

Malawi

## Parliamentary Pensions (Enabling Provisions) Act Chapter 2:06

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## Malawi

# Parliamentary Pensions (Enabling Provisions) Act

## Chapter 2:06

Assented to on 8 May 1981

Commenced on 1 January 1972

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to provide for the constitution of contributory funds under the name of the Parliamentary Pensions Premium Fund for the purpose of effecting and maintaining pensions and related benefits for Members of the National Assembly and their dependants; and further to provide for periodic contributions by such Members and the Government to such funds and for the appointment of trustees of such funds under the name and style of the Trustees of the Parliamentary Pensions Premium Fund; to provide for the incorporation of such Trustees as a body corporate; to provide for the terms and conditions of the trusts under which the aforementioned funds shall be held and administered by such Trustees, and for the powers, duties and obligations of such Trustees in respect thereof and in relation to the beneficiaries thereunder; and further to provide for matters incidental to or connected with the foregoing**

### Part 1 – Preliminary

#### 1. Short title

This Act may be cited as the Parliamentary Pensions (Enabling Provisions) Act.

#### 2. Interpretation

In this Act unless the context otherwise requires—

“**Chairman**” means the Chairman of the Trustees designated by [section 6](#) (1) (2);

“**Fund**” means the Parliamentary Pensions Premium Fund, established by [section 3](#);

“**insurer**” means any person doing business in Malawi, as a life insurer;

“**Member**” means a member of the National Assembly;

“**Minister**” includes the Speaker and Deputy Ministers;

“**Parliamentary Service**” means service as a Member of Parliament for any determinate period;

“**reckonable service**” means the aggregate of all Parliamentary Service;

“**scheme**” means any pension formulated under this Act and includes any supplemental scheme;

“**Speaker**” means the Speaker of the National Assembly

“**Trustees**” means the Trustees of the Parliamentary Pensions Premium Fund constituted by [section 5](#).

## Part II – Establishment of Fund

### 3. Establishment of the Fund

There is hereby established a fund to be known as the Parliamentary Pensions Premium Fund, which shall vest in, and be held and administered by the Trustees upon and subject to the trusts, and for the advancement and furtherance of the objects in this Act hereinafter declared.

### 4. Objects of the Fund

The objects of the Fund are to provide moneys for effecting and maintaining such pension and related benefits schemes as the Trustees may, under this Act, from time to time, formulate on behalf of Members and insure with insurers for the benefit of such Members or their dependants.

## Part III – The Trustees

### 5. Trustees of the Fund

There is hereby constituted the Trustees of the Parliamentary Pensions Premium Fund, which shall by that name be a body corporate with perpetual succession and a common seal, capable of suing and being sued and, subject to this Act, of doing such acts and performing such deeds as a body corporate may by law do or perform.

### 6. Appointment and removal of Trustees

- (1) The Trustees of the Parliamentary Pensions Premium Fund shall be—
  - (a) the Speaker, who shall be executive Trustee, and the Chairman of the Trustees;
  - (b) two other persons appointed by the President.
- (2) In the event of the Speaker being unable to act as such Trustee, the President shall appoint, from among the Members, a Trustee to act as executive Trustee and Chairman in the place and stead of the Speaker during such inability.
- (3) Any Trustee appointed under paragraph (b) of subsection (1), or under subsection (2), may, at any time, resign from such trusteeship, by giving to the President and to the Speaker one month's notice in writing of his intention to resign.
- (4) The President may, at any time, by notice in writing, remove any Trustee appointed pursuant to paragraph (b) of subsection (1), or pursuant to subsection (2), and may appoint in the place and stead of such removed Trustee, a new Trustee, who shall exercise all of the functions and powers of the Trustee whom he has replaced.
- (5) Where, under [section 7](#), any Trustee becomes disqualified from continuing to act as such, the President shall appoint, in his place and stead, a new Trustee who shall exercise all of the functions and powers of the Trustee he has replaced.
- (6) The provisions of section 42 of the General Interpretation Act shall apply to the Trustees.

[Cap. 1:01]

## 7. Disqualifications

No person shall be appointed as a Trustee pursuant to paragraph (b) of subsection (1) of [section 6](#), or to subsection (4) or (5) of the said [section 6](#), or, having been so appointed, shall continue to act as such Trustee, who—

- (a) is an undischarged bankrupt;
- (b) has, within the past three years, been convicted of an offence involving fraud or dishonesty; or
- (c) has been removed by a court from any office of trust by reason of misconduct

## 8. Meetings of the Trustees

- (1) Subject to subsection (2), the Trustees shall meet at such places and times and as often as the Chairman, in his absolute discretion, deems meet.
- (2) A special meeting of the Trustees shall be convened by the Chairman at the written request of a majority of such Trustees.
- (3) The Chairman shall convene all meetings of the Trustees by notice in writing posted by ordinary post to each Trustee at least five days before the date of the meeting:

Provided that, if any question or problem arises in respect of the Fund, or of any scheme or insurance effected or to be effected thereunder, which, in the opinion of the Chairman requires the Trustees to meet without delay to consider such question or problem, the Chairman, may, upon giving not less than one hour's notice to the Trustees, convene such a meeting, and the provisions of this subsection shall not apply to the convening of such meeting or to the form or manner of notice thereof to be given to the Trustees.

- (4) The Chairman shall preside at all meetings of the Trustees.
- (5) The Chairman and one other Trustee shall constitute a quorum of the Trustees.
- (6) The Trustees may determine their own procedure for any meeting of the Trustees.
- (7) Matters of the policy relating to the Fund, or to any scheme, or to any insurance effected under any such scheme, shall be determined at meetings of the Trustees.

## 9. Power of the Trustee

The Trustees shall have power to hold the Fund upon and subject to the trusts declared by or under this Act, or by or under any scheme formulated under this Act, and shall have power to enter into any transaction or to do any act, which, in their opinion will tend to the advancement of the objects of the fund as declared by [section 4](#) or which is incidental or contributory thereto, and without prejudice to the generality of the foregoing, shall have power to—

- (a) formulate in conjunction with any insurer a scheme or schemes for the payment of pensions or other benefits to former Members and for the payment of pensions or other benefits to the surviving spouse, children or other dependants of deceased Members or former Members.
- (b) insure such pension scheme or schemes with such insurer and to agree to and settle the terms of any master policy to be entered into with such insurer, insuring such pension scheme or schemes;
- (c) increase, from time to time, by agreement with the relevant insurer, the amount *per annum* of any such pension benefits payable under any such scheme or the amount of any lump sum payment or other benefits payable thereunder and to provide from the Fund the amount of any additional insurance premium resultant upon any such increase;
- (d) arrange, by agreement with the relevant insurer, for death and other benefits to be payable under any such scheme to the surviving spouse, children and other dependants of any deceased Member

or deceased former Member who was a contributor to, or beneficiary under, the scheme at the date of his death;

- (e) place any surplus moneys in the Fund on deposit account in any Bank until such moneys are required for the purposes of the Fund;
- (f) otherwise manage and control the Fund to the best interests of the beneficiaries under the scheme or schemes by applying all the powers of investment prescribed by the Trustee Act.

*[Cap. 5:02]*

## 10. Duties of the executive Trustee

The executive Trustee shall be the principal administrator of the Fund and of any scheme effected under this Act, and shall be responsible to the Trustees for the day-to-day running of the Fund and of any such scheme.

## Part IV – Financial provisions

### 11. Contributions from Parliamentary remuneration

- (1) Subject to the provisions of this section, there shall be deducted from each payment of salary made to any Minister or Parliamentary Secretary, or to any Member pursuant to the National Assembly (Emoluments) Act, being a payment made in respect of any period after the 1st day of January, 1972, a sum calculated at the rate of 5 per cent of such payment; and all sums so deducted shall be paid into the Fund.

*[Cap. 2:05]*

- (2) If any salary from which a deduction is required to be made under this section is not drawn by the relevant Minister, Parliamentary Secretary or Member, as the case may be, there shall be set aside, out of such moneys as are available for the payment of such salary, a sum equal to the relevant deduction, and any sum so set aside shall be paid into the Fund as if it were a sum deducted under subsection (1), in respect of such Minister, Parliamentary Secretary or Member.
- (3) Any sums which, pursuant to any arrangement or agreement between the President, the Speaker and the Members, have been deducted from any Member's salary for pension purposes for any period before this Act comes into force, or set aside out of moneys available for the payment of any such salary, shall, in so far as and to the extent that they would have fallen to be deducted under this section if it had been enacted and in force at the material time, be treated as sums deducted or set aside under this section; and any sum, or any part thereof, so deducted or set aside, which would not in that event have fallen to be deducted or set aside under this section shall be refunded to the Member from whose salary it was deducted or set aside.

### 12. Government contributions

Subject to this Act, there shall be paid into the Fund out of moneys provided by Government in each financial year a Government contribution of an amount equal to twice the total of the sums payable into the Fund in that financial year by, or in respect of, the Ministers, Parliamentary Secretaries and Members under [section 11](#).

### 13. Conditions of pensions

Any scheme formulated and agreed by the Trustees and the insurers under this Act shall make provision for the payment of a pension to or in respect of any Member, who, after the commencement of this Act, ceases to be a Member or dies, having completed his reckonable service on or before the date upon which he so ceased to be a Member or died.

## Part V – Supplemental schemes

### 14. Trustees to formulate supplemental schemes

- (1) The Trustees shall have power to formulate, in conjunction with any insurer, a Ministers' Supplemental Scheme and a Parliamentary Secretaries' Supplemental Scheme, Supplementary to any Members Pension Scheme formulated under this Act, each of which supplemental schemes shall provide for the payment of a pension supplement or other benefits to any former Member or to the surviving spouse, children or other dependants of any such former Member, who, during any period of his reckonable service, held office as a Minister or as a Parliamentary Secretary.
- (2) Any pension supplement or other benefits payable to any former Member or to the surviving spouse, children or other dependants of any such former Member under any supplemental scheme formulated pursuant to subsection (1) shall be in addition and supplemental to any pension or other benefits payable to such former Member or to the surviving spouse, children or other dependants of any such former Member under any Members Pension Schemes, and shall be calculated upon and payable in respect of, any period, or the aggregate of any periods, of reckonable service during which any former Member held office as a Minister or as a Parliamentary Secretary, as the case may be.
- (3) No pension supplement or other benefit under any supplemental scheme formulated under subsection (1) shall be payable to any person unless or until such person is entitled to the payment of a pension or other benefit under the Members Pension Scheme to which such supplemental scheme is supplementary.

### 15. Contributions to supplemental scheme premiums

Where any supplemental scheme has been formulated under [section 14](#), the amount available out of the contributions to the Fund effected under [section 11](#) for the payment of premiums in respect of any Member to whom such supplemental scheme relates shall be applied as follows—

- (a) a sum equal to the premium payable in respect of an ordinary Member shall be applied towards the premium payment of the Members Pension Scheme in respect of the Member to whom such supplemental scheme relates;
- (b) the excess over and above (a) shall be applied towards the premium payment of the relevant supplemental scheme.

## Part VI – Miscellaneous

### 16. Rules against perpetuities, etc., not applicable

Any trusts settled by or under this Act, or by, or in furtherance of, any scheme formulated under and in accordance with this Act, shall not be avoided or limited by any rule of law which prohibits or limits the settling of property in perpetuity, or the remote vesting of property, or which prohibits or limits accumulations, or restraints upon alienation.