Land Survey Act

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Malawi

Land Survey Act
Chapter 59:03

Commenced on 8 July 1955

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An Act to make better provision for Land Surveys and the Licensing and Control of Land Surveyors and for matters incidental thereto and connected therewith

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 4A;
   [24 of 1986]
   “customary land” means customary land vested in the Government, and not the subject of a lease or right of occupancy;
   “Commissioner” means the Commissioner of Surveys;
   “Government surveyor” means the Commissioner or, as the case may be, any officer of the Survey Department who is authorized in writing by the Commissioner to perform the duties of a surveyor under this Act;
   “graduate surveyor” means a Government surveyor or a registered assistant surveyor employed or engaged as an assistant to a Government surveyor or licensed surveyor and who fulfils the requirements of section 5 (1) (b) (i) and (iv) but who is not a licensed surveyor;
   [24 of 1986]
   “land” includes land covered with water;
   “licensed surveyor” means the land surveyor duly licensed as a surveyor under this Act;
   “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;
   (b) any agent who receives rents or profits on behalf of any such person;
   “plan” includes any map, chart, diagram or aerial photograph where such aerial photograph is approved by the Commissioner suitable for survey purposes, and any photographic copy of any such plan, map, chart, diagram or aerial photograph;
“register” means the register of licensed surveyors or of graduate surveyors kept and maintained by the Board under section 7;

[24 of 1986]

“survey” means every type of land survey, including cadastral surveys and aerial surveys and “to survey” with its grammatical variations and cognate expressions shall be so construed;

“surveyor” means a Government surveyor or a licensed surveyor where such licensed surveyor is duly registered under this Act.

[21 of 1996]

“survey mark” means any trigonometrical 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.

Part II – Administration

3. Appointment of other officers

There shall be a Commissioner of Surveys who shall have charge of the administration of this Act, and there shall be such other officers as the Minister may deem necessary, who may, if so authorized by the Commissioner, either generally or specially, perform any of the duties or do any of the acts or things required or authorized by this Act to be done by the Commissioner.

[24 of 1986]

4. Rules

The Minister may make Rules prescribing anything which by this Act may be or is to be prescribed and generally as to any matter relating to the surveying of land and for the purpose of carrying this Act into effect, and in particular but without prejudice to the generality of this section, may make Rules prescribing the following matters—

(a) the method of executing surveys, the information to be recorded in the 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 Commissioner and the fees which may be charged in connexion therewith;

(c) the degree of accuracy to be attained and the limit of error to be allowed in the execution of surveys and the preparation of plans, survey data and other records;

(d) the method in which surveys shall be based upon existing secondary and tertiary triangulations;

(e) the method of surveying land in any Municipality; Township or Planning Area or any part thereof;

(f) the plans, survey data and other records which are required to be deposited with the Commissioner;

(g) the plans, survey data and other records which are required to be examined and approved by the Commissioner and the method of such examination and approval;
(h) the method to be employed by the Commissioner to test the accuracy of surveys the results of which are recorded on plans, survey data and records deposited with the Commissioner at the date of the commencement of this Act;

(i) the method of correcting any inaccuracy or error in any plan, survey data or any record of any survey;

(j) the form 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) the material from which survey marks are to be constructed and the method of fixing, placing and setting up of survey marks;

(l) the unit of measure to be used on any specified plans;

(m) the 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) the fees, charges and expenses to be paid for the examination and approval by the Commissioner of plans, survey data and other records required to be examined and approved under this Act and for any other work undertaken by the Commissioner in connexion therewith;

(o) the fees to be paid in respect of the licensing and registration of licensed surveyors and the annual fee to be paid for the renewal of any such licence;

(p) the fees, charges and expenses to be paid in respect of any plan, survey data, record or other document issued under the authority of this Act or in respect of any act done under such authority;

(q) the fees, charges and expenses to be paid in respect of any act or matter performed or dealt with by any officer of the Survey Department;

(r) the control and conduct or trigonometrical, topographical and level surveys and such geodetic geophysical operations as are required in Malawi;

(s) recording and preserving all information relating to surveys and operations executed under paragraph (t);

(t) the preparation of maps from the data derived from any surveys, and the compilation and revision of such maps from time to time as may be required;

(u) the construction, erection and maintenance of such control points as are necessary for trigonometrical, topographical and level surveys.

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Part IIA – Land Surveyors Registration Board

4A. Establishment of the Board

There shall be a board to be known as the Land Surveyors Registration Board.

4B. Composition of the Board

The Board shall consist of the following members—

(a) the Commissioner, who shall—

   (i) be the Chairman of the Board;
(ii) be a member ex officio;

(b) two licensed surveyors, appointed by the Minister;

(c) one licensed surveyor in private practice nominated by the Surveyors Institute of Malawi and appointed by the Minister;

(d) one member, being a person who is a full member of the Surveyors Institute of Malawi in good standing, nominated by that Institute from amongst land surveyors and appointed by the Minister.

4C. Disqualification

Any person who—

(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 for not less than six months; or

(d) has been convicted, within the preceding six years, of an offence involving fraud or dishonesty, shall be disqualified from appointment to, or continuing to hold office as a member of, the Board.

4D. Tenure of office and vacancies

(1) A member of the Board, not being a member ex officio, shall hold office for two years and shall be eligible for reappointment.

(2) The office of a member of the Board, not being a member ex officio, shall become vacant—

(a) if the member dies;

(b) if the member resigns by notice in writing to the Minister;

(c) if the Minister so directs;

(d) if, in accordance with section 4C, he becomes disqualified from continuing to hold office.

(3) A vacancy on the Board shall be filled by a person appointed in accordance with the provisions of section 4B under which the former member was appointed.

(4) The Minister shall cause a notice of every appointment to the Board to be published in the Gazette and shall, in such notice, publish resultant membership of the Board.

4E. Secretary

(1) The Minister shall designate as Secretary to the Board a public officer serving with the Department of Surveys.

(2) The Secretary shall keep records of all the proceedings of the Board and shall perform such other duties as the Board or the Chairman may assign to him.

4F. Meetings and quorum

(1) The Board shall meet at least once every year and all meetings of the Board shall be convened by the Chairman either on his own initiative or at the request of any two other members. If convened upon request by two members, the meeting shall be held within thirty days of the request.
(2) At any meeting of the Board, any three members thereof shall constitute a quorum and in the absence of the Chairman the members present shall elect one of their number to preside.

(3) The Board shall have power to regulate its own procedures.

4G. Committees

(1) The Board may establish committees and may assign to such committees such of its functions and powers as it may consider appropriate.

(2) The Board may request any surveyor or other person to attend any meeting of the Board, but such person shall not be entitled to vote.

4H. Powers and duties of the Board

(1) The Board shall be the sole authority for licensing and registering surveyors in Malawi and shall have the following powers and duties—

(a) to approve minimum qualifications acceptable for registration as a surveyor;

(b) to set up and conduct such tests as may be required for the purpose of section 5 (2);

(c) to grant licences;

(d) to keep and maintain a register of licensed surveyors and graduate surveyors;

(e) to advise the Minister on policies relating to technical and professional matters within the scope of this Act;

(f) to advise the Minister as to the professional fees and other charges to be prescribed under section 4 (m);

(g) from time to time, to prescribe principles of conduct and ethics to be followed by surveyors in the course of their practice as surveyors;

(h) to exercise disciplinary control over surveyors and to prescribe and impose disciplinary measures against such surveyors.

(2) The Board shall publish in the Gazette, once in every year, lists of surveyors registered under this Act.

Part III – Licensing, registration and duties of surveyors

5. Qualifications of licensed surveyor

(1) No person shall be licensed as a surveyor unless—

(a) he is immediately prior to the 1st day of January, 1975, a licensed surveyor duly licensed under section 6 of this Act; or

(b)

(i) he has attained the age of twenty-one years;

(ii) he furnishes testimonials or other evidence of good character to the satisfaction of the Board;
(iii) he produces evidence that he has served at least two years as an assistant in practical field surveys to a Government surveyor or licensed surveyor in, Malawi or in any other country approved for the purposes of this paragraph;

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(iv) he either—

(aa) holds a degree in land surveying from a university approved for the purposes of this subparagraph;

(bb) possesses a commission or a licence entitling him lawfully to practise as a land surveyor in any country approved for the purposes of this subparagraph;

(cc) is the holder of the qualification of fellow or professional associate of the Royal Institute of Chartered Surveyors of the United Kingdom in land surveying; or

(dd) has successfully passed any examination which the Board has declared to confer a qualification equivalent to any of the qualifications referred to in subparagraphs (aa), (bb) and (cc) of this paragraph.

(c) he satisfies the Board by examination, or by other method prescribed by the Board that he is familiar with the provisions of this Act and of all other written laws of Malawi relating to land survey.

[24 of 1986]

In this subsection, the expression "approved" means approved by the Board by notice published in the Gazette.

(2) Notwithstanding subsection (1) the Board may, in its discretion, require any person who applies to be licensed as a surveyor to satisfy the Board, either by carrying out to the satisfaction of the Board a trial survey, or by such other evidence as the Board may think fit, that he is capable of conducting surveys in accordance with this Act.

[22 of 1974]

[24 of 1986]

6. Licensing of surveyors

(1) Any person—

(a) who is qualified to be licensed as a surveyor under section 5(1), and

(b) who, if required by the Board so to do under section 5 (2), has satisfied the Board that he is capable of conducting surveys under this Act, shall be entitled, upon application to the Board, accompanied by the prescribed declaration and upon payment of the prescribed fee, to receive a licence as a surveyor in such form as may be prescribed.

(2) Every licence issued under subsection (1) shall, unless suspended or cancelled under this Act, remain valid until the 31st December next following the date of such issue and thereafter shall, subject to any suspension or cancellation as aforesaid, be renewable each year upon payment of the prescribed annual fee. Notification of every licence issued shall be published in the Gazette.
The Board may require a licensed surveyor who wishes to practise but who, for a period of five years or more, has not submitted a survey to the Commissioner to satisfy the Board as to his ability to practise under this Act before his licence is renewed.

[24 of 1986]

7. **Registers**

The Board shall keep and maintain—

(a) a register of all licensed surveyors;

(b) a register of all graduate surveyors,

which shall contain their names, addresses and qualifications and the respective dates of their registration and any other particulars which may be prescribed.

[24 of 1986]

8. **Surveying instruments and measuring tapes to be accurate**

(1) It shall be the duty of every surveyor to assure himself that all surveying instruments used by him for the purpose of carrying out surveys are in a proper state of adjustment and that all measuring tapes so used have been properly standardized.

(2) It shall be the duty of every surveyor, when called upon so to do by the Commissioner, to produce to the Commissioner any such surveying instrument or measuring tape and the Commissioner may apply such test to such surveying instrument or measuring tape as he may think fit.

(3) If the Commissioner finds that any such surveying instrument or measuring tape is defective or inaccurate, the Commissioner may order such surveyor to remedy such defect or to rectify such inaccuracy and such surveyor shall not use such surveying instrument or measuring tape until such defect is remedied or inaccuracy rectified.

(4) If the Commissioner is of the opinion that any such surveying instrument or measuring tape is in such a condition as to render it impossible to remedy such defect or to rectify such inaccuracy the Commissioner may condemn such surveying instrument or measuring tape and thereafter such surveyor shall no longer use such surveying instrument or measuring tape for the carrying out of any survey, or the Commissioner may by order in writing specify the class of work upon which such surveying instrument or measuring tape may be used.

[24 of 1986]

9. **Duties of surveyor**

Every surveyor shall—

(a) carry out every survey undertaken by him in accordance with this Act and in such a manner as will ensure the accuracy of such survey and of any plan, survey data, or other record of such survey;

(b) deposit with the Commissioner for filing in the Commissioner’s office such plans, survey data and records of survey as he may be required to do under this Act;

(c) when required by the Commissioner, without delay—

(i) correct, in conformity with this Act, any inaccuracy or error in any plan, survey data or other record where such error or inaccuracy exceeds the limit of error prescribed under this Act to be allowed in the execution of surveys and the preparation of plans, survey data and other records;
(ii) adjust the position of any survey mark which has been fixed, placed or set up in accordance with any incorrect survey.

[24 of 1986]

10. **Complaint against surveyor**

(1) Every complaint against a surveyor shall be submitted in writing to the Board and shall be signed by the person making the complaint and, if it appears to the Board that such complaint makes it desirable for it to inquire into the matter regarding which the complaint has been made, it shall, in the case of a complaint against a surveyor, fix a time and place for the purpose of holding an inquiry.

(2) At least thirty days prior to the date fixed for such inquiry, notice in writing shall be sent by the Board by registered post to the last known address of the surveyor against whom the complaint is made, informing him of the time and place fixed for the inquiry and supplying him with a copy of the complaint.

(3) At such inquiry the surveyor against whom the complaint is made shall be entitled to be heard in his defence, either personally or by a legal practitioner.

(4) The findings and decision of the Board on such inquiry shall be made in writing.

(5) Within thirty days of the date of the findings and decision of the Board on any such inquiry the surveyor with regard to whom such findings and decision were made may appeal to the Minister whose decision upon such appeal shall be final and conclusive.

[24 of 1986]

11. **Power of Board to deal with offences by surveyor**

(1) Upon a complaint duly made and after inquiry under section 10, if it is shown beyond reasonable doubt to the satisfaction of the Board that any surveyor—

(a) has signed any plan, survey data or other record of any survey relating to any land in respect of which he has not carried out or personally supervised the whole of such survey and examined and satisfied himself of the correctness of the entries in any field book, and the calculations, working plans and other records in connexion therewith which may have been made by any other person:

Provided that in the case of an aerial survey a surveyor shall not be required to carry out or personally to supervise the taking or processing of any aerial photograph;

(b) has signed a plan which he knows or ought, by the exercise of reasonable care, to have known, is incorrect;

(c) has performed through negligence or incompetence an incorrect survey;

(d) has made any entry in a field book or other document which purports to have been made as a result of actual observation or measurement in the field when it was not so made;

(e) has supplied erroneous information to the Board in connexion with any survey mark or boundary which he knows, or ought, by the exercise of reasonable care, to have known was erroneous;

(f) has demanded or received a sum for fees, charges or expenses either less or more than the amount prescribed under this Act;
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(g) has been guilty of any felony or misdemeanour involving moral turpitude, or of such improper conduct as, in the opinion of the Board, renders him unfit to practise as a surveyor;

(h) has obtained, his licence by misrepresentation, or has had his licence or commission many country mentioned in section 5 (1) (b) (iv), or his qualification of fellow or professional associate mentioned in such subparagraph, suspended or cancelled;

(i) has failed to obey any order or instruction given to him by the Board under the provisions of this Act or to carry out any duty imposed upon him under the provisions of this Act or to comply with any of such provisions,

the Board may—

(i) caution such surveyor in writing; or

(ii) suspend such surveyor from practice as a surveyor for any period not exceeding three years, and enter the reasons for such suspension in the register; or

(iii) remove the name of such surveyor from the register.

(2) The Board may, in its absolute discretion—

(a) reinstate any surveyor whose name has been removed from the register;

(b) terminate or reduce the period of suspension of a surveyor who has been suspended from practice.

(3) Where the Board has suspended a surveyor from practice or has removed the name of a surveyor from the register, such surveyor shall deliver to the Board his licence and the Board may retain such licence either until such licence has expired or until the name of the surveyor has been reinstated on the register or until the period of his suspension is terminated, as the case may be.

(4) There shall be published in the Gazette a notification of—

(a) the removal of the name of a surveyor from the register;

(b) the suspension from practice of a surveyor;

(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.

(5) The Board may order any surveyor found guilty by it of culpable negligence to pay the cost of any correction which his negligence may have necessitated.

[24 of 1986]

12. Persons other than surveyors forbidden to survey

(1) After the commencement of this Act no person other than a surveyor shall—

(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 Commissioner, or to be referred to in any manner whatsoever in any other document to be so 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;

(c) hold himself out or act in any manner whatever as a surveyor or perform any of the functions of a surveyor:
Provided that nothing in this Act contained shall preclude—

(i) any person from demarcating and measuring the boundaries of any land and from preparing a sketch plan in connexion with—

(a) any lease to be granted by the Minister responsible for Land, where such lease makes specific provision for a subsequent survey by a surveyor of the land demised by such lease;

(b) any acquisition or occupation of customary land for public purposes;

(c) any exclusive prospecting licence, claim or water right to be granted under the Mining Act or any application for a mining lease to be granted under such Act;

(Cap. 61:01)

(d) any order to be made under the provisions of sections 3 (2) and 10 (1) of the Public Roads Act;

(Cap. 69:02)

(ii) any person from preparing a sketch plan of any land for inclusion in an agreement for sale or an agreement for lease or in an option to purchase or lease or in any other preliminary agreement affecting land or any interest in land or in a grant of an easement, way-leave or licence affecting land or any interest in land;

(2) Any person who contravenes any of the provisions of subsection (1) shall be liable to a fine of K2,000 or, in default of payment, to imprisonment for six months.

[22 of 1974]
[24 of 1986]
[21 of 1996]
[26 of 1996]

13. **Survey plans to be deposited with the Commissioner and to become the property of the Government**

(1) All plans, survey data and records of surveys deposited with the Commissioner in pursuance of any requirements imposed by this Act or any Rules made thereunder shall become the property of the Government.

(2) No plan, survey data or other record deposited in the office of the Commissioner by virtue of this Act shall be altered or amended in any way without the permission in writing of the Commissioner.

(3) Any person who alters or amends in any way any plan, survey data or other record deposited in accordance with this Act without the permission in writing of the Commissioner shall be guilty of an offence and shall be liable to a fine of K2,000 and to imprisonment for six months.

[22 of 1974]
[24 of 1986]
[21 of 1996]
14. **Aerial surveys**

(1) Before any aerial survey of any land in Malawi is made, the person responsible for the making of such survey shall, at least one month before any aerial photography in connexion with such survey is carried out, notify the Commissioner in writing of his intention to cause such survey to be made.

(2) At the conclusion of such aerial survey such person shall, as soon as may be, supply the Commissioner with one contact print of every photograph taken for the purpose of such aerial survey together with one copy of any plan made as the result of such aerial survey.

(3) Any person who fails to comply with subsection (1) or subsection (2) shall be liable to a fine of K1,000 or, in default of payment, to imprisonment for three months.

[22 of 1974]
[24 of 1986]
[21 of 1996]

15. **Commissioner may cancel approval of plan**

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

(2) The Commissioner shall forthwith upon the cancellation of any plan as aforesaid notify in writing—

(a) the owner of the land to which such plan relates or, in the case of customary land or public land, the Minister;

(b) the appropriate registrar, if any.

[24 of 1986]

**Part IV – Survey marks and boundaries**

16. **Survey marks and boundaries lawfully established**

(1) Notwithstanding anything contained in any law, the position of any survey mark fixed, placed or set up for the purpose of denoting the boundaries of any land and which is deemed under this section to have been lawfully established, shall not be brought into question in any court of law or by any person in any circumstances.

(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—

(a) when its position is in agreement with its position established in any other survey and when a plan based on such survey has been approved for the purpose of establishing such survey mark by the Commissioner;

(b) when its position is in agreement with an order of the High Court.

[24 of 1986]
17. **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 centre-mark of such station or within five metres of the centre of the pillar of such fundamental benchmark as the case may be, together with a right-of-way to and from the same 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.

[22 of 1974]
[24 of 1986]

18. **Blasting of rock within area reserved for fundamental benchmark prohibited**

(1) No person shall carry out rock blasting operations within a radius of one hundred metres from any trigonometrical station or fundamental benchmark without the authority in writing of the Commissioner first had and obtained.

(2) Any person who contravenes this section shall be liable to a fine of K4,000 and to imprisonment for twelve months.

[24 of 1986]
[21 of 1996]

19. **No posts or fences to be placed near survey mark**

Except with the permission in writing of the Commissioner in that behalf it shall not be lawful for any person to place any fence, post or fence anchor or any other erection or to make any excavation, within one metre of any survey mark:

Provided that this section shall not apply to—

(a) any land in a Municipality or Township;

(b) any land not exceeding four hectares.

[22 of 1974]
[24 of 1986]

20. **Preservation and maintenance of survey marks**

(1) Every owner of land shall preserve and maintain in proper order and repair, in such manner as may be prescribed, every survey mark fixed, placed or set up on such land for the purpose of denoting the boundary of such land, and every survey mark defining a corner point of such land, whether such survey mark was erected for the purpose of or in connexion with a survey of such land under this Act or of any other law, or for the purpose of, or in connexion with, a survey of any land contiguous to the land upon which such survey mark is situate, and shall forthwith report to the Commissioner if any such survey mark cannot be found or is obliterated, removed or injured or requires repair.
21. **Commissioner may call upon owner to restore survey mark**

(1) If any survey mark has not been maintained in proper order or repair, or has been removed or obliterated, the Commissioner may serve upon the owner of the land upon which such survey mark is, or has been situated, either by delivering the same to such owner or by transmitting it in a registered letter through the post, a notice in writing calling upon such owner to restore such survey mark to the condition prescribed for such a survey mark or to cause it to be replaced in the prescribed manner, as the case may be.

(2) Where any survey mark is restored or re-erected such restoration or re-erection shall be carried out by a surveyor.

(3) If any survey mark is not restored or re-erected within six weeks of the date upon which any such notice was delivered or posted, the Commissioner may cause such 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 and the Commissioner may recover from every such owner his share of all costs incurred by the Commissioner under this subsection:

Provided that—

(a) if any such owner or the servant or agent of such owner has damaged, removed or obliterated any such survey mark, the, entire cost of the repair, restoration or re-erection of such survey mark shall be borne by such owner;

(b) where a survey mark which requires restoration or re-erection or any part of such survey mark is on customary land or public land or on land contiguous to customary land or public land, the Commissioner may, in his discretion, exercise his powers under this subsection without waiting for the expiration of such period of six weeks.

(4) In the case of a Municipality the Municipal Council and in the case of a Township the Town Council 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 Council is responsible for the upkeep and maintenance, and any destruction or damage to any such survey mark may be made good by the Commissioner at the expense of such Council.

[24 of 1986]

22. **Offences and compensation**

(1) Any person who, without lawful excuse (the burden of proof whereof shall be upon him)—

(a) alters, moves, disturbs or wilfully damages or destroys any survey mark, whether permanent or temporary and erected for the purpose of or in connexion with any survey operators, whether such survey mark is upon his own land or not and whether above or below the surface of the land; or

(b) fixes, places or sets up any such survey mark except under the supervision of a surveyor or anyone authorized by the Commissioner in that behalf, whether or not his intention is to
alter the boundary line of any piece of land or to deceive any person as to the position of a
boundary line,
shall be liable 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 Commissioner in that behalf personally superintends such removal or
disturbance and the erection of such other survey mark.

(3) Nothing in this section contained 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) For the purpose of awarding compensation under the law relating to criminal procedure in respect
of any damage caused by the commission of an offence against subsection (1), any survey mark
in connexion with which such offence was committed shall be deemed to be the property of any
person upon whose land or upon a boundary of whose land such survey mark was situate; and any
fundamental benchmark, reference mark or trigonometrical station, in connexion with which any
such offence was committed, shall be deemed to be the property of the Commissioner.

[24 of 1986]

23. **Authority to remove survey marks**

Any person who, for the purpose of carrying out any work which he may lawfully perform, desires to
remove or disturb any survey mark, may apply to the Commissioner for authority to effect such removal
or disturbance, and the Commissioner may thereupon authorize in writing such removal or disturbance
and, in his discretion, may, at the expense of such applicant, employ any surveyor or any authorized
officer personally to effect or supervise the removal or disturbance and subsequent replacement of such
survey mark or the erection or placing of any other survey mark to indicate the position of such removed
or disturbed survey mark, in such manner as the Commissioner may direct.

[24 of 1986]

**Part V – Miscellaneous**

24. **Government not liable for incorrect survey**

Neither the Government nor any officer thereof shall be liable for any incorrect survey or work
appertaining thereto performed by a surveyor, notwithstanding that such survey or work or any plans,
survey data or other record appertaining thereto has been approved by the Commissioner.

[24 of 1986]

25. **Plans and records, etc., prima facie evidence**

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

[24 of 1986]
26. **Power to enter upon land and to use material thereon**

(1) The Commissioner and any person generally or specially authorized by the Commissioner in writing and any surveyor may, for the purpose of performing any duties imposed by or in pursuance of this Act or any other law—

(a) enter upon any land with such 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 any survey mark, whether permanent or temporary, upon such land;

(c) make use of any brushwood, stone, sand, gravel, clay or other materials of a like nature upon which no work has been expended by the owner of such 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 or destroy all such trees, branches, underwood, growth or vegetation of any kind whatsoever in the vicinity of any survey mark as may interfere or be likely to interfere with the functions of such 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 such land or in the case of customary land to the appropriate Chief;

(ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section, and such owner or occupier shall be entitled to compensation for any avoidable damage caused to or in any building or caused to any other property belonging to such owner or occupier.

(2) Any person who in any manner whatsoever prevents, obstructs or impedes the exercise of any powers conferred by subsection (1) or who 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, shall be liable to a fine of K500, or, in default of payment, to imprisonment for one month or to both such fine and imprisonment.

[21 of 1996]

[24 of 1986]