold or act in offices to which this section applies and to remove from office persons holding or acting in such offices shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) Before tendering any advice for the purposes of this section in relation to any person who holds any office in the public service, other than an office to which this section applies, the Prime Minister shall consult the Public Service Commission.

(3) The offices to which this section applies are the offices of Ambassador, High Commissioner or other principal representative of Malawi in any other country.

Appointment of Permanent Secretaries, etc.

100.—(1) Power to appoint persons to hold or act in offices to which this section applies and to remove from office persons holding or acting in such offices shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) Before tendering any advice for the purposes of this section, the Prime Minister shall consult the Public Service Commission.

(3) The offices to which this section applies are the offices of any Permanent Secretary or the Secretary to the Cabinet.

Police Service Commission.

101. There shall be a Police Service Commission which shall consist of—

(*a*) the Chairman of the Public Service Commission, who shall be Chairman of the Commission ;

(*b*) a judge of the High Court designated by the Governor-General, acting in accordance with the advice of the Prime Minister ; and

(*c*) a member of the Public Service Commission, other than the Chairman, designated by the Governor-General, acting in accordance with the advice of the Prime Minister.

Appointment of Commissioner and Deputy Commissioner of Police.

102.—(1) Power to appoint persons to hold or act in the office of Commissioner of Police or Deputy Commissioner of Police shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) Before tendering advice for the purposes of this section the Prime Minister shall consult the Police Service Commission.

Appointment, etc. of police officers.

103.—(1) Subject to the provisions of section 102 of this Constitution, power to appoint persons to hold or act in offices in the Malawi Police Force (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Police Service Commission.

(2) The Police Service Commission may, by directions in writing and subject to such conditions as it thinks fit, delegate any of its powers under this section to the Commissioner of Police or to any other member of the Malawi Police Force and may, by such directions and subject as aforesaid, empower the person to whom the delegation is made to authorize another member of the Malawi Police Force to exercise the power so delegated.

Laws with respect to police discipline.

104. Nothing in section 103 of this Constitution shall preclude Parliament from making provision constituting acts or omissions by members of the Malawi Police Force as offences against police force discipline and prescribing the punishment that may be imposed for any such offence, and the powers of the Police Service Commission and of any officer of the Malawi Police Force under that section with respect to disciplinary control and removal from office of members of the Police Force shall be exercised in accordance with any such provision.

Pensions laws and protection of pension rights.

105.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before 6th July 1964 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

(*a*) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 6th July 1964, be the law that was in force on 5th July 1964 ; and

(*b*) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 6th July 1964, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits shall (except to the extent to which, in the case of benefits under the Widows' and Orphans' Pensions Ordinance(a) or under any law amending or replacing that Ordinance, they are a charge on a fund established by that Ordinance or by any such law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the revenues and public funds of Malawi.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Power of Commissions in relation to pensions, etc.

106.—(1) Where under any law any person or authority has a discretion—

(*a*) to decide whether or not any pensions benefits shall be granted; or

(*b*) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of a judge of the Supreme Court of Appeal, a judge of the High Court, the Director of Public Prosecutions or the Auditor-General has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section "the appropriate Commission" means—

(a) Laws of Nyasaland, 1957, c. 61.

(*a*) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial Service Commission or that have been granted in respect of such service, the Judicial Service Commission;

(*b*) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was a member of the Malawi Police Force, the Police Service Commission; and

(*c*) in any other case, the Public Service Commission.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service.

CHAPTER IX

MISCELLANEOUS

Performance of functions of Commissions.

107.—(1) Any Commission established by this Constitution may, with the consent of the Prime Minister or such other Minister as may be authorized in that behalf, by regulation or otherwise regulate its own procedure or confer power or impose duties on any officer or authority of the Government of Malawi for the purpose of discharging its functions.

(2) Any decision of any Commission established by this Constitution shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member.

(3) Subject to the provisions of this section, any Commission established by this Constitution may regulate its own procedure.

Resignations.

108.—(1) Any person who is appointed or elected to any office established by this Constitution or any office of Minister established under this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected:

Provided that in the case of a person who holds office as Speaker or Deputy Speaker of the National Assembly his resignation from that office shall be addressed to the Assembly, and in the case of a member of the Assembly his resignation shall be addressed to the Speaker.

(2) The resignation of any person from any office established by this Constitution shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorized by that person or authority to receive it.

Re-appointments and concurrent appointments.

109.—(1) Where any person has vacated any office established by this Constitution or any office of Minister established under this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be

appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Interpretation.

110.—(1) In this Constitution, unless the context otherwise requires—

"Act of Parliament" means any law made by Parliament;

"African" means any member of the original tribes or races of the Continent of Africa and includes any person having the blood of any such tribe or race;

"Asian" means a person of Asian descent and includes a person who is partly of Asian and partly of European descent;

"the Commonwealth" means Malawi, any country to which section 8 of this Constitution applies, and any dependency of any such country;

"European" means a person of European descent, not having the blood of any African or Asian tribe or race, and includes an American or Australasian of such descent;

"financial year" means the period of twelve months ending on 31st December in any year or on such other day as Parliament may prescribe;

"the Judicial Committee" means the Judicial Committee of the Privy Council established by the Judicial Committee Act 1833 as from time to time amended by any Act of the Parliament of the United Kingdom;

"Justice of Appeal" means a judge of the Supreme Court of Appeal other than the Chief Justice or a puisne judge of the High Court;

"local court" means a court established by or under the Local Courts Ordinance(a) or any law amending or replacing that Ordinance;

"Malawi" means the territory comprised in the former Nyasaland Protectorate;

"the former Nyasaland Protectorate" means the territory that, on 5th July 1964, was comprised in the Protectorate of Nyasaland;

"the oath of allegiance" means such oath of allegiance as may be prescribed by law;

"public office" means an office of emolument in the public service;

"public officer" means a person holding or acting in any public office;

"the public service" means, subject to the provisions of subsections (2) and (3) of this section, the service of the Crown in a civil capacity in respect of the government of Malawi;

"session" means the sittings of the National Assembly beginning when it first sits after the coming into operation of this Constitution

(a) Ordinance No. 8 of 1962.

or after its prorogation or dissolution at any time and ending when it is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the National Assembly is sitting without adjournment and includes any period during which it is in committee;

"subordinate court" means any court established for Malawi other than—

(*a*) the Judicial Committee;

(*b*) the Supreme Court of Appeal;

(*c*) the High Court; or

(*d*) a court-martial.

(2) In this Constitution, unless the context otherwise requires, references to offices in the public service shall be construed as including references to the offices of judges of the Supreme Court of Appeal, judges of the High Court, to the offices of members of all subordinate courts (other than courts-martial or a local court), being offices the emoluments attaching to which are paid directly out of monies provided by Parliament, and to the offices of members of the Malawi Police Force.

(3) In this Constitution references to an office in the public service shall not be construed as including references to the office of the Speaker or Deputy Speaker of the National Assembly, the Prime Minister or other Minister, Parliamentary Secretary, a member of the Assembly, a member of any Commission established by this Constitution or a chief or sub-chief.

(4) For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Crown.

(5) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(6) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that—

(*a*) nothing in this subsection shall be construed as conferring on any person or authority power to require a judge of the Supreme Court of Appeal, a judge of the High Court or the Director of Public Prosecutions or the Auditor-General to retire from the public service; and

(*b*) any power conferred by any law to permit a person to retire from the public service shall, in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(7) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of

public officers generally or any class of public officer on attaining an age specified therein.

(8) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

(9) No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(10) Where any power is conferred by this Constitution to make any Proclamation, order, regulation or rule, to give any direction or make any designation, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such Proclamation, order, regulation, rule, direction or designation.

(11) Any reference in this Constitution to a law made before 6th July 1964 shall, unless the context otherwise requires, be construed as a reference to that law as it had effect on 5th July 1964.

(12) Any reference in this Constitution to a law that amends or replaces any other law shall be construed as including a reference to a law that modifies, re-enacts, with or without amendment or modification, or makes different provision in lieu of that other law.

(13) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

Section 33 (2).

THE SCHEDULE TO THE CONSTITUTION

QUALIFICATIONS AND DISQUALIFICATIONS FOR REGISTRATION AS A VOTER

1. Subject to the provisions of paragraphs 4 and 5 of this Schedule, a person shall be qualified to be registered as a voter in a general roll constituency if, and shall not be so qualified unless, at the date of his application for registration he—

(*a*) is a citizen of Malawi;

(*b*) has attained the age of twenty-one years;

(*c*) is an African, an Asian or a European;

(*d*) is ordinarily resident in Malawi and has been ordinarily resident in Malawi or the former Nyasaland Protectorate at any time for a continuous period of two years; and

(*e*) is ordinarily resident in that constituency or was born there or is employed or carries on a business there.

2. Subject to the provisions of paragraphs 4 and 5 of this Schedule, a person shall be qualified to be registered as a voter in a special roll

constituency if, and shall not be so qualified unless, at the date of his application for registration he—

(*a*) is a citizen of Malawi;

(*b*) has attained the age of twenty-one years;

(*c*) is a European;

(*d*) is ordinarily resident in Malawi and has been ordinarily resident in Malawi or the former Nyasaland Protectorate at any time for a continuous period of two years; and

(*e*) is ordinarily resident in that constituency or was born there or is employed or carries on a business there.

3. Any person who was registered as a voter on 29th March 1964 in a general roll constituency under regulations made or having effect as if made under the Nyasaland (Electoral Provisions) Order in Council 1964 shall be deemed to possess the qualifications specified in sub-paragraphs (*a*), (*b*), (*c*) and (*d*) of paragraph 1 of this Schedule and any person who was registered as a voter on 19th January 1964 in a special roll constituency under regulations made or having effect as if made under that Order in Council shall be deemed to possess the qualifications specified in sub-paragraphs (*a*), (*b*), (*c*) and (*d*) of paragraph 2 of this Schedule.

4. No person shall be qualified for registration as a voter in a general roll constituency or in a special roll constituency—

(*a*) if he is, under any law in force in Malawi, adjudged or otherwise declared to be of unsound mind;

(*b*) if he is under sentence of death imposed on him by a court in Malawi or in the former Nyasaland Protectorate or is serving a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(*c*) if he is disqualified for registration as a voter by Parliament on the grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition.

5. No person shall be qualified for registration as a voter in a general roll constituency if he has at any time been registered as a voter in a special roll constituency and no person shall be qualified for registration as a voter in a special roll constituency if he has at any time been registered as a voter in a general roll constituency.

6. Where any person is qualified to be registered in more than one constituency as a voter he shall be so registered only in the first of the constituencies in which he applies to be so registered.

7. References in this Schedule to a sentence of imprisonment do not include references to a sentence of imprisonment imposed as an alternative to or in default of payment of a fine.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

By virtue of the provisions of the Malawi Independence Act 1964, the present Protectorate of Nyasaland will attain fully responsible status within the Commonwealth on 6th July 1964 under the name of Malawi. This Order makes provision for a new Constitution for Malawi from that date.