

Malawi Independence Act (1964)

Caption: On 10 June 1964, the Malawi Independence Act is published. The independence of the former British colony of Nyasaland, within the Commonwealth, is proclaimed on 6 July 1964.

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Rhodesia &
Nyasaland
(Independence
of Nyasaland)

Malawi Independence Act 1964

CHAPTER 46

10. 6. 64

ARRANGEMENT OF SECTIONS

Section

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2. Consequential modifications of British Nationality Acts.
3. Retention of citizenship of United Kingdom and Colonies by certain citizens of Malawi.
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ELIZABETH II



1964 CHAPTER 46

An Act to make provision for and in connection with the attainment by Nyasaland of fully responsible status within the Commonwealth. [10th June 1964]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) On and after 6th July 1964 (in this Act referred to as "the appointed day") the territories which immediately before the appointed day are comprised in the Nyasaland protectorate shall together form part of Her Majesty's dominions under the name of Malawi; and on and after that day Her Majesty's Government in the United Kingdom shall have no responsibility for the government of those territories. Fully responsible status of Malawi.

(2) No Act of the Parliament of the United Kingdom passed on or after the appointed day shall extend or be deemed to extend to Malawi as part of its law; and on and after that day the provisions of Schedule 1 to this Act shall have effect with respect to legislative powers in Malawi.

(3) Subsection (1) of this section shall not affect the operation in Malawi of any enactment or any other instrument having the effect of law passed or made before the appointed day, or be taken to extend any such enactment or instrument to Malawi as part of its law.

2.—(1) Subject to subsection (2) of this section, the British Nationality Acts 1948 to 1964 shall have effect on and after the appointed day as if in section 1(3) of the said Act of 1948 (Commonwealth countries having separate citizenship) there were added at the end the words "and Malawi", and as if in Schedule 1 to the British Protectorates, Protected States and Consequential modifications of British Nationality Acts.

Protected Persons Order in Council 1949 the words "Nyasaland Protectorate" were omitted.

(2) A person who, immediately before the appointed day, is for the purposes of the said Acts and Order in Council a British protected person by virtue of his connection with the Nyasaland protectorate shall not cease to be such a British protected person for any of those purposes by reason of anything contained in the preceding provisions of this Act, but shall so cease upon his becoming a citizen of Malawi.

(3) Except as provided by section 3 of this Act, any person who immediately before the appointed day is a citizen of the United Kingdom and Colonies shall on that day cease to be such a citizen if he becomes on that day a citizen of Malawi.

(4) Section 6(2) of the British Nationality Act 1948 (registration as citizens of the United Kingdom and Colonies of women who have been married to such citizens) shall not apply to a woman by virtue of her marriage to a person who on the appointed day ceases to be such a citizen under subsection (3) of this section, or who would have done so if living on the appointed day.

Retention of citizenship of United Kingdom and Colonies by certain citizens of Malawi.

3.—(1) Subject to subsection (5) of this section, a person shall not cease to be a citizen of the United Kingdom and Colonies under section 2(3) of this Act if he, his father or his father's father—

- (a) was born in the United Kingdom or in a colony; or
- (b) is or was a person naturalised in the United Kingdom and Colonies; or
- (c) was registered as a citizen of the United Kingdom and Colonies; or
- (d) became a British subject by reason of the annexation of any territory included in a colony.

(2) A person shall not cease to be a citizen of the United Kingdom and Colonies under the said section 2(3) if either—

- (a) he was born in a protectorate or protected state, or
- (b) his father or his father's father was so born and is or at any time was a British subject.

(3) A woman who is the wife of a citizen of the United Kingdom and Colonies shall not cease to be such a citizen under the said section 2(3) unless her husband does so.

(4) Subject to subsection (5) of this section, the reference in subsection (1)(b) of this section to a person naturalised in the United Kingdom and Colonies shall include a person who would, if living immediately before the commencement of the British

Nationality Act 1948, have become a person naturalised in the United Kingdom and Colonies by virtue of section 32(6) of that Act (persons given local naturalisation in a colony or protectorate before the commencement of that Act).

(5) Any reference in this section to a colony, a protectorate or a protected state is a reference to a territory which is a colony, a protectorate or a protected state, as the case may be, within the meaning of the British Nationality Act 1948, on the appointed day, and accordingly does not include a reference to Malawi; and subsection (1) of this section shall not apply to a person by virtue of any certificate of naturalisation granted or registration effected by the governor or government of a territory outside the United Kingdom which is not such a colony, protectorate or protected state on the appointed day.

(6) Part III of the British Nationality Act 1948 (supplemental provisions) shall have effect for the purposes of this section as if this section were included in that Act.

4.—(1) Notwithstanding anything in the Interpretation Act 1889, the expression “colony” in any Act of Parliament of the United Kingdom passed on or after the appointed day shall not include Malawi. Consequential modification of other enactments.

(2) On and after the appointed day the expression “colony” in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 shall not include Malawi; and in the definitions of “Commonwealth force” in sections 225(1) and 223(1) respectively of the said Acts of 1955 and in the definition of “Commonwealth country” in section 135(1) of the said Act of 1957, at the end there shall be added the words “or Malawi”.

(3) No Order in Council made on or after the appointed day under section 1 of the Army and Air Force Act 1961 shall operate to continue either of the said Acts of 1955 in force as part of the law of Malawi.

(4) On and after the appointed day, the provisions specified in Schedule 2 to this Act shall have effect subject to the amendments respectively specified in that Schedule, and Her Majesty may by Order in Council make such further adaptations in any Act of the Parliament of the United Kingdom passed before this Act, or in any instrument having effect under any such Act, as appear to Her Majesty to be necessary in consequence of section 1 of this Act.

(5) Any Order in Council under subsection (4) of this section may be varied or revoked by a subsequent Order in Council and may, if made after the appointed day, be made so as to

take effect on the appointed day ; and any statutory instrument made by virtue of that subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Subsection (4) of this section, Schedule 2 to this Act and any Order in Council made under the said subsection (4) shall not extend to Malawi as part of its law.

Judicial
Committee of
Privy Council.

5.—(1) Her Majesty may by Order in Council made before the appointed day confer on the Judicial Committee of the Privy Council such jurisdiction in respect of appeals from any court having jurisdiction under the law of Malawi, and in respect of any proceedings concerning judges of any such court, as appears to Her Majesty to be appropriate.

(2) An Order in Council under this section may determine the classes of cases in which, and the conditions as to leave and otherwise subject to which, any such appeal or other proceedings may be entertained by the said Committee, and the practice and procedure to be followed in any such proceedings, and—

- (a) may confer on the said Committee any of the jurisdiction or powers possessed by any court under the law of Malawi ;
- (b) may require that the decisions of the said Committee in exercise of any jurisdiction conferred under this section shall be enforced in the same way as decisions of any court having jurisdiction under the law of Malawi ;
- (c) may exclude an appeal to Her Majesty in Council, whether as of right or by special leave, in all or any cases ; and
- (d) may contain transitional provisions with respect to appeals to Her Majesty in Council and other proceedings which are pending on the appointed day, and may contain such other incidental or supplemental provisions as appear to Her Majesty to be expedient.

(3) Except so far as otherwise provided by an Order in Council under this section, and subject to such modifications as may be so provided, the Judicial Committee Act 1833 shall apply in relation to appeals and other proceedings in respect of which any jurisdiction is conferred under this section as it applies in relation to appeals to Her Majesty in Council.

(4) Provisions made in pursuance of this section may be included in any Order in Council revoking the existing Constitution Order.

(5) So much of any Order in Council as is made under this section may be varied or revoked by a further Order in Council, whether made before or after the appointed day ; but any Order in Council made under this section on or after the appointed day shall not extend to Malawi as part of its law.

6.—(1) On and after the appointed day no court having jurisdiction under the law of Malawi shall, by virtue of the Colonial and Other Territories (Divorce Jurisdiction) Acts 1926 to 1950, have jurisdiction to make a decree for the dissolution of a marriage, or as incidental thereto to make an order as to any matter, unless proceedings for the decree were instituted before the appointed day. Divorce jurisdiction.

(2) Except as provided by subsection (1) of this section, and subject to any provision to the contrary which may be made on or after the appointed day by or under any law made by any legislature established for Malawi, all courts having jurisdiction under the law of Malawi shall on and after that day have the same jurisdiction under the said Acts as they would have had if this Act had not been passed.

(3) Any rules made on or after the appointed day under section 1(4) of the Indian and Colonial Divorce Jurisdiction Act 1926 for a court having jurisdiction under the law of Malawi shall, instead of being made by the Secretary of State with the concurrence of the Lord Chancellor, be made by such authority as may be determined by the law of Malawi, and so much of the said section 1(4) and of any rules in force thereunder as requires the approval of the Lord Chancellor to the nomination for any purpose of any judges of any such court shall cease to have effect.

(4) The references in subsection (1) of this section to proceedings for the dissolution of a marriage include references to proceedings for such a decree of presumption of death and dissolution of marriage as is authorised by section 16 of the Matrimonial Causes Act 1950.

7.—(1) In this Act “the existing Constitution Order” means the Nyasaland (Constitution) Order in Council 1963 as amended by the Nyasaland (Constitution) (No. 2) Order in Council 1963 and any further Order in Council made before the appointed day. Interpretation.

(2) References in this Act to any enactment are references to that enactment as amended or extended by or under any other enactment.

8. This Act may be cited as the Malawi Independence Act Short title, 1964.

SCHEDULES

SCHEDULE 1

LEGISLATIVE POWERS IN MALAWI

1. The Colonial Laws Validity Act 1865 shall not apply to any law made on or after the appointed day by any legislature established for Malawi.

2. No law and no provision of any law made on or after the appointed day by any such legislature shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any Act of the Parliament of the United Kingdom, including this Act, or to any order, rule or regulation made under any such Act, and, subject to paragraph 5 of this Schedule, the powers of any such legislature shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of Malawi.

3. Any legislature established for Malawi shall have full power to make laws having extra-territorial operation.

4. Without prejudice to the generality of the preceding provisions of this Schedule—

(a) sections 735 and 736 of the Merchant Shipping Act 1894 shall be construed as if references therein to the legislature of a British possession did not include references to any legislature established for Malawi; and

(b) section 4 of the Colonial Courts of Admiralty Act 1890 (which requires certain laws to be reserved for the signification of Her Majesty's pleasure or to contain a suspending clause), and so much of section 7 of that Act as requires the approval of Her Majesty in Council to any rules of court for regulating the practice and procedure of a Colonial Court of Admiralty, shall not apply in relation to Malawi.

5. Nothing in this Act shall confer on any legislature established for Malawi any power to repeal, amend or modify the constitutional provisions otherwise than in such manner as may be provided for in those provisions; and for the purposes of this paragraph "the constitutional provisions" means the following, that is to say—

(a) this Act;

(b) any Order in Council revoking the existing Constitution Order and providing for a new constitution for Malawi to come into effect on the appointed day;

(c) any law, or instrument made under a law, of any legislature established for Malawi which, being a law or instrument made on or after the appointed day, amends, modifies, re-enacts with or without amendment or modification, or makes different provision in lieu of, any provisions of this Act, of the Order in Council first mentioned in this paragraph, or of any such law or instrument previously made.

SCHEDULE 2

AMENDMENTS NOT AFFECTING THE LAW OF MALAWI

Diplomatic immunities

1. In section 461 of the Income Tax Act 1952 (exemption from income tax in the case of certain Commonwealth representatives and their staffs)—

- (a) in subsection (2), before the words “for any state” there shall be inserted the words “or Malawi”;
- (b) in subsection (3), before the words “and ‘Agent-General’” there shall be inserted the words “or Malawi”.

2. In section 1(6) of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952, before the words “and the Republic of Ireland” there shall be inserted the word “Malawi”.

3. In section 1(5) of the Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961, before the words “and the Republic of Ireland” there shall be inserted the word “Malawi”.

Financial

4. In section 2 of the Import Duties Act 1958—

- (a) in subsection (4), before the words “together with” there shall be inserted the word “Malawi”, and
- (b) in subsection (9), for the word “Nyasaland”, in each place where it occurs, there shall be substituted the word “Malawi”;

and in paragraph 7(a) of Schedule III to the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 the words “and Nyasaland”, in the second place where they occur, shall be omitted.

Visiting forces

5. In the Visiting Forces (British Commonwealth) Act 1933, section 4 (attachment and mutual powers of command) shall apply in relation to forces raised in Malawi as it applies in relation to forces raised in Dominions within the meaning of the Statute of Westminster 1931.

6. In the Visiting Forces Act 1952—

- (a) in section 1(1)(a) (countries to which that Act applies) at the end there shall be added the words “Malawi or”;
- (b) in section 10(1)(a) the expression “colony” shall not include Malawi;

and, until express provision with respect to Malawi is made by Order in Council under section 8 of that Act (application to visiting forces of law relating to home forces), any such Order for the time being in force shall be deemed to apply to visiting forces of Malawi.

Ships and aircraft

7. In section 427(2) of the Merchant Shipping Act 1894, as substituted by section 2 of the Merchant Shipping (Safety Convention) Act 1949, before the words “or in any” there shall be inserted the words “or Malawi”.

8. In the proviso to section 6(2) of the Merchant Shipping Act 1948, at the end there shall be added the words “or Malawi”.

9. In the definition of "excepted ship or aircraft" in paragraph 3 of Schedule 3 to the Emergency Laws (Repeal) Act 1959, before the words "or in any" there shall be inserted the words "or Malawi".

10. The Ships and Aircraft (Transfer Restriction) Act 1939 shall not apply to any ship by reason only of its being registered in or licensed under the law of Malawi; and the penal provisions of that Act shall not apply to persons in Malawi (but without prejudice to the operation with respect to any ship to which that Act does apply of the provisions thereof relating to the forfeiture of ships).

11. In the Whaling Industry (Regulation) Act 1934, the expression "British ship to which this Act applies" shall not include a British ship registered in Malawi.

12. In section 2(7)(b) of the Civil Aviation (Licensing) Act 1960, the expression "colony" shall not include Malawi.

Copyright

13. If the Copyright Act 1911, so far as in force in the law of Malawi, is repealed or amended by that law at a time when sub-paragraph (2) of paragraph 39 of the Seventh Schedule to the Copyright Act 1956 (which applies certain provisions of that Act in relation to countries to which the said Act of 1911 extended) is in force in relation to Malawi, the said sub-paragraph (2) shall thereupon cease to have effect in relation thereto.

Commonwealth Institute

14. In section 8(2) of the Imperial Institute Act 1925, as amended by the Commonwealth Institute Act 1958 (power to vary the provisions of the said Act of 1925 if an agreement for the purpose is made with the governments of certain territories which for the time being are contributing towards the expenses of the Commonwealth Institute) at the end there shall be added the words "and Malawi".



Table of Statutes referred to in this Act

Short Title	Session and Chapter
Judicial Committee Act 1833	3 & 4 Will. 4. c. 41.
Colonial Laws Validity Act 1865	28 & 29 Vict. c. 63.
Interpretation Act 1889	52 & 53 Vict. c. 63.
Colonial Courts of Admiralty Act 1890	53 & 54 Vict. c. 27.
Merchant Shipping Act 1894	57 & 58 Vict. c. 60.
Copyright Act 1911	1 & 2 Geo. 5. c. 46.
Imperial Institute Act 1925	15 & 16 Geo. 5. c. xvii.
Indian and Colonial Divorce Jurisdiction Act 1926	16 & 17 Geo. 5. c. 40.
Statute of Westminster 1931	22 & 23 Geo. 5. c. 4.
Visiting Forces (British Commonwealth) Act 1933	23 & 24 Geo. 5. c. 6.
Whaling Industry (Regulation) Act 1934	24 & 25 Geo. 5. c. 49.
Ships and Aircraft (Transfer Restrictions) Act 1939	2 & 3 Geo. 6. c. 70.
British Nationality Act 1948	11 & 12 Geo. 6. c. 56.
Merchant Shipping (Safety Convention) Act 1949	12, 13 & 14 Geo. 6. c. 43.
Matrimonial Causes Act 1950	14 Geo. 6. c. 25.
Army and Air Force (Annual) Act 1951	14 & 15 Geo. 6. c. 24.
Income Tax Act 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 10.
Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952.	15 & 16 Geo. 6. & 1 Eliz. 2. c. 18.
Visiting Forces Act 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 67.
Army Act 1955	3 & 4 Eliz. 2. c. 18.
Air Force Act 1955	3 & 4 Eliz. 2. c. 19.
Copyright Act 1956	4 & 5 Eliz. 2. c. 74.
Naval Discipline Act 1957	5 & 6 Eliz. 2. c. 53.
Import Duties Act 1958	6 & 7 Eliz. 2. c. 6.
British Nationality Act 1958	6 & 7 Eliz. 2. c. 10.
Commonwealth Institute Act 1958	6 & 7 Eliz. 2. c. 16.
Emergency Laws (Repeal) Act 1959	7 & 8 Eliz. 2. c. 19.
Civil Aviation (Licensing) Act 1960	8 & 9 Eliz. 2. c. 39.
Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961	9 & 10 Eliz. 2. c. 11.

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