

Malawi

Land Survey Act

Chapter 59:03

Legislation as at 31 December 2017

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Malawi

Land Survey Act

Chapter 59:03

Commenced in full on 8 July 1955

[This is the version of this document at 31 December 2017.]

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[18 of 2016; G.N. 62/2017]

An Act to provide for land surveys; the establishment of the Land Surveyors Registration Board; the licensing and control of land surveyors; the establishment of the Malawi Geographic Information Council, and to provide for matters connected therewith or incidental thereto

Part I – Preliminary

1. Short title

This Act may be cited as the Land Survey Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Board**” means the Land Surveyors Registration Board established under [section 4](#);

“**cadastre**” means a methodically arranged public inventory of data on properties within a district based on a survey of the property boundaries;

“**general plan**” means a document containing geometrical, numerical and verbal representations of a piece of land, which has been approved or certified by the Surveyor General or a copy thereof prepared in the Surveyor General’s office and approved and certified as aforesaid, and includes a document which has, at anytime prior to the commencement of this Act, been accepted as a diagram in the Deeds Registry or Land Registry;

“**government surveyor**” means the Surveyor General or, as the case may be, any officer of the Department of Surveys who is authorized in writing by the Surveyor General to perform the duties of a surveyor under this Act, or any government officer being a surveyor;

“**land**” has the meaning ascribed to the word in the Land Act;

“**licensed surveyor**” means a land surveyor duly licensed as a surveyor under this Act;

[Cap. 57:01]

“**owner**” includes—

- (a) every lessee, tenant or licensee of land and his successors in title and every occupier of land, whether as supervisor, overseer or manager or otherwise; and
- (b) any agent who receives rents or profits on behalf of such person;

“**parcel**” means a piece of land with defined boundaries to which a property right of a person applies;

“**plan**” includes any aerial photograph where such aerial photograph is approved by the Surveyor General as suitable for survey purposes, chart, diagram, and map or any photographic copy of any such aerial photograph, chart, diagram, or map;

“**registrar**” means the Registrar of the Board appointed pursuant to [section 23](#);

“**register**” means the register of licensed surveyors, surveying technicians or graduate surveyors, kept and maintained by the Board under [section 34](#);

“**survey**” means every type of land survey, including cadastral surveys and aerial surveys;

“**survey mark**” means any trigonometrical station, continuous operating reference station, signal station, benchmark of whatever type, reference mark, boundary beacon, peg, picket, mark or pole, whether above or below the surface of the ground, which is fixed, placed or set up by or under the direction of, a surveyor, for the purpose of any survey and includes, when so fixed or placed, a properly cut survey point on any rigid building or structure of permanent material and construction;

“**surveying technician**” means a surveyor registered as such under this Act; and

“**surveyor**” means a Government surveyor, licensed surveyor, surveying technician or graduate surveyor who is duly registered under this Act.

Part II – Administration

3. Surveyor General and other officers

- (1) There shall be established in the public service, an office of the Surveyor General which shall be responsible for the administration of this Act.
- (2) A person shall not be recruited in accordance with the Malawi Public Service Regulations as Surveyor General unless that person is licensed and registered as a surveyor under this Act.
- (3) There shall be appointed such other officers, who are qualified surveyors, employed in the Surveyor General’s office who may, if so authorized by the Surveyor General, either generally or specifically, perform any of the duties or do any of the acts or things required or authorized by this Act to be done by the Surveyor General.

4. Duties and functions of the Surveyor General

Subject to the general or special directions of the Minister, the Surveyor General shall—

- (a) carry out surveys on public land and any land on behalf of Government, for grant, lease and easement purposes;
- (b) supervise and control the survey and charting of land for purposes of registration;
- (c) take charge and preserve all records appertaining to the survey of parcels of land;
- (d) direct and supervise the conduct of trigonometric, topographic and level surveys and such geodetic and geophysical operations as the Minister may direct;
- (e) take charge of and preserve all records of all surveys and operations carried out under paragraph (c);
- (f) supervise the preparation of maps and other geo-information products as the Minister may direct from data derived from any surveys and the amendment of such maps and geo-information products; and
- (g) generally administer the provisions of this Act.

Part III – Land Surveyors Registration Board

5. Establishment of Land Surveyors Registration Board

There is hereby established a Land Surveyors Registration Board (hereinafter referred to as the “Board”) which shall—

- (a) be a body corporate with perpetual succession and common seal;
- (b) capable of suing and being sued in its corporate name; and
- (c) have power to do and perform such things and acts which a body corporate may by law do or perform.

6. Powers and functions of the Board

- (1) The Board shall be the sole authority for licensing and registering surveyors in Mala#i and in that regard, shall have the following powers and functions—
 - (a) approve minimum qualifications and training acceptable for registration as a surveyor;
 - (b) approve, in consultation with the National Council for Higher Education, educational and training institutions within and outside Mala#i as institutions with recognized training in land surveying;
 - (c) set up and conduct such tests, examinations and trial surveys as may be required for purposes of this Act;
 - (d) appoint such examiners and invigilators as may be necessary for the purpose of administering any examinations under this Act;
 - (e) grant surveyor licences;
 - (f) keep and maintain a register of licensed surveyors, surveying technicians and graduate surveyors;
 - (g) advise the Minister on policies relating to technical and professional matters within the scope of this Act including fees and other charges to be prescribed under this Act;
 - (h) determine other methods, apart from examinations, to be used in assessing the suitability of an applicant for licensing and registration under this Act;
 - (i) prescribe principles of conduct and ethics to be followed by surveyors in the course of their practice as surveyors;
 - (j) exercise disciplinary control over surveyors and to prescribe and impose disciplinary measures against such surveyors, if necessary;
 - (k) establish such committees of the Board as may be considered necessary for implementation of this Act; and
 - (l) do all such acts, matters and things as may be necessary for fulfilling the functions of the Board.
- (2) The Board shall cause to be published in the *Gazette*, once every year, a list of surveyors registered under this Act.

7. Composition of the Board

The Board shall consist of the following seven members—

- (a) the following persons nominated by the Surveyors Institute of Mala#i and appointed by the Minister—
 - (i) five licensed surveyors, two of whom shall be from private practice; and
 - (ii) one member, being a land surveyor and a full member of the Surveyors Institute of Mala#i of good standing in the Institute;
- (b) the Surveyor General or his designated representative, *ex officio*; and
- (c) the composition of the Board shall have not less than forty per cent and not more than sixty per cent of either sex.

8. Chairperson and Vice Chairperson of the Board

- (1) Members of the Board shall elect a Chairperson and Vice Chairperson from among their number at the first meeting of the Board which shall be convened by the Registrar and attended by all members.
- (2) The Surveyor General or his designated representative shall not be eligible to be elected as Chairperson or Vice Chairperson.
- (3) The Minister shall cause a notice of every appointment to the Board to be published in the *Gazette*.

9. Disqualification of members of the Board

A person shall not qualify to be appointed, or shall be disqualified from continuing to hold office, as a member of the Board if that person—

- (a) is an undischarged bankrupt;
- (b) has been convicted, at any time, of an offence under this Act;
- (c) has, within the preceding three years, been convicted of an offence under any written law and sentenced to imprisonment of not less than six months; or
- (d) has been convicted, within the preceding six years, of an offence involving fraud or dishonesty.

10. Tenure and nature of office of members of the Board

- (1) Members of the Board shall serve on a part time basis.
- (2) A member of the Board, not being an *ex officio* member, shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

11. Vacancies and filling of vacancies in the Board

- (1) The office of a member of the Board, not being an *ex officio* member, shall become vacant if—
 - (a) the member dies;
 - (b) the member resigns by notice in writing to the Minister; or
 - (c) he becomes disqualified from continuing to hold office pursuant to [section 9](#).
- (2) A vacancy in the Board shall be filled by a person appointed in accordance with [section 7](#).

12. Meetings of the Board

- (1) The Board shall meet at least once every year:
Provided that the Chairperson may, at any time and shall, upon application in writing by at least three members of the Board, convene a meeting of the Board.
- (2) The Chairperson shall preside at meetings of the Board, but in the absence of the Chairperson, the Vice Chairperson shall preside and perform the functions of the Chairperson at any such meeting.
- (3) Where both the Chairperson and Vice Chairperson are absent at a meeting, the members of the Board present shall elect a member from among their number to preside at that meeting.
- (4) The Registrar or such other person as the Registrar may designate, shall take and keep minutes of proceedings of every meeting of the Board or its committees.
- (5) A simple majority of the members of the Board shall constitute a quorum at a meeting of the Board.
- (6) Decisions of the Board on any matter shall be made by a vote of the majority of members of the Board present and voting thereon, but in the event of an equality of votes, the Chairperson or the member presiding shall have a casting vote in addition to his deliberative vote.
- (7) Subject to the provisions of this Act, the Board shall have power to regulate its own procedure at meetings.

13. Committees of the Board

- (1) The Board may—
 - (a) establish such number of committees as it considers necessary for the performance of its functions and the exercise of its powers under this Act; and
 - (b) without prejudice to the exercise of any of its powers under this Act, assign any of those functions to such committees.
- (2) A committee of the Board shall comprise a member of the Board who shall be the chairperson of the committee, and other persons who may include persons who are not members of the Board but who are not members of staff of the secretariat of the Board and at least the appointees shall be forty per cent and not more than sixty per cent of either sex.
- (3) The Board may, at any time, direct a chairperson of any committee to convene a meeting of the committee and the chairperson of such committee shall, as soon as it is practicable, comply with such direction.
- (4) Every committee shall keep minutes of its meetings and inform the Board of its activities and conduct its proceedings in such manner as the Board may direct.
- (5) A committee shall have power to determine its own procedure at meetings.

14. Allowances of members of the Board and its committees

A member of the Board or member of a committee of the Board shall be paid such allowances to cover expenses reasonably incurred by the member in respect of attendance of meetings of the Board or committee, as may be prescribed by the Minister.

15. Invited persons

- (1) The Board or any committee of the Board, may invite any person to attend any of its meetings in order to assist or advise the Board or the committee in respect of a matter under consideration at the meeting.

- (2) The person invited pursuant to subsection (1) may take part in the deliberations of the Board or committee of the Board but that person shall not be entitled to vote on any matter at the meeting.

16. Board not liable for acts done in good faith

The Board or any member of a committee of the Board, shall not be liable for any act or omission done in good faith in the exercise of the functions and duties of the Board under this Act.

17. Funds of the Board

The funds and property of the Board shall consist of such sums of money—

- (a) as may, from time to time, be payable to the Board from moneys appropriated by Parliament for that purpose;
- (b) or other property, real or personal, as may be payable to, or vest in the Board pursuant to this Act or any other written law; and
- (c) or other property, real or personal, as may be payable to or vest in the Board by way of a donation, or accrue to the Board from any trust.

18. Investment of surplus sums of money

The Board may, in accordance with the Public Finance Management Act, invest any sums which are not immediately required for immediate use by the Board.

[Cap. 37:02]

19. Borrowing powers of the Board

Subject to the provisions of the Public Finance Management Act and the Public Audit Act, the Board may borrow such sums of money as it may require to discharge its functions under this Act.

[Cap. 37:02; Cap. 37:01]

20. Financial year of the Board

The financial year of the Board shall be the financial year of the Government.

21. Books of accounts, audits and reports

- (1) The Board shall cause to be kept, proper books of accounts and other records in relation to all moneys and other property vested, received or otherwise obtained, and of all moneys expended or other property sold or otherwise disposed of, by the Board.
- (2) The accounts of the Board shall be audited annually by professional auditors appointed by the Board.
- (3) Expenses incurred in relation to and incidental to, annual audits shall be paid out of the funds of the Board.

22. Annual report of the Board

- (1) The Board shall, as soon as it is practicable, but not later than three months after the end of each financial year, submit to the Minister, an annual report of its work and operations.
- (2) The annual report shall include a balance sheet, an income and expenditure account and the annual report of auditors.
- (3) The Minister shall lay the annual report before Parliament.

23. Registrar

- (1) The Board shall, with the approval of the Minister, appoint a Registrar who shall be a registered surveyor, on such terms and conditions as the Board shall determine.
- (2) The Registrar shall be the chief executive officer of the Board and shall act as a secretary to the Board.
- (3) Where no Registrar is appointed by the Board in accordance with subsection (1), the Minister may, in consultation with the Board, designate a public officer in the Department of Surveys as a secretary to the Board.

24. Duties of the Registrar

Subject to the general and special directions of the Board, the Registrar shall be responsible to the Board for the day to day management of the Board and supervision of staff of the Board.

25. Other staff

- (1) The Board shall appoint other staff, subordinate to the Registrar, as the Board shall consider necessary for the exercise of its powers and performance of its duties and functions.
- (2) The staff of the Board shall serve on such terms and conditions as the Board shall determine.
- (3) The Board may, by directions in writing, delegate to the Registrar, the appointment of its staff in such junior ranks as the Board shall specify, and the Registrar shall report to the Board every appointment made pursuant to this section.

26. Attendance of meetings by staff

- (1) The Registrar or any other officer of the Board as the Registrar may, with the approval of the Board designate, may attend meetings of the Board or any committee of the Board to record minutes of the meetings and take part in the deliberations thereof subject to the directions of the Board or the committee of the Board, but shall not be entitled to vote.
- (2) Where at any meeting, the deliberations of the Board or committee of the Board concern the Registrar or any staff of the Board designated to attend the meeting, the Board or the committee of the Board, as the case may be, may exclude the Registrar or such officer from attending the meeting.

Part IV – Licensing, registration and duties of surveyors**27. Application for a licence and registration**

- (1) Save as otherwise provided in this Act, a person shall not engage in the practice of land surveying in Malawi, or hold himself out as being entitled so to do, unless he is registered as a licensed surveyor under this Act.
- (2) Any application for a licence and registration under this Act shall be made to the Board in the prescribed manner and shall be accompanied by a prescribed fee.
- (3) Any person who engages in the practice of land surveying in contravention of this Act commits an offence.

28. Qualifications for licensed surveyors

- (1) A person shall not be registered as a licensed surveyor unless that person—
 - (a) holds a degree in land surveying from a university approved by the Board in consultation with the National Council for Higher Education for purposes of this Act;
 - (b) produces a certificate that he has served at least two years as an assistant in practical field surveys under the direct personal supervision of a licensed surveyor practising as such, under the Act or in any country as the Minister list by notice published in the *Gazette*:

Provided that no less than half such period shall have been spent in doing title surveys the nature of which shall be approved by the Board;
 - (c) possesses a commission or a licence entitling him lawfully to practise as a land surveyor in any country listed in the notice published in the *Gazette* pursuant to subparagraph (b);
 - (d) is a holder of the qualification of fellow or professional associate of the Royal Institute of Chartered Surveyors of the United Kingdom in land surveying; or
 - (e) has passed an examination which has been set by the Board to confer a qualification equivalent to any of the qualifications referred to in subparagraphs (a) and (b).
- (2) In addition to having any of the requirements under subsection (1), the person shall—
 - (a) furnish testimonials or other evidence of good character to the satisfaction of the Board; and
 - (b) satisfy the Board through an examination, or by other method prescribed by the Board, that he is familiar with the provisions of this Act and all other written laws of Malawi relating to land survey.
- (3) Notwithstanding subsection (1), the Board may require a person who applies to be registered as a licensed surveyor, to satisfy the Board either by carrying out to the satisfaction of the Board, a trial survey or show such other evidence as the Board may determine, that he is capable of conducting surveys in accordance with this Act.
- (4) If a person has undergone training which, in the opinion of the Board is equivalent to serving as an assistant in practical field survey as provided for under subsection (1) (b), that person may be granted exemption from such portion of the period of service as the Board may determine:

Provided that the exemption shall not—

 - (a) reduce the requisite period of training to less than one year; or
 - (b) be granted in respect of training served before the completion of the applicant's first year of study.
- (5) A certificate indicating proof of service as an assistant to a licensed surveyor under subsection (1) (b) shall be in the form prescribed by the Board, and shall be accompanied by an annexure in the form of a diary containing detailed particulars of all survey work carried out, signed by the licensed surveyor who supervised the applicant, and the applicant, as an employee.

29. Licensing and registration of surveyors

A person who qualifies to be registered as a licensed surveyor under this Act and satisfies the conditions under [section 28](#) shall, upon application to the Board, be entitled to be issued with a licence.

30. Qualifications for registration as a licensed surveyor

A person may be registered as a licensed surveyor, if he—

- (a) holds a qualification approved by the Board or has satisfied the Board that he holds a qualification which, in the opinion of the Board, is a sufficient guarantee of the possession by him of the requisite knowledge and skill for the efficient practice of the work of a surveyor under [section 28](#);
- (b) is a full member of the Surveyors Institute of Mala#i or such other institution or society as the Minister may, by notice published in the *Gazette*, declare to be of adequate standing in the field of land surveying; and
- (c) proves to the satisfaction of the Board, that his professional and general conduct has been such as would not, in the opinion of the Board, debar him from registration under this Act.

31. Qualifications for registration as a graduate surveyor

- (1) A person may be registered as a graduate surveyor under this Act if he has, as a result of an examination obtained from an approved institution, a degree or other qualification which the Board considers acceptable for registration.
- (2) Every graduate surveyor registered pursuant to this section shall be entitled to practice land surveying as a surveyor in training by agreement with and under the direction or control of a registered licensed surveyor.

32. Qualifications for registration as a surveying technician

- (1) A person may be registered as a surveying technician under this Act if he has—
 - (a) obtained a diploma or a certificate in land surveying from an approved institution or obtained other qualifications approved by the Surveyors Institute of Mala#i in consultation with the National Council for Higher Education, which the Board considers acceptable for registration; and
 - (b) received practical training as a technician for a period of not less than two years from an institution approved by the Board.
- (2) The Board may direct the Registrar to register an applicant pursuant to this section if the Board is satisfied that the applicant—
 - (a) is a fit and proper person to be registered; and
 - (b) has complied with all the relevant requirements of this section.

33. Certificate of registration

The Registrar shall issue to every person registered as a licensed surveyor, graduate surveyor, or surveying technician, as the case may be, under this Act, a certificate of registration in a form as may be prescribed by the Minister.

34. Registers

- (1) The Board shall keep and maintain separate registers of all—
 - (a) licensed surveyors;
 - (b) graduate surveyors; and
 - (c) surveying technicians.

- (2) A register shall contain—
 - (a) names, addresses and qualifications of registered surveyors;
 - (b) the respective dates of their registration; and
 - (c) any other particulars which may be prescribed.
- (3) The Registrar shall keep custody of the registers at the offices of the Board or at such other place in Mala#i as the Board may direct.
- (4) A register shall, at all reasonable times, be open to inspection by—
 - (a) public officers in the course of duty;
 - (b) a person registered under this Act; and
 - (c) members of the public upon payment of a prescribed fee.

35. Corrections of registers

- (1) The Registrar may, on his own or on application by an interested party, with the prior approval of the Board, make necessary alterations or corrections in any register in relation to any entry therein.
- (2) The Registrar shall remove from the relevant register, the name of a registered surveyor who is deceased and shall, when directed by the Board to do so, remove from any register, any entry which has been incorrectly or fraudulently made therein.
- (3) The Registrar may, with the written consent of the person concerned, remove from any register, the name of any person who has ceased to practise land surveying in Mala#i.
- (4) The Registrar shall reinstate in the register, a name removed from any register pursuant to subsection (3), on the request in writing by the person concerned.

36. Duties of a surveyor

- (1) A surveyor licensed under this Act shall—
 - (a) carry out every survey undertaken by him in accordance with this Act in a manner that will ensure the accuracy of the survey and any plan, survey data, or other record of the survey;
 - (b) deposit with the Surveyor General, for filing in the Surveyor General's office, plans, survey data and records of survey he undertakes;
 - (c) be responsible for the corrections of every survey carried out by him or under his supervision and for the correctness of any plan and diagram which bears his signature; and
 - (d) when required by the Surveyor General, without delay, adjust the position of any survey mark which has been fixed, placed or set up in an incorrect survey.
- (2) The Surveyor General may direct a surveyor, within ninety days, to correct any inaccuracy or error in any plan, survey data or other record where such error or inaccuracy exceeds the limit of error allowable under this Act to the execution of surveys and the preparation of plans, survey data and other records.

37. Surveying instruments to be accurate

- (1) A surveyor shall ensure that all surveying instruments he uses for the purpose of carrying out surveys are in a proper state of adjustment and that all distance measuring instruments so used are properly standardized.

- (2) A surveyor shall, when called upon by the Surveyor General, produce to the Surveyor General, a surveying instrument or distance measuring instrument which he uses for testing, as the Surveyor General may consider appropriate.
- (3) Where the Surveyor General finds that the surveying instrument or distance measuring instrument produced pursuant to subsection (2) is defective or inaccurate, he may order the surveyor to remedy the defect or to rectify the inaccuracy and the surveyor shall not use the instrument until the defect is remedied or the inaccuracy rectified, as the case may be.
- (4) If the Surveyor General is of the opinion that a surveying instrument or distance measuring instrument is in such a condition as to render it impossible to remedy a defect or rectify an inaccuracy, he may condemn the instrument.
- (5) Where the Surveyor General condemns a surveying instrument or distance measuring instrument under this Act—
 - (a) the surveying instrument or distance measuring instrument shall no longer be used for carrying out of any survey; or
 - (b) he may, by order in writing, specify the class of work for which the surveying instrument or distance measuring instrument may be used.

38. Complaints against a surveyor

- (1) A person with a complaint against a surveyor shall submit a signed written complaint to the Board.
- (2) The Board may, where the complaint made under subsection (1) is justified, inquire into the complaint and shall fix a time and place for the purpose of holding an inquiry.
- (3) The Board shall, at least thirty days prior to the date fixed for the inquiry, send a notice in writing through registered post to the last known address of the surveyor against whom the complaint is made.
- (4) A surveyor against whom the complaint is made, shall be entitled to be heard in his defence, either personally or may be represented by a legal practitioner at an inquiry made pursuant to this section.
- (5) The findings and decision of the Board on any inquiry under this section shall be made in writing.
- (6) A surveyor with regard to whom the findings and decision of the Board are made, may apply to the High Court for judicial review within thirty days of the date of the findings and decision of the Board.

39. Misconduct and disciplinary measures

- (1) The Board may invoke disciplinary measures on a registered surveyor, where, after an inquiry, it is proven to the satisfaction of the Board, that the registered surveyor has carried out any following acts of misconduct—
 - (a) signed a plan, survey data or other record of a survey relating to any land in respect of which he has not carried out, personally supervised the whole of such survey, or examined and satisfied himself of the correctness of the entries in any field book, calculations, working plans or other records, which may have been made by any another person;
 - (b) signed a plan which he knows or ought to have known by the exercise of reasonable care, to be incorrect;
 - (c) performed through negligence or incompetence, an incorrect survey;
 - (d) made an entry in a field book or other document which purports to have been made as a result of actual observation or measurement in a field when in actual fact, was not so made;

- (e) supplied erroneous information to the Board in connexion with a survey mark or boundary which he knows or ought to have known by the exercise of reasonable care, to be erroneous;
 - (f) demanded or received a sum for fees, charges or expenses either less or more than the amount prescribed under this Act;
 - (g) been convicted of an offence involving moral turpitude, or such improper conduct as, in the opinion of the Board, renders him unfit to practise as a surveyor;
 - (h) obtained his licence by misrepresentation, or has had his licence or his qualification of fellow or professional associate under [section 28\(1\)](#) (d) suspended or cancelled; or
 - (i) failed to obey any order or instruction given to him by the Board under this Act or to carry out any duty imposed upon him under this Act.
- (2) The Board may invoke the following disciplinary measures for a misconduct under subsection (1)—
- (a) caution the surveyor in writing;
 - (b) suspend the surveyor from practicing as a surveyor for any period not exceeding two years and enter the reasons for such suspension in the register; or
 - (c) remove the name of such surveyor from the relevant register.
- (3) In addition to the measure imposed on the surveyor under subsection (2), the Board may order the surveyor to pay the cost of any correction necessitated by his negligence.
- (4) The Board may—
- (a) reinstate any surveyor whose name has been removed from the register; or
 - (b) terminate or reduce the period of suspension of a surveyor who has been suspended from practice.
- (5) Where the Board has suspended a surveyor from practice or has removed the name of a surveyor from the register, the surveyor shall surrender his licence to the Board and the Board may retain the licence either until the licence expires, or until the name of the surveyor is reinstated in the register or until the expiry or termination of the period of his suspension, as the case may be.
- (6) The Board shall cause to be published in the *Gazette*, a notice of—
- (a) the removal of the name of a surveyor from the register;
 - (b) the suspension from practice of a surveyor; and
 - (c) the reinstatement in the register of the name of a surveyor or the termination or reduction of the period of suspension of a surveyor.

40. Persons other than surveyors forbidden to carry out land surveys

- (1) A person, other than a licensed surveyor registered under this Act, shall not—
- (a) carry out any survey for the purpose of preparing any plan, survey data or other record required under the provisions of this Act to be deposited with, examined and approved by, the Surveyor General, or to be referred to in any manner whatsoever, in any other document to be deposited or examined and approved;
 - (b) carry out any survey affecting the delimitation of the boundaries or the location of the beacons or other boundary marks of any land; or
 - (c) hold himself out or act in any manner whatsoever, as a surveyor or perform any of the functions of a surveyor.

- (2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of K500,000 and to imprisonment for six months.

41. Survey plans to be deposited with the Surveyor General and to be property of the Government

- (1) All plans, survey data and records of surveys deposited with the Surveyor General in pursuance of any requirement imposed by this Act or any regulations or rules made hereunder, shall become the property of the Government.
- (2) No plan, survey data or other record deposited in the office of the Surveyor General pursuant to this Act shall be altered or amended in any way, without the written permission of the Surveyor General.
- (3) Any person who alters or amends in any way, a plan, survey data or other record deposited in accordance with this section without the written permission of the Surveyor General, commits an offence and shall on conviction, be liable to a fine of K500,000 and to imprisonment for six months.

42. Aerial and topographic survey and topographic mapping

- (1) A person who intends to carry out an aerial survey of any land in Mala#i, shall, at least thirty days before the survey is carried out, notify the Surveyor General in writing of his intention to cause the survey to be made.
- (2) A person who carries out an aerial survey in accordance with subsection (1) and any topographic survey, shall within thirty days of completion of the survey, submit to the Surveyor General—
 - (a) one printed copy of every photograph taken for the purpose of such aerial survey together with one copy of any plan made as a result of the survey; and
 - (b) copies of all data and subsequent maps and plans.
- (3) A surveyor shall, within thirty days of the completion of any topographical mapping in Mala#i, submit copies of all data and subsequent maps and plans to the Surveyor General for quality control and archiving.
- (4) The Surveyor General shall store all data, maps and plans relating to any topographical mapping in a good and secure place.
- (5) The Surveyor General shall, from time to time, compile non-existing maps and amend existing plans and maps, and sell information taking into account the provisions of the Copyright Act.
[Cap. 49:03]
- (6) Any person who fails to comply with this section, commits an offence and shall on conviction, be liable—
 - (a) in case of a natural person, a fine of K500,000 and to imprisonment for twelve months; and
 - (b) in the case of a legal person, a fine of K1,000,000.

43. Approval of surveys by the Surveyor General

The Surveyor General shall examine all data, plans and diagrams of surveys of land and where he is satisfied that such surveys have been properly carried out, approve all such plans and diagrams.

44. Surveyor General may cancel approval of a plan

- (1) Where any plan approved by the Surveyor General under this Act is found to be incorrect by reason of any error or omission in a survey, the Surveyor General may cancel his approval of the plan and in every such case, cause to be made and deposited, a corrected plan.

- (2) Upon the cancellation of any plan in accordance with subsection (1), the Surveyor General shall in writing, notify—
 - (a) the owner of the land to which the plan relates;
 - (b) the traditional authority in case of land under a Traditional Land Management Area;
 - (c) the Minister in case of public or government land; or
 - (d) a land registrar, if any.

Part V – Survey marks and boundaries

45. Survey marks and boundaries lawfully established

- (1) Notwithstanding anything contained in any written law, the position of any survey mark fixed, placed or set up for the purpose of denoting the boundaries of any land shall be deemed, under this section, to have been lawfully established.
- (2) A survey mark fixed, placed or set up for the purpose of denoting a boundary of any land shall be deemed to have been lawfully established where the position of the mark is in agreement with—
 - (a) the position established in another survey and where a plan based on the survey has been approved by the Surveyor General for the purpose of establishing the survey mark; or
 - (b) an order of the High Court.

46. Survey of Traditional Land Management Areas etc.

- (1) The boundaries of any area declared as a Traditional Land Management Area, a district or a local government area shall be surveyed and registered in the Land Registry under the traditional authority or local government authority of the area.
- (2) Where a Traditional Land Management Area is registered, all the villages and the public land within the area shall be surveyed and registered.

47. Sites of trigonometrical stations and fundamental benchmarks reserved to Government

Every trigonometrical station or fundamental benchmark shall be deemed to comprise the land within five metres of the center mark of the station or within five metres of the center of the pillar of a fundamental benchmark as the case may be, together with a right of way to and from the trigonometric station or fundamental benchmark and shall, notwithstanding any alienation thereof, be reserved to the use of the Government and be deemed to have been and to be excepted out of such alienation.

48. Blasting of rock within area reserved for a fundamental benchmark prohibited

- (1) A person shall not carry out rock blasting operations within a radius of one hundred metres from any fundamental benchmark without prior written authorization of the Surveyor General.
- (2) Any person who contravenes this section commits an offence and shall on conviction, be liable—
 - (a) in the case of a natural person, to a fine of K500,000 and to imprisonment for twelve months; and
 - (b) in the case of a legal person, to a fine of K1,000,000.

49. No posts or fences to be placed near survey mark

A person shall not place a fence, post, fence anchor or any other erection, or make any excavation, within half a metre of a plot boundary beacon and ten metres from other survey marks, except with the prior written authorization of the Surveyor General.

50. Preservation and maintenance of survey marks

- (1) Every owner of land shall preserve and maintain in proper order and repair, and in a manner as may be prescribed, every survey mark fixed, placed or set on his land for the purpose of denoting the boundary of the land, whether the survey mark was erected for the purpose of, or in connexion with, a survey of that land under this Act or any other written law, or for the purpose of, or in connexion with, a survey of a land contiguous to the land on which the survey mark is situate.
- (2) The owner of the land in subsection (1) shall immediately report to the Surveyor General when the survey mark cannot be found is obliterated, removed, or requires repair and if the owner is within a Traditional Land Management Area shall report to the Land Committee.
- (3) Any person who fails to comply with subsections (1) and (2) commits an offence and shall, on conviction, be liable—
 - (a) in the case of a natural person, to a fine of K500,000 and to imprisonment for twelve months; and
 - (b) in the case of legal person, a fine of K1,000,000.

51. Surveyor General may call upon owner of land to restore survey mark

- (1) Where a survey mark has not been maintained in proper order or repair, or has been removed or obliterated, the Surveyor General may serve on the owner of the land upon which the survey mark is situate, a notice in writing either by delivering the notice to the owner, or by transmitting the notice as a registered letter calling upon the owner to restore the survey mark to the condition prescribed for that survey mark or to cause the survey mark to be replaced in the prescribed manner, as the case may be.
- (2) Where a survey mark is to be restored or re-erected, the restoration or re-erection shall be carried out by a surveyor.
- (3) The restoration or re-erection of the survey mark shall be done within six weeks of the delivery of the notice in subsection (1).
- (4) Where a survey mark is not restored or re-erected within six weeks of the date from which the notice in subsection (1) was delivered or posted, the Surveyor General may cause the survey mark to be restored or re-erected and in such case, the owner of the land, and the owners of all land jointly affected by this section, shall be liable in equal shares, for the cost of such restoration or re-erection.
- (5) The Surveyor General may recover from every such owner in subsection (4), all costs incurred by the Surveyor General:
Provided that—
 - (a) where the owner of the land or the servant or agent of the owner, has damaged, removed or obliterated the survey mark, the entire cost of the repair, restoration or erection of such survey mark shall be borne by the owner of the land; or
 - (b) where a survey mark which requires restoration or re-erection or any part of the survey mark is on public land or on land contiguous to public land, the Surveyor General may exercise his powers under this subsection without waiting for the expiration of six weeks.

- (6) In the case of a local government authority, the local government authority shall be responsible for the maintenance of all survey marks erected in accordance with this Act on all roads, lands and premises in respect of which the local government authority is responsible for the upkeep and maintenance.
- (7) Any destruction or damage to any survey mark in a local government area may be made good by the Surveyor General at the expense of the local government authority responsible for that area.

52. Offences, penalties and compensation

- (1) Any person who, without lawful excuse—
 - (a) alters, moves, disturbs or willfully damages or destroys a survey mark, whether permanent or temporary, erected for the purpose of, or in connexion with, a survey operation, whether the survey mark is on his own land or not, and whether the survey mark is above or below the surface of the land; or
 - (b) fixes, places or sets up a survey mark without the supervision of a surveyor or anyone authorized by the Surveyor General in that behalf, whether or not his intention is to alter the boundary line of a piece of land or to deceive any person as to the position of a boundary line,commits an offence and shall, on conviction, be liable to a fine of K500,000 and to imprisonment for twelve months.
- (2) The removal or disturbance of any survey mark for the purpose of erecting another survey mark in its place shall not constitute a lawful excuse under this section unless a surveyor or a person authorized in writing by the Surveyor General in that behalf, personally superintends such removal or disturbance and the erection of such other survey mark.
- (3) Nothing in this section shall be construed as exempting any person from being charged and punished under the Penal Code or any other written law in respect of any such act or omission as is described in this section.

[Cap. 7:01]

- (4) A person whose property is destroyed or otherwise incurs damages as a result of an offence committed under this section may be awarded compensation.
- (5) For the purpose of awarding compensation in respect of any damage caused by the commission of an offence under subsection (1)—
 - (a) a survey mark in connexion with which the offence was committed shall be deemed to be the property of any person on whose land or on a boundary of the land the survey mark was situate; and
 - (b) a fundamental benchmark, reference mark or trigonometrical station, in connexion with which the offence was committed, shall be deemed to be the property of the Surveyor General.

53. Authority to remove survey marks

- (1) Any person who, for the purpose of carrying out any work which he may lawfully perform, intends to remove or disturb any survey mark, shall apply to the Surveyor General for authority to effect the removal or disturbance.
- (2) The Surveyor General may authorize the removal or disturbance of the survey mark and may, at the expense of the applicant, employ a surveyor or an authorized officer to personally effect or supervise the removal or disturbance and subsequent replacement of the survey mark or the erection or placing of another survey mark to indicate the position of the removed or disturbed survey mark, in such manner as the Surveyor General may direct.

Part VI – Mala#i Geographic Information Council

54. Establishment of the Mala#i Geographic Information Council

There is hereby established the Mala#i Geographic Information Council (hereinafter referred to as the “Council”) which shall—

- (a) be a body corporate with perpetual succession and common seal;
- (b) capable of suing and being sued in its corporate name; and
- (c) have power to do and perform such things and acts which a body corporate may by law do or perform.

55. Functions and powers of the Council

The Council shall be the sole authority for licensing and registering spatial data in Mala#i and shall have functions and powers to—

- (a) establish and enforce national spatial data standards;
- (b) establish and maintain centralized and decentralized spatial data access points and nodes;
- (c) enter into, agreements, memoranda of understanding and grant data user licences for spatial data transfer;
- (d) act as an advisory body on policies and technical issues relating to spatial data development and management;
- (e) advise the Minister on fees payable for data development, update, management and transfer;
- (f) assist in the development and maintenance of a national spatial data infrastructure;
- (g) audit the quality of metadata provided to major access points;
- (h) audit availability and quality of framework data; and
- (i) perform any other function for implementation of this Act.

56. Composition of the Council

The Council shall comprise the following seven members—

- (a) the Surveyor General, *ex officio* who shall be the Chairperson of the Council; and
- (b) the following members appointed by the Minister on recommendation from bodies comprising users and producers of geographic information—
 - (i) two members representing the user and producer community from the public sector;
 - (ii) two members representing the user and producer community from the private sector;
 - (iii) one member from a public university; and
 - (iv) one member nominated by the Surveyors Institute of Mala#i;
- (c) the composition of the Council shall have not less than forty per cent and not more than sixty per cent of either sex.

57. Secretary to the Council

The Surveyor General shall appoint a public officer from the Department of Surveys to serve as secretary to the Council.

58. Nature of service and tenure of a member of the Council

- (1) A member of the Council shall not, by virtue only of his appointment to the Council, be deemed to be an officer in the public service or hold a public office.
- (2) A member of the Council or committee of the Council shall serve on part time basis.
- (3) A member of the Council, other than the Surveyor General, or member of a committee of the Council shall hold office for a term of three years and shall be eligible for re-appointment for only one further term immediately following the expired term.

59. Disqualifications

A person shall not qualify to be appointed, or continue to hold office as a member of the Council, where that person—

- (a) is an undischarged bankrupt; or
- (b) has been convicted of an offence under this Act.

60. Vacancies and filling of vacancies

- (1) The office of a member of the Council, other than the Surveyor General, shall become vacant where —
 - (a) the member dies;
 - (b) the member resigns by notice in writing to the Minister; or
 - (c) if, in accordance with [section 59](#), he becomes disqualified from continuing to hold office.
- (2) A vacancy in the Council shall be filled by a person appointed in accordance with [section 56](#).

61. Meetings of the Council

- (1) The Council shall meet at least once every year:

Provided that the Chairperson may, on his own motion, and shall, on application in writing by at least three members of the Council, convene a meeting of the Council at any time.
- (2) The Chairperson shall preside at meetings of the Council, but in the absence of the Chairperson, the members of the Council present and forming quorum shall elect one of their number to preside over the meeting.
- (3) Minutes of proceedings of every meeting of the Council or any committee of the Council shall be taken and kept by the secretary of the Council and shall be subject to confirmation by the Council or committee, as the case may be, at a subsequent meeting.
- (4) Five members of the Council shall constitute a quorum at any meeting of the Council.
- (5) Decisions of the Council on any matter shall be made by the vote of a simple majority of members of the Council present and voting thereon.
- (6) In the event of an equality of votes, the member presiding at the meeting shall have a casting vote in addition to his deliberative vote.
- (7) Subject to this Act, the Council shall have power to regulate its own procedure at meetings.

62. Committees of the Council

- (1) The Council may establish such committees as it considers necessary for the performance of its functions and exercise of its powers, and may assign to those committees, any of its functions without prejudice to the power of the Council to perform the functions itself.
- (2) Every committee of the Council shall be chaired by a member of the Council and may include persons who are not members of the Council.
- (3) The Council may, at any time, direct the chairperson of any committee to convene a meeting of such committee and the chairperson shall, as soon as is practicable, comply, with such direction.
- (4) Every committee shall keep minutes of its meetings and inform the Council of its activities and conduct its proceedings in a manner directed by the Council.
- (5) Subject to this Act and any general or special directions of the Council, every committee of the Council shall have power to determine its own procedure.

63. Allowances of members of the Council and its committees

A member of the Council shall be paid such allowances to cover expenses reasonably incurred by him in respect of attendance of meetings of the Council, as may be prescribed by the Minister.

64. Invited persons

- (1) The Council or any committee of the Council, may invite any person to attend any meeting of the Council or of the committee of the Council, as the case may be, for the purpose of assisting or advising the Council or the committee of the Council in respect of any matter under consideration by the Council or the committee of the Council.
- (2) A person invited pursuant to subsection (1), may take part in the deliberations of the Council or committee of the Council at any meeting but shall not be entitled to vote on any matter at that meeting.

65. Funds of the Council

The funds and property of the Council shall consist of—

- (a) such sums as may, from time to time, be payable to the Council from moneys appropriated by Parliament for that purpose;
- (b) sums of money or other property, real or personal, as may be payable to or vest in the Council pursuant to this Act or any other written law; and
- (c) such sums of money or other property, real or personal as may be payable to or vest in the Council by way of a donation or accrue to the Council from any trust.

66. Investment of surplus funds

Subject to the Public Finance Management Act, the Council may invest any sums which are not immediately required for its use in such manner as the Minister may approve.

[Cap. 37: 02]

67. Borrowing powers of the Council

Subject to the provisions of the Public Finance Management Act, and the Public Audit Act, the Council may borrow, such sums as it may require to fulfil its obligations or discharge its functions under this Act.

[Cap. 37: 01; Cap. 37: 02]

68. Financial year of the Council

The financial year of the Council shall be the financial year of the Government.

69. Accounts and reports

- (1) The Council shall cause to be kept proper books of accounts and other records in relation to all moneys and other property vested, received or otherwise obtained and of all moneys expended or other property sold or otherwise disposed of by the Council.
- (2) The accounts of the Council shall be audited annually by professional auditors appointed by the Council.
- (3) The expenses of any audit shall be paid out of funds of the Council.

70. Annual report

- (1) The Council shall, as soon as it is practicable but not later than six months after the end of each financial year, submit to the Minister, an annual report of its work and operations.
- (2) The annual report shall include a balance sheet on income and expenditure account and annual report of auditors, shall be laid before Parliament by the Minister.

Part VII – Miscellaneous provisions**71. Government not liable for incorrect survey**

The Surveyor General or any officer employed by the Government shall not be liable for any incorrect survey or work appertaining thereto, done in good faith by a Government surveyor, notwithstanding that the survey, work, any plans, survey data or other record appertaining thereto, has been approved by the Surveyor General.

72. Board or Council not liable for acts done in good faith

- (1) The Board or a member of the Board shall not be liable for any act done in good faith in the exercise of functions and duties of the Board under this Act.
- (2) The Council or a member of the Council shall not be liable for any act done in good faith in exercise of the function and duties of the Council under this Act.

73. Plans and records, etc., *prima facie* evidence of contents therein

A survey plan, survey data or other record relating to the survey of any land, signed by a surveyor and approved by the Surveyor General, shall be admissible as *prima facie* evidence of the contents thereof in all courts and judicial proceedings.

74. Power of Surveyor General to enter land and to use material thereon

- (1) The Surveyor General, a Government surveyor and any person generally or specially authorized by the Surveyor General in writing may, for the purpose of performing any duties under this Act or any other written law, may—
 - (a) enter any land with assistants or servants, animals, vehicles, appliances and instruments as are necessary for, or incidental to, the performance of such duties;
 - (b) fix, place, or set up a survey mark, whether permanent or temporary, upon the land entered;

- (c) make use of any brushwood, stone, sand, gravel, clay or other materials of a like nature on which no work has been expended by the owner of the land without tender or payment by way of compensation to any person, and, except within a municipality or township, of any water, whether conserved or not, found upon or in such land;
- (d) cut and remove trees, branches, underwood, growth or vegetation of any kind whatsoever, in the vicinity of a survey mark that may interfere with the functions of the survey mark; and
- (e) enter, at all reasonable hours, any building or enclosed place:

Provided that—

- (i) reasonable notice of the intention to exercise any of the powers conferred by this section shall be given to the owner or occupier of the land or in the case of land under Traditional Land Management Area, to the appropriate traditional authority; and
 - (ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section.
- (3) The owner or occupant of the land which is entered shall be entitled to compensation for any avoidable damage caused to the building or to any other property belonging to the owner or occupier of the land which is entered.

[Please note: numbering as in original.]

- (4) Any person who—
- (a) in any manner whatsoever prevents, obstructs or impedes the exercise of any powers conferred by subsection (1); or
 - (b) moves, obscures, damages or destroys any flag, peg, signal or other mark of a temporary nature lawfully placed on any land in connexion with any surveying operations before the completion of such operations,
- commits an offence and shall, upon conviction, be liable to a fine of K500,000 and to imprisonment for twelve months.

75. Regulations

- (1) The Minister may make regulations for the purpose of implementing this Act generally, and, in particular on the following matters—
- (a) the method of executing surveys and the information to be recorded in plans, survey data and other records of surveys and the manner and form in which such information is to be recorded;
 - (b) the persons who, and the times at which, such persons may have access to any plans, survey data or other records in the office of the Surveyor General and the fees which may be charged in connexion therewith;
 - (c) the degree of accuracy to be attained and the limit of error allowable in the execution of surveys and the preparation of plans, survey data and other records;
 - (d) the method in which surveys shall be based on existing, primary, secondary and tertiary triangulations;
 - (e) methods of surveying land, including general boundaries;
 - (f) plans, survey data and other records which are required to be deposited with the Surveyor General;
 - (g) plans, survey data and other records which are required to be examined and approved by the Surveyor General and the method of such examination and approval;

- (h) methods to be employed by the Surveyor General to test the accuracy of surveys the results of which are recorded on plans, survey data and records deposited with the Surveyor General at the date of the commencement of this Act;
 - (i) methods of correcting any inaccuracy or error in any plan, survey data or any record of any survey;
 - (j) forms and dimensions of survey marks, the manner of marking survey marks for identification and the manner of their construction, erection, protection, inspection, maintenance and repair;
 - (k) material from which survey marks are to be constructed and the method of fixing, placing and setting up of the survey marks;
 - (l) units of measure to be used on any specified plans;
 - (m) fees, charges or expenses to be paid for any survey or class of survey or for the demarcating and measuring the boundaries of any land, and the person or authority responsible for the payment of, and the method of recovering, such fees, charges or expenses;
 - (n) fees, charges and expenses to be paid for the examination and approval by the Surveyor General of plans, survey data and other records required to be examined and approved under this Act and for any other work undertaken by the Surveyor General in connexion therewith;
 - (o) fees, charges and expenses to be paid in respect of any plan, survey data, record or other document issued under this Act or in respect of any act done under this Act;
 - (p) fees, charges and expenses to be paid in respect of any act or matter performed or dealt with by any officer in the office of Surveyor General;
 - (q) control and conduct of trigonometrical, topographical and level surveys, and geodetic and geophysical operations that are required in Malawi;
 - (r) recording and preserving all information relating to surveys and operations executed under paragraph (q);
 - (s) preparation of maps from the data derived from surveys, and the compilation and revision of such maps from time to time as may be required;
 - (t) the construction, erection and maintenance of such control points as are necessary for trigonometrical, topographical and level surveys; and
 - (u) any other matter as considered necessary for implementation of this Act.
- (2) Notwithstanding section 21(e) of the General Interpretation Act, the regulations made under this Act may provide for offences whose penalties do not exceed a fine of K250,000 and a term of imprisonment of not more than six months.

[Cap. 1:01]

76. Repeal and savings

- (1) The Land Survey Act is hereby repealed.
- (2) Any subsidiary legislation made under the repealed Act and in force immediately before the commencement of this Act—
 - (a) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and
 - (b) may be replaced, amended, or repealed by subsidiary legislation made under this Act.

- (3) Any survey approvals, survey licences and survey marks and boundaries made, granted and lawfully established under the repealed Act, shall be valid and have effect as if they were made, granted and lawfully established under this Act.

[Cap. 59:03]