

Malawi

## Disaster Preparedness and Relief Act

### Chapter 33:05

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# Disaster Preparedness and Relief Act

## Contents

Part I – Preliminary .....	1
1. Short title .....	1
2. Interpretation .....	1
Part II – Commissioner for Disaster Preparedness and Relief .....	2
3. Establishment of the office of the Commissioner .....	2
4. Functions of the Commissioner .....	2
Part III – National Disaster Preparedness and Relief Committee .....	2
5. Establishment of the Committee .....	2
6. Composition of the Committee .....	2
7. Vacation of office by members of the Committee .....	3
8. Filling of vacancies on the Committee .....	3
9. Co-opted persons .....	4
10. Chairman and Vice-chairman of the Committee .....	4
11. Allowances of members of the Committee .....	4
12. Meetings and procedure of the Committee .....	4
13. Functions of the Committee .....	5
14. Sub-committees of the committee .....	5
15. Non-liability of members of the Committee or of sub-committees .....	6
Part IV – Planning sub-committees and civil protection plans .....	6
16. Planning sub-committees .....	6
17. Civil protection plans .....	6
Part V – Regional organization of civil protection .....	7
18. Civil protection plans .....	7
19. Regional civil protection officers and their assistants .....	7
20. Functions of regional civil protection officers .....	7
21. Appointment of committees and delegation of powers by regional civil protection officers .....	8
Part VI – Area organization of civil protection .....	8
22. Civil protection areas .....	8
23. Area civil protection officers and their assistants .....	8
24. Functions of area civil protection officers .....	9
25. Appointment of committees and delegation of powers by area civil protection officers .....	9
Part VII – Volunteers .....	10
26. Volunteers .....	10
27. Reimbursement and indemnification of persons employed in civil protection .....	10

28. Disability benefits .....	10
Part VIII – General powers of civil protection officers .....	11
29. Interpretation .....	11
30. Orders by civil protection officers .....	11
31. Powers of civil protection officers to requisition land and property .....	11
Part IX – Declaration of a state of disaster .....	12
32. Declaration of a state of disaster .....	12
33. Communication to the National Assembly .....	13
Part X – National Disaster Preparedness and Relief Fund .....	13
34. Establishment of the Fund .....	13
35. The Fund to vest in the Minister .....	13
36. Advances to the Fund .....	13
37. Objects of the Fund .....	13
38. Application of the Fund .....	13
39. Books and other records of account, audit and reports of the Fund .....	14
40. Holdings of the Fund .....	14
41. Financial year .....	14
Part XI – Emergency powers of the Minister .....	14
42. Minister may take over certain powers and duties during disaster .....	14
43. Burial, etc., during disasters .....	15
Part XII – Miscellaneous .....	15
44. Secretariat .....	15
45. Commissioner, etc., to deliberate at meeting of the Committee, etc. ....	15
46. Offences .....	15
47. Regulations .....	15
48. Transitional .....	16



# Malawi

## Disaster Preparedness and Relief Act

### Chapter 33:05

Commenced on 16 March 1992

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

*[Note: This version of the Act was revised and consolidated in the Forth Revised Edition of the Laws of Malawi (L.R.O. 1/2015), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

**An Act to make provision for the co-ordination and implementation of measures to alleviate effects to disasters, the establishment of the office of Commissioner for Disaster Preparedness and Relief, the establishment of a National Disaster Preparedness and Relief Committee of Malawi, and for matters incidental thereto or connected therewith**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Disaster Preparedness and Relief Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**area civil protection officer**” means an area civil protection officer referred to in [section 23](#);

“**civil protection**” means any service provided or measure taken for the purpose of preparing for, guarding against or dealing with any actual or potential disaster;

“**civil protection area**” means a civil protection area established pursuant to [section 22](#);

“**civil protection region**” means a civil protection region established pursuant to [section 18](#);

“**Committee**” means the National Disaster Preparedness and Relief Committee of Malawi established by [section 5](#);

“**Commissioner**” means the Commissioner for Disaster Preparedness and Relief appointed under [section 3](#);

“**disaster**” means an occurrence (whether natural, accidental or otherwise) on a large scale which has caused or is causing or is threatening to cause—

- (a) death or destruction of persons, animals or plants;
  - (b) disruption, pollution or scarcity of essential supplies;
  - (c) disruption of essential services;
  - (d) influx of refugees into or out of Malawi;
  - (e) plague or epidemic of disease that threatens the life or well-being of the community,
- and includes the likelihood of such occurrence;

“**Fund**” means the National Disaster Preparedness and Relief Fund established under [section 34](#);

“**planning sub-committee**” means a planning sub-committee appointed under [section 16](#);

“**state of disaster**” means a state of disaster declared under [section 32](#);

“**volunteer**” means a person who has applied to be a volunteer and whose name is entered in a register of volunteers established under [section 26](#).

## **Part II – Commissioner for Disaster Preparedness and Relief**

### **3. Establishment of the office of the Commissioner**

- (1) There shall be a Commissioner for Disaster Preparedness and Relief (in this Act referred to as the “Commissioner”) whose office shall be a public office.
- (2) In addition to the Commissioner there shall be appointed in the public service such officers subordinate to the Commissioner as are necessary for the proper performance of the functions of the Commissioner.

### **4. Functions of the Commissioner**

Subject to this Act, the Commissioner shall have the following functions—

- (a) directing the establishment of civil protection organizations and civil protection areas;
- (b) controlling and directing personnel, materials and services for the purposes of this Act;
- (c) directing and acting regional civil protecting officers and area civil protection officers in the performance of their duties under this Act;
- (d) co-ordinating the training of personnel for civil protection purposes;
- (e) generally co-ordinating the planning and execution of civil protection;
- (f) promoting research in matters relating to civil protection and disseminating information on matters of civil protection and on activities in civil protection regions and civil protection area;
- (g) advising the Minister on all matters relating to civil protection; and
- (h) performing any other functions relating to civil protection that may be assigned to him by the Committee or by the Minister under this Act.

## **Part III – National Disaster Preparedness and Relief Committee**

### **5. Establishment of the Committee**

There is hereby established a body to be known as the National Disaster Preparedness and Relief Committee of Malawi (in this Act referred to as the “Committee”).

### **6. Composition of the Committee**

- (1) The Committee shall consist of—
  - (a) the following *ex-officio* members—
    - (i) the Secretary to the President and Cabinet, or his representative;
    - (ii) the Secretary for Health, or his representative;
    - (iii) the Secretary for Community Services, or his representative;

- (iv) the Secretary for Local Government, or his representative;
  - (v) the Secretary to the Treasury, or his representative;
  - (vi) the Secretary for Economic Planning and Development, or his representative;
  - (vii) the Secretary for Works, or his representative;
  - (viii) the Secretary for Agriculture, or his representative;
  - (ix) the Secretary for Forestry and Natural Resources, or his representative;
  - (x) the Secretary for Transport and Communications, or his representative;
  - (xi) the Inspector General of Police, or his representative;
  - (xii) the Army Commander, or his representative;
  - (xiii) the Secretary for Youth and Culture or his representative;
  - (b) not less than three and not more than five other members representing the non-governmental sector appointed by the Minister.
- (2) A representative of an *ex-officio* member referred to in subsection (1) (a) shall be designated by, or on behalf of, the *ex-officio* member by notice in writing to the Committee to attend the meetings thereof, and upon such designation such representative shall not himself attend to the business of the Committee by representation.
- (3) A member of the Committee appointed under subsection (1) (b) shall hold office for a period of two years, unless his appointment is terminated sooner than the expiry of that period and shall be eligible for re-appointment.
- (4) The names of all members of the Committee as first constituted and every change in the membership of the Committee shall be published in the *Gazette*.

## 7. Vacation of office by members of the Committee

The office of a member, other than an *ex-officio* member, shall become vacant—

- (a) upon his death;
- (b) if he has been absent from three consecutive meetings of the Committee of which he has had notice, without the permission of the Chairman;
- (c) if he has been convicted of an offence without the option of a fine and sentenced to imprisonment for a period exceeding six months;
- (d) if, in the opinion of the Minister, he becomes mentally or physically incapable of performing his duties as a member of the Committee; and
- (e) if the Minister so directs.

## 8. Filling of vacancies on the Committee

- (1) On vacation of office by a member of the Committee, other than an *ex-officio* member, the vacancy shall be filled by a person appointed in accordance with the relevant provisions of [section 6](#) (1) (b) under which the former member was appointed:

Provided that if the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

- (2) If any member of the Committee is granted leave of absence by the Committee, the Committee may, if it sees fit, co-opt a person who belongs to the same organization as the member who has been granted leave to fill the vacancy during the absence of that member.

## **9. Co-opted persons**

The Committee may, in its discretion, at any time and for any period, invite any person, and the Minister may in like manner nominate any officer in the public service, to attend any meeting of the Committee and take part in the deliberations of the Committee, but such person or officer shall not be entitled to vote at that meeting.

## **10. Chairman and Vice-chairman of the Committee**

- (1) The Minister shall, by writing under his hand, designate one member of the Committee to be the Chairman thereof and the person so designated shall, subject to subsection (2), hold office for the duration of his membership on the Committee.
- (2) The office of the Chairman shall become vacant—
  - (a) if the holder resigns his office by notice to the Minister;
  - (b) if the holder of the office ceases to be a member of the Committee; and
  - (c) if the Minister so directs.
- (3) The Committee shall elect a Vice-Chairman from amongst its members who shall, subject to subsection (4), hold office for the duration of his membership on the Committee.
- (4) The office of the Vice-Chairman shall become vacant—
  - (a) if the holder resigns his office by notice in writing to the Committee;
  - (b) if the holder of the office ceases to be a member of the Committee; and
  - (c) if the Committee or the Minister so directs.
- (5) Whenever the Chairman is absent or is for any cause unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

## **11. Allowances of members of the Committee**

A member of the Committee other than an *ex-officio* member, shall be paid out of the funds of the Fund such allowances as the Minister may determine.

## **12. Meetings and procedure of the Committee**

- (1) Subject to subsection (2), the Committee shall hold ordinary meetings for the dispatch of business at least four times a year.
- (2) An extraordinary meeting of the Committee—
  - (a) may be convened by the Chairman at any time;
  - (b) shall be convened by the Chairman within twenty-one days of receipt by him of a request in writing signed by not less than five members of the Committee and specifying the purpose for which the meeting is to be convened.
- (3) At any meeting of the Committee—



- (a) the Chairman or, in his absence, the Vice-Chairman, shall preside;
  - (b) in absence of, both the Chairman and Vice-Chairman the members present and forming a quorum shall elect one of their member to preside;
  - (c) the quorum shall be formed by a majority of members;
  - (d) the decision on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of inequality of votes, the Chairman and Vice-Chairman or the person presiding shall have a casting vote in addition to this deliberative vote.
- (4) The Committee shall have power to regulate its own procedure.
- (5) The Committee shall cause minutes of every meeting of the Committee to be kept.

### 13. Functions of the Committee

The Committee shall be responsible for co-ordinating the implementation of measures to alleviate disasters in Malawi, and without prejudice to the generality of the foregoing the functions of the Committee shall include—

- (a) the planning and implementation of the measures for the establishment, maintenance and effective operation of civil protection;
- (b) reviewing, from time to time, the measures referred to in paragraph (a);
- (c) considering plans prepared by planning sub-committees pursuant to [section 17](#).

### 14. Sub-committees of the committee

- (1) In addition to the planning sub-committees, and save as otherwise provided in relation to those sub-committees, the Committee may establish any number of other sub-committees to carry out any special or general functions determined by the Committee and may delegate to any sub-committee such of the functions of the Committee as the Committee may deem expedient:

Provided that—

- (i) the vesting or imposition of any functions in a sub-committee shall not divest the committee of such functions; and
  - (ii) the Committee may vary or revoke any decision of any such sub-committee in exercise of its functions.
- (2) The Chairman shall, by reason of this office, be a member of every sub-committee established under subsection (1).
- (3) The Chairman of each sub-committee shall be appointed by the Committee from amongst the members of the Committee.
- (4) If at a meeting of a sub-committee the Chairman is absent, the members present may elect one of their number to be chairman.
- (5) Every sub-committee may, in its discretion, invite any person to attend a meeting of the sub-committee and take part in the deliberations of the meeting but such person shall not be entitled to vote.
- (6) The Chairman of a sub-committee may, at any time and place, convene a meeting of the sub-committee of which he is chairman.

- (7) The Chairman may, at any time, direct the chairman of any sub-committee to convene a meeting of such sub-committee and such chairman shall, as soon as is practicable, comply with such direction.
- (8) At all meetings of a sub-committee the quorum shall be formed by a majority of members.
- (9) At all meetings of a sub-committee each member present shall have one vote on a question before the sub-committee and, in the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.
- (10) Every sub-committee shall have the power to regulate its own procedure.
- (11) Every sub-committee shall keep minutes of its meetings and shall inform the committee of its activities.
- (12) A member of a sub-committee who is not an officer in the public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that sub-committee be paid out of the funds of the Fund such allowances as the Committee may, with the approval of the Minister, determine.

#### **15. Non-liability of members of the Committee or of sub-committees**

No member of the Committee or of any sub-committee of the Committee shall be liable for any act or default of his, or of the Committee, done in the exercise in good faith of the functions or powers of the Committee.

### **Part IV – Planning sub-committees and civil protection plans**

#### **16. Planning sub-committees**

- (1) The Committee may, from time to time, appoint such planning sub-committees as it considers necessary for the purpose of preparing plans in respect of any aspect of civil protection in any civil protection region or in any civil protection area.
- (2) A planning sub-committee shall consist of persons from the public service, local authorities, statutory bodies and such non-governmental organizations as the Committee, after consultation with the Minister, considers have a general responsibility for carrying out functions associated with or related to civil protection or which have resources and services for carrying out civil protection measures.
- (3) The Committee shall designate one of the members of a planning sub-committee as chairman.
- (4) A planning sub-committee shall hold its first meeting on such date and at such place as the Committee may fix and thereafter the planning sub-committee shall meet for the dispatch of business and adjourn, close and otherwise regulate its meeting and procedures as it considers appropriate.

#### **17. Civil protection plans**

- (1) A planning sub-committee shall prepare a civil protection plan for the civil protection region or civil protection area for which it was appointed, in which the planning sub-committee shall specify its proposals of the civil protection measures to be undertaken and the functions to be exercised by government departments, local authorities, statutory bodies and non-governmental organizations in contemplation of, or in the event of, a disaster.

- (2) The chairman of a planning sub-committee shall submit every plan prepared pursuant to subsection (1) to the Chairman who shall submit it for consideration by the Committee.
- (3) If the committee adopts a plan submitted to it under subsection (2), the Chairman shall submit the plan to the Minister for his approval.
- (4) Where the Committee does not adopt a plan submitted to it under subsection (2), the Chairman shall return the plan, together with directions, if any, given thereon by the Committee, to the appropriate planning sub-committee for a review of the plan or for a new plan to be prepared and the planning sub-committee shall endeavour to comply with such directions.
- (5) Where a plan has been approved by the Minister, every public officer and every local authority, statutory body or non-governmental organization which is required under the plan to undertake civil protection measures, shall take necessary steps to undertake and effect those measures.

## Part V – Regional organization of civil protection

### 18. Civil protection plans

- (1) The Minister may, subject to subsection (2), by order published in the *Gazette* and on the advice of the Commissioner, establish civil protection regions or declare an area to be a civil protection region for the purposes of this Act with such boundaries and names as he thinks fit and may in like manner vary or revoke the establishment or declaration of any such region.
- (2) In establishing or declaring any civil protection region the Minister shall pay due regard to—
  - (a) the boundaries of local authorities within the proposed region; and
  - (b) the boundaries of regions and districts as established by the Regional and District Boundaries and Place Names Act,

*[Cap. 18:04]*

and shall ensure that, wherever practicable, no local authority, district or region is included in two or more civil protection regions.

### 19. Regional civil protection officers and their assistants

- (1) For the carrying out of the purposes of this Act, there shall be appointed in the public service a regional civil protection officer for each civil protection region and such other officers assistant to him as may be necessary.
- (2) In performing their duties under this Act, regional civil protection officers and their assistants shall be subordinate to the Commissioner.

### 20. Functions of regional civil protection officers

- (1) Subject to this Act, a regional civil protection officer shall, within the civil protection region for which he has been appointed, be responsible for—
  - (a) co-ordinating the planning of civil protection measures;
  - (b) co-ordinating the training of personnel for civil protection purposes;
  - (c) directing and assisting area civil protection officers in the execution of their duties; and
  - (d) preparing reports on civil protection activities in his civil protection region regularly and whenever he is required to do so by the Commissioner or the Committee.

- (2) Subject to any instructions given to him by the regional civil officer for his region, an assistant to the regional civil protection officer may exercise all the powers conferred, and shall perform all the duties imposed, upon a regional civil protection officer under this Act.

## **21. Appointment of committees and delegation of powers by regional civil protection officers**

- (1) A regional civil protection officer may, and if so directed by the Commissioner shall, appoint one or more committees to advise and assist him in the performance of his functions under this Act.
- (2) A regional civil protection officer may with the consent of the Commissioner, and if so directed by the Commissioner shall, delegate all or any of his powers to any committee appointed by him under subsection (1) or to any other person.
- (3) Delegation of any power by a regional civil protection officer under subsection (2) shall not divest him of that power, and he may at any time vary or revoke any decision of any committee or person in the exercise of that power:

Provided that where the regional civil protection officer has been directed by the Commissioner to delegate any power to a committee or person, he shall not vary or revoke a decision of any such committee or person except with the consent of the Commissioner but may express such views thereon as he considers appropriate.

- (4) Where there has been delegation of powers to a committee or to any person under subsection (2), the regional civil protection officer shall, in writing, notify the committee or the person of the delegation and shall, in the notification, specify the terms of the delegation.

## **Part VI – Area organization of civil protection**

### **22. Civil protection areas**

- (1) The Minister may, subject to subsection (2), by order published in the *Gazette*, and on the advice of the Commissioner, establish civil protection areas in civil protection regions or declare any area to be a civil protection area for the purposes of this Act with such names as he thinks fit and may in like manner vary or revoke the establishment or declaration of any such area.
- (2) In declaring any civil protection area the Minister shall pay due regard to—
  - (a) the boundaries of local authorities within the proposed area; and
  - (b) the boundaries of districts established under the Regional and Districts Boundaries and Place Names Act,

[Cap. 18:04]

and shall ensure that, wherever practicable, no local authority or district is included in two or more civil protection areas.

### **23. Area civil protection officers and their assistants**

- (1) For the carrying out of the purposes of this Act, there shall be appointed in the public service an area civil protection officer for each civil protection area and such other officers assistant to him as may be necessary.
- (2) In performing their duties under the Act area civil protection officers and their assistants shall be subordinate to their respective regional civil protection officer and to the Commissioner.

## 24. Functions of area civil protection officers

- (1) Subject to this Act, an area civil protection officer shall, within the civil protection area for which he has been appointed, be responsible for—
  - (a) the establishment, maintenance and command of civil protection organizations;
  - (b) the provision, operation and co-ordination of all civil protection services and activities;
  - (c) giving such orders and taking such measures, during a state of disaster, as in his opinion are reasonably necessary in order to deal with such state of disaster;
  - (d) co-ordinating the use of materials and services made available by government departments, local authorities, statutory bodies and other non-governmental organizations during a state of disaster; and
  - (e) the preparation of reports on civil protection generally in his civil protection area whenever he is required to do so by the regional civil protection officer or by the Commissioner or the Committee.
- (2) In the exercise of his functions, an area civil protection officer may—
  - (a) enter into arrangements, other than financial arrangements, with any person whereby that person makes available or undertakes to make available his services or those of his staff, whether individually or in units under the control of that person for the purpose of carrying out such civil protection measures and activities as may be agreed upon;
  - (b) cause personnel to be trained for civil protection purposes within the civil protection area under his jurisdiction;
  - (c) disseminate information and advice on matters relating to civil protection to local authorities or to the public generally.
- (3) Whenever it is possible to do so, an area civil protection officer shall exercise his powers under this Act after consultation and in cooperation with the District Commissioner and the commanding officers of the Malawi Police Service and the Malawi Defence Force within his civil protection area.
- (4) Subject to any instructions given to him by the area civil protection officer for his area, an assistant to the area civil protection officer may exercise all the powers conferred, and shall perform all the duties imposed, upon an area civil protection officer under this Act.

## 25. Appointment of committees and delegation of powers by area civil protection officers

- (1) An area civil protection officer may, and if so directed by the Commissioner shall, appoint one or more committees to advise and assist him in the performance of his functions under this Act.
- (2) An area civil protection officer may, with the consent of the Commissioner, and if so directed by the Commissioner shall, delegate all or any of his powers to any committee appointed by him under subsection (1) or to any other person.
- (3) Delegation of any power by an area civil protection officer under subsection (2) shall not divest him of that power, and he may at any time vary or revoke a decision of any committee or any person in the exercise of that power:

Provided that where the area civil protection officer has been directed by the Commissioner to delegate any power to a committee or person he shall not vary or revoke the decision of any such committee or person except with the consent of the Commissioner but may express such views thereon as he considers appropriate.

- (4) Where there has been delegation of powers to a committee or to any person under subsection (2), the area civil protection officer shall, in writing, notify the committee of the delegation and shall, in the notification, specify the terms of the delegation.

## Part VII – Volunteers

### 26. Volunteers

- (1) Any person may, by applying to the area civil protection officer for the civil protection area concerned, volunteer—
  - (a) to serve in a civil protection organization for the civil protection area; or
  - (b) to provide or assist in the provision of any civil protection service within the civil protection area; or
  - (c) to perform, within the civil protection area, any function connected with civil protection, and the area civil protection officer shall enter the name of such person in the register kept pursuant to subsection (4).
- (2) A volunteer may resign as a volunteer upon giving fourteen days' notice in writing to the area civil protection officer for the civil protection area concerned who shall, upon the expiry of that period, remove the volunteer's name from the register.
- (3) A volunteer shall comply with every reasonable instruction given to him by the area civil protection officer for the civil protection area concerned or by any person authorized to give such instruction by the area civil protection officer.
- (4) Every area civil protection officer shall maintain a register of all volunteers in the civil protection area within which he may exercise his powers.

### 27. Reimbursement and indemnification of persons employed in civil protection

Every volunteer and any other person employed in a civil protection organization established and maintained under this Act shall be reimbursed and indemnified from the proceeds of the Fund to such extent and in such manner as may be prescribed for any reasonable expense or liability incurred by such volunteer or other person as a result of—

- (a) carrying out any order or performing any civil protection service under this Act; or
- (b) making available, for purposes of civil protection, any land or other property.

### 28. Disability benefits

- (1) Any written law relating to the payment of compensation on death of, or injury to, an officer in the public service shall, *mutatis mutandis*, apply in relation to a volunteer or other person performing any duty under this Act as though he were an officer in the public service; and for the purpose of this section every such volunteer shall be ranked at a grade of Technical Officer (T.O.) and be assigned the highest salary point of that grade.
- (2) Any compensation payable under subsection (1) shall be paid out of the Consolidated Fund without further appropriation than this Act.

## Part VIII – General powers of civil protection officers

### 29. Interpretation

In this Part—

“**civil protection officer**” includes a regional civil protection officer, an officer assistant to a regional civil protection officer, an area civil protection officer and an officer assistant to an area civil protection officer.

### 30. Orders by civil protection officers

- (1) Subject to this Act, a civil protection officer may, by order in writing, direct any person—
  - (a) to supply him with information relating to the existence and availability of any service, facility or thing whatsoever which may be used for or in connexion with civil protection and which is under the control or in the possession of such person;
  - (b) to maintain such specified stocks of fuel, food, water, medical supplies, for use during a state of disaster as he may reasonably be expected to maintain; and
  - (c) while, declaration of a state of disaster under this Act is in force, to perform any work or render any service which, as a result of the disaster, is reasonably necessary for the purpose of dealing with the situation.
- (2) Every civil protection officer and every person employed in a civil protection capacity shall keep secret and aid in keeping secret any information supplied in compliance with an order given under paragraph (a) of subsection (1).
- (3) Any person aggrieved by an order given under paragraph (a), (b) or (c) of subsection (1) may appeal in writing against the order to the Minister.
- (4) In any appeal under subsection (3), the Minister, after inviting the civil protection officer concerned to submit written representations in the matter and considering any representations so submitted, may confirm, vary or set aside the order appealed against or give such other directions in the matter as he thinks appropriate.

### 31. Powers of civil protection officers to requisition land and property

- (1) Subject to subsection (2), a civil protection officer may, while a declaration of a state of disaster under this Act is in force, take possession or control of any land or other property whatsoever for the purpose of dealing with the situation that has arisen.
- (2) As soon as possible after taking possession or control of any land or property under subsection (1), a civil protection officer shall cause written notice of such taking to be served on any person owning or possessing such land or property:

Provided that, if it is expedient to do so, the civil protection officer shall cause such notice to be served before taking possession or control of the land or property concerned.
- (3) Any person from whom possession or control of any land or property has been or is about to be taken in accordance with this section may, if he objects to such taking, notify in writing the civil protection officer concerned accordingly, and upon such notification the civil protection officer, if he does not accept the objection, shall instruct the Attorney General to apply to the High Court for a determination of his right to exercise his powers under this Act to take possession or control of the land or property in question, and such application shall be made within thirty days after the written notification by the person objecting.

- (4) On an application under subsection (3), the High Court shall, unless it is satisfied that the exercise of the power by the civil protection officer concerned was reasonably justified in the circumstances of the situation arising or existing as a result of the disaster concerned or giving rise to the declaration of the state of disaster for the purpose of dealing with that situation, order the civil protection officer to return any land or property which he has taken into his possession or control or to cancel his notice of intention to take possession or control thereof, as the case may be.
- (5) When the continued possession or control by a civil protection officer of any land or property taken under this section is no longer required or is no longer reasonably justified for the purpose of this Act, that land or property shall, wherever possible, be promptly returned to the person entitled to its possession or control and as far as possible in the condition in which it was at the time of such, taking of possession or control.
- (6) Adequate compensation shall be paid promptly out of the Fund for—
  - (a) the taking of possession or control of any land or property under this section;
  - (b) where appropriate, any failure to return any land or property in accordance with subsection (4) or (5); and
  - (c) any damage to any land or property taken under this section.
- (7) The owner or any other person entitled to the return of any land or property under subsection (5) or entitled to compensation under subsection (6) may apply to the High Court for the return of the land or property or for the determination of his right thereto or the amount of compensation, as the case may be, and the High Court shall make such order in respect thereof as it thinks fit.
- (8) Part II of the Lands Acquisition Act shall, *mutatis mutandis*, apply in respect of a claim for compensation for land taken under this section.  
[Cap. 58:04]
- (9) No land or other property owned or possessed by the Government shall be taken under this section without the consent of the Minister responsible for the land.

## Part IX – Declaration of a state of disaster

### 32. Declaration of a state of disaster

- (1) If at any time it appears to the President that any disaster is of such a nature and extent that extraordinary measures are necessary to assist and protect the persons affected or likely to be affected by the disaster in any area within Malawi or that circumstances are likely to arise making such measures necessary, the President may, in such manner as he considers fit, declare that, with effect from a date specified by him in the declaration, a state of disaster exists within an area defined by him in the declaration:

Provided that where such declaration has been made in any manner other than by notice in the *Gazette*, the President shall, as soon as possible after making it, cause it to be published in the *Gazette*.

- (2) The declaration of a state of disaster under subsection (1) shall remain in force for a period of three months from the date specified in the declaration as the commencement date of the state of disaster, unless the President by notice in the *Gazette*, withdraws such declaration before the expiry of such period:

Provided that the President may, from time to time, extend or further extend such period by not more than another three months and shall do so by notice in the *Gazette*, published before the expiry of such period or any such extension thereof.



### 33. Communication to the National Assembly

Where a state of disaster has been declared under [section 32](#) the Minister shall communicate such declaration to the National Assembly during the meeting next occurring after the declaration.

## Part X – National Disaster Preparedness and Relief Fund

### 34. Establishment of the Fund

- (1) There is hereby established a fund to be known as the National Disaster Preparedness and Relief Fund (in this Act referred to as the “Fund”).
- (2) The Fund shall consist of—
  - (a) such sums as shall be appropriated by Parliament for the purposes of the Fund;
  - (b) advances made to the Fund under [section 36](#);
  - (c) such sums as may be received for the purposes of the Fund by way of voluntary contributions; and
  - (d) such sums or other assets as may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body.

### 35. The Fund to vest in the Minister

The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions.

### 36. Advances to the Fund

If in any financial year the income of the Fund, together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make advances to the Fund out of moneys appropriated for that purpose by Parliament in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

### 37. Objects of the Fund

The objects for which the Fund is established shall be the development, promotion, management and administration of civil protection.

### 38. Application of the Fund

Without derogation from the generality of [section 37](#), the Fund may be applied to—

- (a) research and training which is calculated to promote civil protection;
- (b) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;
- (c) the cost of any scheme which the Minister considers to be in the interest of civil protection;
- (d) meeting any expenses arising from the establishment and maintenance of the Fund; and

- (e) any purpose which the Minister considers to be in the interest of the objects of the Fund.

### **39. Books and other records of account, audit and reports of the Fund**

- (1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund.
- (2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by Part VI of the Finance and Audit Act.

*[Cap. 37:01]*

- (3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.
- (4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

### **40. Holdings of the Fund**

- (1) All sums received for the purposes of the Fund shall be paid into a banking account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.
- (2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

### **41. Financial year**

The financial year of the Fund shall be the period of twelve months ending on the 31st March in each year:

Provided that first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

## **Part XI – Emergency powers of the Minister**

### **42. Minister may take over certain powers and duties during disaster**

- (1) Where a state of disaster has, under this Act, been declared to exist in any area and the Minister considers that the civil protection organization in that area is unable to provide adequate civil protection to meet the disaster, the Minister, on the advice of the Committee, may—
  - (a) by notice published in such manner as he thinks fit—
    - (i) take over, to such extent and for such purposes as he may specify in the notice, any power or duty conferred or imposed by or under this Act upon the area civil protection officer for the civil protection area concerned;
    - (ii) confer or impose upon any person or authority any power or duty conferred or imposed upon an area civil protection officer or other person by or under this Act: Provided that if such notice has been made in any manner other than by publication in the *Gazette*, the Minister shall, as soon as possible after making the notice, cause it to be published in the *Gazette*,

- (b) direct any person employed in the public service to render such assistance as the Minister may direct to any area civil protection officer or other person upon whom a power or duty is conferred by or under this Act.
- (2) Where the Minister has, by notice under subsection (1)—
  - (a) taken over any powers or duties; or
  - (b) conferred or imposed powers or duties on any person or authority, any reference in this Act to the exercise of such powers or the performance of such duties by any person or authority shall be construed as reference to the exercise of the powers or the performance of the duties by the Minister or the person or authority upon whom he has conferred or imposed such powers or duties.

#### **43. Burial, etc., during disasters**

Where the Minister is satisfied that persons have died as a result of any disaster, he may, after consulting with the Minister responsible for health, if he considers that it is necessary or expedient to do so, give directions and make such arrangements as he considers appropriate in respect of—

- (a) the removal, safe custody, examination, burial or cremation of the remains of the persons concerned;
  - (b) the issue of certificates in respect of the deaths or causes of death of the persons concerned;
  - (c) any other related matters,
- and any such directions or arrangements shall have effect notwithstanding any written law to the contrary.

### **Part XII – Miscellaneous**

#### **44. Secretariat**

The Commissioner, every regional civil protection officer and every area civil protection officer shall act as secretary to the Committee and any committee appointed under Part V and any committee appointed under Part VI, respectively.

#### **45. Commissioner, etc., to deliberate at meeting of the Committee, etc.**

The Commissioner and such other officers as he may designate shall be entitled to attend meetings of the Committee and to take part in the deliberations thereof but shall not be entitled to vote, and regional or area civil protection officers shall similarly be entitled to attend meetings of their respective committees.

#### **46. Offences**

Any person, who without lawful excuse, fails to comply with an order, direction or instruction given under this Act shall be guilty of an offence and liable to a fine of K5,000 or to imprisonment for three years.

#### **47. Regulations**

The Minister may make regulations providing for all matters which, in his opinion, are necessary or expedient for giving effect to this Act.

**48. Transitional**

If at the commencement of this Act there are—

- (a) any sums held in an account or a special fund of the Government; or
  - (b) any materials at the disposal of the Government,
- for the purpose of managing any existing disaster, such sums or materials shall forthwith transfer to the Fund and shall be applied in accordance with this Act as if the disaster had been declared under this Act.