

[Chap0903]CHAPTER 9:03

CONVICTED PERSONS (EMPLOYMENT ON PUBLIC WORK)

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Power of court to order persons to perform public work
4. Payment of fine either in full or in part
5. Duties of persons ordered to perform public work
6. Penalty for failure to comply with an order to perform public work
7. Revision and appeals
8. Rules
9. Saving

16 of 1954

39 of 1954

27 of 1964 (N)

G.N. 166/1967

An Act to consolidate and amend the law relating to the employment of convicted persons on public work

[28TH MAY 1954]

[Ch0903s1]1. Short title

This Act may be cited as the Convicted Persons (Employment on Public Work) Act.

[Ch0903s2]2. Interpretation

In this Act, unless the context otherwise requires—

“court” means a subordinate court and includes a Traditional Court to the extent to which it is empowered under the Traditional Courts Act to make an order to perform public work. Cap. 3:03

[Ch0903s3]3. Power or court to order persons to perform public work

(1) When a person is convicted of any offence by a court and such court is of opinion that the offence would be adequately punished by a sentence of imprisonment not exceeding six months, the court may, instead of awarding a sentence of imprisonment, order such person to perform public work for a period not exceeding six months.

(2) Subject to subsection (1), the court shall not order any person to perform public work for a longer period than the maximum sentence of imprisonment which it could have imposed on such person in respect of the offence of which he has been convicted.

(3) Where any Act provides that an offence is punishable by fine only or by fine and imprisonment in default of payment of such fine, the court may order the person convicted to perform public work for a period not exceeding six months in default of payment.

(4) Notwithstanding the Criminal Procedure and Evidence Code, no court may order a person to perform public work for a total period exceeding six months where such order is made in respect of two or more offences tried together. Cap. 8:01

[Ch0903s4]4. Payment of fine either in full or in part

(1) If any person, ordered to perform public work in default of payment of a fine, pays such fine in full to the court which so ordered him, the order shall thereupon determine.

(2) If any person, ordered to perform public work in default of payment of a fine, pays any sum in part satisfaction of such fine, the period of the public work ordered to be performed by him shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person was ordered to perform public work as the sum so paid bears to the fine imposed.

(3) Where any person is desirous of taking advantage of subsection (2), any payment in part satisfaction of the fine shall be made by such person to the court which ordered him to perform public work and the court shall certify the number of days by which the period of public work originally ordered is reduced by such payment.

[Ch0903s5]5. Duties of persons ordered to perform public work

A person ordered by a court to perform public work shall—

(a) work for a period not exceeding eight hours each day (excluding Sundays and public holidays) on such work as shall be allotted to him by the District Commissioner of the District in which such person was convicted or by any person authorized by such District Commissioner in that behalf;

(b) reside in such place as the District Commissioner shall direct, or, if the court so orders, in a camp.

[Ch0903s6]6. Penalty for failure to comply with an order to perform public work

(1) Every person ordered by a court to perform public work who shall without reasonable cause—

(a) fail to perform the work lawfully allotted to him; or

(b) absent himself from his place of work or of residence; or

(c) fail to comply with any Rules made under this Act,

shall be liable to imprisonment for six months:

Provided that where any person is sentenced to a term of imprisonment under this subsection, the court imposing such sentence of imprisonment may, in its discretion, revoke the order to perform public work.

(2) A return of all sentences imposed by a court under this section shall be made monthly to the High Court.

[Ch0903s7]7. Revision and appeal

Where a sentence of fine or imprisonment or an order to perform public work comes before the High Court on appeal or in exercise of its powers of revision, the High Court may alter any sentence of fine or imprisonment to an order to perform public work, or an order to perform public work to a sentence of fine or imprisonment.

[Ch0903s8]8. Rules

The Minister may make Rules—

(a) prescribing the nature of the public work to be performed under this Act;

(b) establishing camps in which persons ordered to perform public work may be required to reside;

(c) prescribing the manner in which persons ordered to perform public work shall be supervised;

(d) prescribing anything which, under this Act, may be or is to be prescribed;

(e) generally for the better carrying into effect of this Act.

[Ch0903s9]9. Saving

22 of 1946 Any rules made under the Convicted Persons (Employment on Public Work) Ordinance, 1946 (now repealed) and in force at the time of the coming into operation of this Act shall be deemed to have been made under this Act and shall continue in force until other Rules shall be made by virtue of this Act.

## SUBSIDIARY LEGISLATION

### CONVICTED PERSONS (EMPLOYMENT ON PUBLIC WORK) RULES

deemed to be made under s. 8

[made under s. 8 of the Convicted Persons (Employment on Public Work) Ordinance, 1946, No. 22 of 1946 (now repealed)]

G.N.149/1948

152/1964(M)

#### 1. Citation

These Rules may be cited as the Convicted Persons (Employment on Public Work) Rules.

#### 2. Minister may declare camps

The Minister may by notice published in the Gazette declare any place to be a labour camp for the purpose of these Rules.

#### 3. Interpretation

In these Rules—

“camp” means a labour camp declared under rule 2;

“labourer” means any person who has been ordered by a court to perform public work under section 3 of the Act and who has been directed by a District Commissioner to reside in a camp under section 5 (b) of the Act.

#### 4. Medical Examination

Any person who has been ordered by a Court to perform public work may be permitted, at the discretion of the public officer having responsibility for the allocation of such work, to be examined by a medical officer who shall notify whether or not that person is fit to perform ordinary labour.

#### 5. Management of a camp

Every camp shall be under the management of a public officer appointed by the Minister.

6. Appointment of a clerk and labour supervisor

The officer appointed as manager of the camp shall appoint one clerk in charge who shall be responsible for the keeping of camp stores, the issue of rations, the making of returns, and the sanitary condition of the camp.

7. Provision of food

Food shall be provided for labourers so far as possible in accordance with the diet prescribed in the Third Schedule to the Prison Regulations, and labourers shall partake of food before commencing and at the end of the day's work: Cap. 9:02, p. 46

Provided that it shall be lawful to pay such cash allowance, if any, as the Minister may, from time to time, determine, in lieu of food.

8. Work to be performed

Labourers shall unless a District Commissioner otherwise directs perform such work as is ordinarily performed by paid labourers employed by the Government department having management of the camp.

9. Duty to obey orders

Every labourer shall obey all lawful and reasonable orders given by a clerk in charge or supervisor of labour.

10. Permission to leave camp

Labourers may be given permission to leave the camp area from after work until sunset on Mondays to Fridays inclusive and from after work on Saturdays until sunset on the ensuing Sunday.

11. Medical officer

The officer in medical charge of the District in which a camp is declared under rule 2 shall visit such camp at least once in every month.

42 of 1967 DECLARATION OF LABOUR CAMPS

under r. 2

of the Convicted Persons (Employment on Public Work) Rules

The following places have been declared to be labour camps for the purposes of the Convicted Persons (Employment on Public Work) Rules—

(1) the buildings enclosed by a wire fence at Mpatamanga, in the Southern Region; G.N. 128/1953

(2) the buildings constructed for the purpose at the Agricultural Research Station, Chitedze, Lilongwe, in the Central Region; G.N. 129/1953

(3) The Kochirira Leper Settlement. G.N. 212/1953

(4) Bvumbwe Experimental Station. G.N. 116/1958(F)

[Chap0905]CHAPTER 9:05

ADVISORY COMMITTEE ON THE GRANTING OF PARDON

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Composition of the Committee
4. Meetings of the Committee

9 of 1995

An Act to make provisions relating to the formation and composition of the Advisory Committee on the Granting of Pardon and for matters ancillary thereto or connected therewith

[19TH MAY 1995]

[Ch0905s1]1. Short title

This Act may be cited as the Advisory Committee on the Granting of Pardon Act.

[Ch0905s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Committee” means the Advisory Committee on the Granting of Pardon required to be constituted pursuant to section 89 (2) of the Constitution.

[Ch0905s3]3. Composition of the Committee

The Committee shall consist of—

- (a) the President;
- (b) such number of ministers of the Government as the President shall consider appropriate to appoint to the Committee; and
- (c) the Attorney General.

[Ch0905s4]4. Meetings of the Committee

- (1) The Committee shall meet at such places and times as the President shall determine.
- (2) Meetings of the Committee shall be presided over by the President.
- (3) The Committee shall have power to determine its own procedure for its meetings.

[Chap1001]CHAPTER 10:01

ADMINISTRATOR GENERAL

ARRANGEMENT OF SECTIONS

SECTION

- 1. Short title
- 2. Incorporation of Administrator General
- 3. Appointment of Administrator General [Repealed by Act No. 30 of 1994]
- 4. District Commissioner to act as agent of Administrator General
- 5. Administrator General or his agents not liable for acts done in performance of their duties
- 6. Protection of certain property
- 7. Cases in which Administrator General may apply for administration
- 8. Administrator General may be appointed executor
- 9. Notice of application

10. Grant to Administrator General may be revoked and grant made to other person
11. Administrator General to make inventory and keep accounts
12. Court may appoint persons to receive minor's share
13. Unclaimed and small balances
14. Liability of the Government
15. Fees of Administrator General
16. Minister may make Rules
17. Transitional

30 of 1967

30 of 1994

An Act to incorporate the Administrator General and to provide for the Official Administration of the Estates of deceased persons and other Trusts and for matters incidental thereto

[6TH NOVEMBER 1967]

[Ch1001s1]1. Short title

This Act may be cited as the Administrator General Act.

[Ch1001s2]2. Incorporation of Administrator General

30 of 1994(1) There shall be appointed in the public service an officer to be designated as Administrator General and such other officers subordinate to him may be required to carry out the functions and duties of the Administrator General.

(2) The Administrator General and his successors in office shall be a body corporate under the name of Administrator General (hereinafter in this section referred to as "the Corporation").

(3) The Corporation may sue and be sued in its own name and shall have perpetual succession and a common seal:

Provided that until such time as a common seal for the Corporation can be provided the Corporation may use such seal or stamp as may be approved by the Minister.

(4) The Corporation may acquire, hold and enjoy property of every description and may convey, assign, mortgage, charge, devise or otherwise dispose of or deal with any property vested in the Corporation upon such terms as to the Corporation seems fit, and may do all such other acts and things



as bodies corporate may lawfully do, including acting as a trust corporation, and as guardian ad litem or next friend of any person under a disability.

(5) The seal of the Corporation may be affixed to any document on the authority of the officer for the time being discharging the duties of the office of Administrator General who shall sign every document to which the seal is affixed and such signature shall be sufficient evidence that the seal was duly and properly affixed.

(6) A notice published in the Gazette of the appointment of any person to hold or act in the office of Administrator General shall be conclusive evidence that such person was duly so appointed.

[Ch1001s3]3. Appointment of Administrator General

[Repealed by Act No. 30 of 1994]

[Ch1001s4]4. District Commissioner to act as agent of Administrator General

Every District Commissioner shall, at the request of the Administrator General, act as his agent for the purposes of this Act:

Provided that nothing herein contained shall affect the Administrator General's power to appoint such other agents as he thinks fit.

[Ch1001s5]5. Administrator General or his agents not liable for acts done in performance of their duties

Neither the Administrator General nor any of his agents shall be personally liable to any person in respect of goods or chattels in the possession at the time of his death of any person whose estate shall be administered by the Administrator General which shall be sold by the Administrator General or such agents unless the Administrator General or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of the person whose estate is being administered by him, and generally neither the Administrator General nor any agent shall be liable for any act done by him bona fide in the supposed and the intended performance of his duties unless it shall be shown that such act was done not only illegally, but willfully or with gross negligence:

Provided always that in case of any sale by the Administrator General or any agent of goods or chattels belonging in fact to any third person the amount realised by such sale shall be paid over to the owner upon proof by him of such ownership unless the same shall have already been applied in payment of the debts of the deceased or shall have been distributed in the ordinary course of administration whilst the Administrator General or agent was in ignorance and without actual notice of the claim of such person to the goods or chattels sold.

[Ch1001s6]6. Protection of certain property

(1) Where any person has died and—

(a) it is not known to the District Commissioner of the District in which he died that he has left any widow, other relative or executor who can properly administer his estate; or

(b) it appears advisable to the Administrator General or to such District Commissioner for the protection of the property of the deceased person,

the District Commissioner may take into his custody, without any grant or order of court, all the property of which the deceased was possessed and shall forthwith report the death and particulars of the property to the Administrator General.

(2) A District Commissioner who takes custody of any property under subsection (1) shall dispose of such property in accordance with the directions of the Administrator General.

[Ch1001s7]7. Cases in which Administrator General may apply for administration

Where—

(a) the Administrator General has received a report from a District Commissioner under section 6; or

(b) it otherwise comes to the knowledge of the Administrator General that a person has died and that no person has obtained a grant of probate or letters of administration to his estate,

the Administrator General may apply to the court for a grant of letters of administration, with or without a will annexed, to the estate of the deceased and the Court may make such a grant:

Provided that—

(i) no such grant shall be made by the Court until after the expiration of 3 months from the death of the deceased if the Court considers it likely that a person may apply for a grant to whom the Court would, but for this section, make a grant;

(ii) the Administrator General shall not apply to a Local Court for any grant.

[Ch1001s8]8. Administrator General may be appointed executor

Any person may appoint the Administrator General to be executor of his will:

Provided that nothing in this section shall deprive the Administrator General of his right to renounce probate of any will.

[Ch1001s9]9. Notice of application

The Administrator General shall cause notice of his intention to apply for letters of administration under section 7 to be published in the Gazette at least fourteen days before making the application and the cost of such publication shall in every case be deemed to be a testamentary expense

and be payable out of the estate of the deceased whether such estate be administered by the Administrator General or any other person:

Provided that nothing in this section shall be construed to limit in any way the powers of the Court to order the sale of perishable property or to make any other order for the interim protection of any estate.

[Ch1001s10]10. Grant to Administrator General may be revoked and grant made to other person

At any time after a grant of letters of administration to the Administrator General under this Act, any person to whom the High Court might have committed administration if no such grant had been made may apply to the High Court for revocation of such grant and for the grant to himself of probate or letters of administration; but no such application shall be made until seven days after notice of intention to make it shall have been given to the Administrator General. Upon such application the High Court, after hearing the Administrator General if he appears, may revoke the grant to the Administrator General and grant probate or letters of administration to the applicant subject to such limitations and conditions as it may think fit.

[Ch1001s11]11. Administrator General to make inventory and keep accounts

The Administrator General shall make a complete inventory of every estate of which administration is committed to him, and shall keep an account of all receipts, payments and dealings with every such estate.

[Ch1001s12]12. Court may appoint persons to receive minor's share

Where any person entitled to a share under the will or in the distribution of the estate of a deceased person whose estate is being administered by the Administrator General is a minor, the High Court may, upon the application of the Administrator General, appoint the father or mother of such minor or some other suitable person to receive the share of such minor on his behalf and upon such appointment being made the Administrator General may pay the share of such minor to such person on behalf of such minor and the receipt of such person shall be a full and complete discharge to the Administrator General so far as regards such share.

[Ch1001s13]13. Unclaimed and small balances

(1) If after payment of all claims which have been made and admitted or established against an estate being administered by the Administrator General there remains in the hands of the Administrator General a balance to which no person has established a claim, the Administrator General shall publish a notice in the Gazette notifying the fact that such balance remains in his hands and calling upon all persons having any claim thereto to send in such claim to him.

(2) After the expiration of two years from the publication of any such notice the Administrator General shall pay any balance as to which no claim shall have been established into the Consolidated Fund and upon such payment all claims of any person whatsoever thereto shall become extinguished:

Provided that nothing herein contained shall prejudice or affect legal proceedings in respect of any such claim which shall have been instituted before the expiration of the said period of two years.

(3) Where the cost of distribution of any balance of an estate in the hands of the Administrator General would exceed the amount of such balance, the Administrator General may pay that balance into the Consolidated Fund and thereupon all claims of any person thereto or to any share therein shall become extinguished.

[Ch1001s14]14. Liability of the Government

The Government shall be liable to make good all sums required to discharge any liability which the Administrator General, if he were an individual, would be personally liable to discharge and any sums so paid by the Government shall be a charge on the Consolidated Fund.

[Ch1001s15]15. Fees of Administrator General

(1) There shall be payable to the Administrator General out of every estate administered by him such fees as the Minister may by Rule prescribe.

(2) The Administrator General shall be entitled to recover from the estate any payments properly made by him or his agents in respect of any estate in his or their charge.

(3) The fees and reimbursements authorized by this section shall be a first charge on the estate after payment of funeral expenses, and shall be paid into the Consolidated Fund.

[Ch1001s16]16. Minister may make Rules

The Minister may make Rules for the better carrying out of the purposes and provisions of this Act.

[Ch1001s17]17. Transitional

24 of 1921(1) Notwithstanding the repeal of the Administrator General's Ordinance, all Rules made thereunder shall, until revoked, remain in full force and effect as if they had been made under this Act.

(2) The Corporation sole incorporated by this Act shall be deemed the successor to the corporation incorporated under the Administrator General's Ordinance (now repealed) and all property, rights, obligations and liabilities which immediately before the coming into operation of this Act were held for, vested in, belonged to or were obligations or liabilities of the Administrator General incorporated by the said Ordinance shall upon the coming into operation of this Act vest in or, as the case may be, be held for, belong to or be the obligations or liabilities of the Administrator General incorporated by this Act.

SUBSIDIARY LEGISLATION

ADMINISTRATOR GENERAL'S (FEES) RULES

deemed to be made under s. 15

[made under s. 19 of the Administrator General Ordinance, 1921 (now repealed)]

G.N.68/1963

1. Citation

These Rules may be cited as the Administrator General's (Fees) Rules.

2. Fees

Fees at the following rates shall be payable to the Administrator General out of every estate administered by him—

(a) on the value of the assets in Malawi—

(i) on the first £1,000 or less of such value 5% (ii) on the second " " " 4% (iii) on the third " " " 3% (iv) on the fourth " " " 2% (v) on the fifth " " " 1% (vi) on the remainder of such value ½%:

Provided that the minimum fee under this head shall be £10;

(b) in respect of any part of the estate outside Malawi which is distributed by the Administrator General or by his agent on his behalf, on the value of the assets 1%:

Provided that the fee under this head shall be additional to the proper charges of the agents who administer the assets outside Malawi;

(c) on all income of the estate received by the Administrator General  
5%:

Provided that where the Administrator General carries on a business on behalf of the estate, the percentage payable shall be charged on the net income received from the business;

(d) in the case of an insolvent estate, upon the amounts which would be available for distribution but for payment of this fee, an additional fee at the rate of 2%.

3. Meaning of the value of assets

(1) The expression "the value of the assets" means the gross value before making any deduction except in respect of a specific charge on the asset, and—

(a) when the assets are realized, at the date of such realization;

(b) where the assets are not realized, at the date of distribution to the beneficiaries.

7 of 1945(2) The expression "the value of the assets" shall not include any gratuity granted under section 16 of the European Officers Pensions Ordinance, 1945, or any other written law, or any assets not administered by the Administrator General or held by the deceased as a trustee.

4. Fees when payable

(a) The fees payable under rule 2 (a) shall be due when the Administrator General has taken the initial steps to administer the estate, but the Administrator General shall have a discretion to postpone taking payment in whole or in part to such date or dates as may be convenient in due course of administration.

(b) The fees payable under rule 2 (b) and (c) shall be due on receipt of the assets or income by the Administrator General and may be charged in the accounts at intervals of six months.

(c) The fees payable under rule 2 (d) shall be due and paid immediately before a distribution is made.

5. Remittance of fees

If, upon application made to him by the Administrator General or by any person interested in the estate, the Registrar of the High Court certifies in writing under his hand that—

(a) the circumstances have been such as to render the duties of the Administrator General-exceptionally simple;

(b) the Administrator General has, before completing the administration of the estate, the duty to hand over the assets of the estate to some other person to whom the High Court has granted probate or letters of administration;

(c) by reason of the poverty of any person beneficially interested in the estate a remission of some part of the fees is desirable,

a part of the fees not exceeding one half may be remitted:

Provided that—

(i) the certificate of the Registrar records his reasons for remission;

(ii) the application is made before the residue of the estate or a substantial part thereof has been paid away or distributed.

6. Application

These Rules shall apply in every case in which fees have not previously been charged.