



ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. General amendment of Cap. 33:01
3. Amendment of section 2 of the Act
4. Amendment of section 4 of the Act
5. Amendment of section 5 of the Act
6. Amendment of section 6 of the Act
7. Amendment of section 7 of the Act
8. Amendment of section 9 of the Act
9. Amendment of section 10 of the Act
10. Amendment of section 17 of the Act
11. Amendment of section 21 of the Act
12. Amendment of section 31 of the Act
13. Insertion of section 41A of the Act
14. Amendment of section 42 of the Act
15. Amendment of section 47 of the Act

An Act to amend the Land Survey Act.

Date of Assent: 03.05.11

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Land Survey (Amendment) Act, 2011, and shall come into operation on such date as the Minister may, by Order, appoint.
2. The Land Survey Act (hereinafter referred to as "the Act") is amended —
 - (a) by substituting, for the word "President" wherever it appears in the Act, the word "Minister";
 - (b) by substituting, for the word "Board" wherever it appears in the Act, the word "Council"; and
 - (c) by substituting, for the phrase "trigonometrical stations" wherever it appears in the Act, the phrase, "geodetic stations".

Short title and commencement

General amendment of Cap. 33:01

Amendment of section 2 of the Act

3. Section 2 of the Act is amended —

(a) by substituting for the definition of the word “general plan” the following new definition —

““general plan” means a plan representing the relative positions and dimensions of five or more pieces of land, which has been signed by a land surveyor and which has been approved or certified as a general plan by the Director or other officer empowered under this Act to do so and includes a general plan or a copy thereof in the Director’s office and approved or certified as aforesaid or a general plan which has, at any time prior to the commencement of this Act, been accepted as a general plan in the Deeds Registry;” and

(b) by inserting, in their correct alphabetical order, the following new definitions —

““member” means a member of the Council appointed under section 4A;

““subdivision” means the division of any land, other than buildings, into two or more parts;”.

Amendment of section 4 of the Act

4. The Act is amended by substituting, for section 4 thereof, the following new section —

“Land Surveyors’ Council

4A. (1) There is hereby established a Council, to be known as the Land Surveyors’ Council, which shall consist of the following members —

- (a) the Director who shall be the Chairperson of the Council;
- (b) two land surveyors from the Surveys and Mapping Department appointed by the Minister;
- (c) two land surveyors from the land boards appointed by the Minister; and
- (d) two land surveyors from the private sector, elected by the Botswana Surveying and Mapping Association and appointed by the Minister.

(2) Every member shall take an oath of affirmation in the form prescribed.

(3) The Council may, through its Chairperson, continue to function although not meeting and every act so performed during such time shall be approved, in writing, by a majority of its members.

(4) Notice of an appointment of a member shall be published in the *Gazette*.

Minister’s power to appoint members required to be elected

4B. (1) The Minister shall appoint a member where the Botswana Surveying and Mapping Association fails, neglects or refuses to elect a member —

- (a) within 21 days of notification by the Minister to elect a member, or
- (b) within the period referred to in section 4E to fill a vacancy in terms thereof.

(2) A member appointed under —

- (a) subsection (1) (a) shall hold office for such period, not exceeding two years, as the Minister may determine; and

(b) subsection (1) (b) shall hold office in accordance with section 4E, and shall be deemed to have been duly elected to the Council.

Tenure of
office

4C. (1) A member shall hold office for such period, not exceeding three years, as may be specified in the notice appointing him.

(2) On the expiry of a member's term of office, he shall continue to hold office until a successor has been elected or a period of three months has elapsed, whichever occurs first.

(3) Notwithstanding the provisions of subsection (1), the Chairperson shall hold office for a period of three years.

(4) A member whose term of office expires shall be eligible for re-appointment as a member.

Disqualification,
removal and
resignation

4D. (1) No person shall be appointed or elected as a member or be qualified to continue to hold office as a member who has —

(a) in terms of a law in force in any country —

(i) been adjudged or otherwise declared bankrupt or insolvent and has not been discharged, or

(ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside; or

(b) within a period of ten years immediately preceding the date of his proposed appointment, been convicted —

(i) in Botswana, of a criminal offence,

(ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he has not received a free pardon.

(2) The Council may, by notice in writing, remove a member from office where the member —

(a) is absent without reasonable cause from three consecutive meetings of the Council of which he has had notice;

(b) is inefficient;

(c) has been found to be physically or mentally incapable of performing his duties efficiently, and his medical doctor has issued a certificate to that effect; or

(d) has failed to comply with the provisions of section 5D.

(3) A member may resign from office by giving 30 days notice in writing to the Chairperson.

(4) The office of a member shall become vacant after —

(a) a period of 30 days from the date a ruling against the member is made on all appeals made in respect of charges levelled against him under subsection (1) (b);

(b) a period of 30 days has elapsed from the date the member has given notice in writing to the Chairperson under subsection (3), of his intention to resign;

- (c) a period of 30 days has elapsed from the date the member is given notice in writing by the Chairperson to vacate office; or
- (d) the member is summarily dismissed by the Council on the grounds of contravening a provision of this Act or for misconduct under subsection (2) (d).

(5) For purposes of subsection (2), “misconduct” includes any act done without reasonable excuse by a member which —

- (a) amounts to failure to perform in a proper manner any duty imposed on him as a member;
- (b) is prejudicial to the efficient conduct of the Council; or
- (c) tends to bring the Council into disrepute.

Filling of
Vacancy

4E. (1) The Minister shall, on being notified by the Council in writing of a death or vacation of office of a member appointed by the Minister, appoint, within such period as may be specified in the notice, being not less than 60 days from the date of the notification, a member to fill the vacancy, and the member so appointed shall hold office for the remainder of the period for which the former member would, but for his death or the vacation of his office, have continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.”

Amendment of
section 5 of the
Act

5. The Act is amended by substituting, for section 5 thereof, the following new sections —

“Functions of
Council

5A. (1) The functions of the Council are —

- (a) to set and carry out such tests and examinations as are prescribed in section 7 (2);
- (b) to register land surveyors;
- (c) to hear disciplinary allegations, and carry out disciplinary proceedings where necessary, against a land surveyor for professional misconduct;
- (d) to perform such other functions as may be assigned.

(2) For the purpose of carrying out the provisions of subsection (1) (a) the Council may, from time to time, appoint a maximum of three examiners and invigilators as may be necessary.

(3) The Council shall prescribe the following procedures for the purposes of subsection (1) (c) —

- (a) hearing a disciplinary allegation;
- (b) carrying out disciplinary proceedings;
- (c) the penalty which may be awarded by the Council for professional misconduct; and
- (d) any other procedure that the Council may consider appropriate.

5B. (1) At the first meeting of the Council, the members shall elect, from among their number, a Vice Chairperson who shall hold office for such period, being not less than 12 months, as the Council may from time to time determine unless he ceases to be a member.

(2) On the expiry of the term of office of the Chairperson or Vice Chairperson or where the Chairperson or Vice Chairperson vacates his office as such, a new Chairperson or Vice Chairperson shall be elected by the members from among their number at the next meeting of the Council or as soon thereafter as may be convenient.

(3) The Chairperson or Vice Chairperson may vacate his office as such even though he remains a member.

(4) The Vice Chairperson shall, whenever the Chairperson is absent or unable to carry out his functions, exercise the functions of the Chairperson during the period that the Chairperson is absent or unable to act as Chairperson.

5C. (1) Subject to the provisions of this Act, the Council shall regulate its own proceedings.

(2) The Council shall meet at such times and places as may be necessary for the performance of its duties.

(3) Upon giving notice in writing of not less than 14 days, a meeting of the Council may be called by the Chairperson and shall be called if not less than one half of the members so request in writing.

(4) Where the urgency of any particular matter does not permit the giving of notice in accordance with subsection (3), a special meeting may be called upon giving a shorter notice.

(5) The quorum at any meeting of the Council shall be four members including the Chairperson.

(6) There shall preside, at any meeting of the Council —
(a) the Chairperson;
(b) in the absence of the Chairperson, the Vice Chairperson; or
(c) in the absence of the Chairperson and Vice Chairperson,
such member as the members present may elect from among
their number for the purposes of the meeting.

(7) A decision of the Council on any question shall be by a
majority of the members present and voting at the meeting
and, in the event of an equality of votes, the person presiding
shall have a casting vote in addition to that person's deliberative
vote.

(8) The Council may invite any person whose presence it
considers necessary, to attend and participate in the deliberations
of a meeting of the Council, but such person shall have no vote.

(9) The provisions of sections 5D, 5E and 5F shall, with
the necessary modifications, apply to a person invited by the
Council under subsection (8).

Disclosure of
interest

5D. (1) Where a member is present at a meeting of the Council
at which meeting a matter which is the subject of consideration
is one in which he is directly or indirectly interested in a private
capacity, the member shall, as soon as practicable after the
commencement of the meeting, disclose such interest and shall
not take part in any consideration or discussion of, or vote on
any question touching upon, such matter.

(2) A disclosure of interest made in accordance with
subsection (1) shall be recorded in the minutes of the meeting
at which it is made.

(3) Where a member fails to disclose his interest in
accordance with subsection (1) and a decision by the Council
is made benefitting such member, such decision shall be null
and void.

(4) A member who contravenes subsection (1) commits an
offence and is liable to a fine not exceeding P2 000, or to
imprisonment for a term not exceeding two years, or to both.

Confidentiality

5E. (1) A member shall not disclose any confidential
information relating to the affairs of the Council, which he
acquired during the performance of his duties under this Act.

(2) Notwithstanding the provisions of subsection (1), a
member may disclose information relating to the affairs of the
Council acquired during the performance of his duties —

- (a) within the scope of his duties under this Act; or
- (b) when required to —
 - (i) by an order of court,
 - (ii) under any written law, or
 - (iii) in the investigation of an offence.

(3) Any person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding two years, or to both.

Remuneration
of
members

5F. (1) A member may be paid such remuneration and other allowances and such travelling, accommodation and subsistence expenses incurred during his service on the Council as may be determined by the Minister.

(2) Members shall receive the same remuneration except for the Chairperson and the Vice Chairperson who shall receive remuneration commensurate with their positions.

Validity of
decisions and
acts of Council

5G. A decision or act of the Council done under the authority of the Council shall not be invalid by reason only of the fact that —

- (a) the Council did not consist of the full number of members for which provision is made under section 4A;
- (b) the various members did not have the qualifications prescribed under section 4A; or
- (c) a disqualified person acted as a member of the Council.

Reports to
Minister

5H. (1) The Chairperson shall from time to time submit, to the Minister, reports with regard to matters relating to the activities of the Council which, in the opinion of the Council, should be brought to the notice of the Minister.

(2) The Council shall, when so requested by the Minister, furnish him with advice on matters in connection with the profession of land survey or cognate matters and shall communicate, to the Minister, information acquired by it in the course of its duties on matters regarded by it as being of public importance.”.

6. Section 6 of the Act is amended in subsection (3) by deleting paragraph (a) thereof.

Amendment of
section 6 of the
Act

7. The Act is amended by substituting, for section 7 thereof, the following new section —

Amendment of
section 7 of the
Act

“Qualifications
for
registration as
land surveyor

7. (1) A person shall not qualify to be registered as a land surveyor in terms of section 6 unless he is —

- (a) a Fellow or Professional Associate of the Royal Institute of Chartered Surveyors in subdivision V (Land Surveying);
or
- (b) the holder of a university degree in surveying, geomatics or mapping sciences.

(2) The person holding any of the qualifications in subsection (1) shall not be registered unless he —

- (i) satisfies the Council that he has field experience of the types of survey required by this Act,
- (ii) carries out a trial survey, to the satisfaction of the Council,
- (iii) satisfies the Council that he is capable of conducting land surveys in accordance with the provisions of this Act, and
- (iv) has passed, to the satisfaction of the Council, any prescribed examinations set by the Council.

(3) A person may be exempted from the provisions of paragraph (i) if he holds such post-graduate qualifications as may be prescribed.”.

Amendment of section 9 of the Act

8. Section 9 of the Act is amended by substituting, for the word “President” the word “Council” wherever it appears in this section.

Amendment of section 10 of the Act

9. Section 10 of the Act is amended by substituting, for the phrase “P500 or to imprisonment for a term not exceeding 12 months” appearing therein, the phrase “P10 000, or to imprisonment for a term not exceeding ten years”.

Amendment of section 17 of the Act

10. Section 17 of the Act is amended —

- (a) in subsection (3) by substituting, for the phrase “of record” appearing therein, the phrase “or recorded”;
- (b) in subsection (4) by substituting, for the phrase “If he approves the new diagram, the Director shall transmit it” appearing therein, the phrase “If the Director approves the new diagram, the owner of the land re-surveyed shall transmit the new diagram”.

Amendment of section 21 of the Act

11. Section 21 of the Act is amended by substituting, for the word “affecting” appearing therein, the word “effecting”.

Amendment of section 31 of the Act

12. The Act is amended by substituting, for section 31 thereof, the following new section —

“No poles, etc., to be placed near geodetic station

31. (1) Except with the consent of the Director, a person shall not place any fence post or fence anchor or any other erection or make any excavation within 0.09144m of any geodetic station.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding five years, or to both.”.

Insertion of section 41A of the Act

13. The Act is amended by inserting, immediately after section 41 thereof, the following new section —

“Survey of layout of infrastructure

41A. (1) Every utility company shall, within three months of completion of a project, deposit an engineering survey layout of its infrastructure with the Director for archiving.

(2) The engineering survey layout under subsection (1) may be used for planning and development purposes.”.

14. The Act is amended by substituting, for section 42 thereof, the following new section —

“Geodetic surveys, etc.

42. (1) The Director shall cause to be conducted such trigonometrical, topographical and level surveys, and such geodetic and geophysical operations as the Minister may direct, and shall take charge of and preserve all records of such surveys or operations.

(2) Any person who intends to carry out any mapping over an area exceeding one hectare, or to make a levelling line exceeding five kilometres or to carry out any aerial photography for use in mapping or similar purpose shall, before carrying out the same, give the Director written notice of not less than one month.

(3) Any person who has carried out any of the operations referred to in subsection (2) shall, if the Director so directs —

- (a) submit to the Director for inspection such records or aerial photographs as the Director may specify;
- (b) supply to the Director, at a prescribed cost, such copies of the records or aerial photographs as the Director may require; and
- (c) permit the use of all data derived from the records and aerial photographs in national mapping and development programmes.

(4) Any person who fails to comply with the provisions of subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding P5 000.”.

15. Section 47 of the Act is amended by inserting, immediately after paragraph (c) the following new paragraphs —

- “(d) the Cape rood, which is equal to 3.7782669 metres;
- (e) the morgen, which is equal to 0.856518047 hectares;
- (f) the acre, which is equal to 0.4046842 hectares; and
- (g) the hectare, which is equal to 2.47106238 acres.”.

Amendment of section 42 of the Act

Amendment of section 47 of the Act

PASSED by the National Assembly this 6th day of April, 2011.

B.N. DITHAPO,
Clerk of the National Assembly.