

(Published 27th January, 2017)

ACT

No. 8 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

20th January, 2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 to Cap. 69:02
3. Amendment of s. 3 of the principal Act
4. Amendment of s. 4 of the principal Act
5. Amendment of s. 5 of the principal Act
6. Amendment of s. 5A of the principal Act
7. Amendment of s. 10 of the principal Act
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16. Amendment of s. 45 of the principal Act
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22. Amendment of s. 51 of the principal Act
23. Amendment of s. 53 of the principal Act

An Act to amend the Public Roads Act

ENACTED by the Parliament of Malawi as follows—

- Short title and commencement 1. This Act may be cited as the Public Roads (Amendment) Act, 2017, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.
- Amendment of s.2 of Cap.69:02 2. Section 2 of Public Roads Act (hereinafter referred to as the “principal Act”) is amended by—
- (a) inserting therein, in the correct alphabetical order, the following definitions—
- “customary estate” bears the same meaning ascribed to it in the Land Act, 2016;
- “customary land committee” bears the meaning ascribed to it in the Customary Land Act, 2016;
- “local government authority” bears the meaning ascribed to in the Local Government Act.
- (b) deleting the definition of the words “surface rights” and substituting therefor the following—
- “surface rights”, in relation to land in respect of which compensation is claimed, means the rights of the claimant to any interest in the crops, structures and other improvements on the land;”.
- Act No. 16 of 2016
- Act No. 19 of 2016
- Cap. 22:01
- Amendment of s.3 of the principal Act 3. Section 3 of the principal Act is amended in subsection (2), by deleting the word “President” and substituting therefor the word, “Republic”.
- Amendment of s.4 of the principal Act 4. Section 4 of the principal Act is amended—
- (a) in subsection (2) and (3), by deleting the words “City, Municipality or Township” wherever they appear and substituting therefor the words “local government authority”; and
- (b) in the proviso to subsection (3), by deleting the words “City Council, Municipal Council or Town Council” and substituting therefor the words, “local government authority”.
- Amendment of s.5 of the principal Act 5. Section 5 of the principal Act is amended—
- (a) in subsections (2) and (3), by deleting the words “City, Municipality or Township” wherever they appear and substituting therefor the words “local government authority”; and
- (b) in the proviso to subsection (3), by deleting the words “City Council, Municipal Council or Town Council” and substituting therefor the words “local government authority”.

6. Section 5A of the principal Act is amended—

Amendment
of s.5A of the
principal Act

(a) in subsections (2) and (3), by deleting the words “City, Municipality or Township,” wherever they appear and substituting therefor the words “local government authority”; and

(b) in the proviso to subsection (3), by deleting the words “City Council, Municipal Council or Town Council” and substituting therefor the words “local government authority”.

7. Section 10 of the principal Act is amended—

Amendment
of s.10 of the
principal Act

(a) by deleting subsection (1) and substituting therefor the following new subsection (1)—

“(1) A local government authority shall have power to declare by notice published in the *Gazette*, the width, not exceeding sixty metres (60 m), of any road reserve or class or classes of road reserve in its area”; and

(b) in the second proviso to subsection (6), by deleting the words, “Town and Country Planning” and substituting therefor the words “Physical Planning”.

8. Section 11 of the principal Act is amended in subsection (4), by deleting the word “President” and substituting therefor the word “Republic”.

Amendment
of s.11 of the
principal Act

9. Section 12 of the principal Act is amended in subsection (2), by deleting the words “Town and Country Planning” and inserting the words “Physical Planning”.

Amendment
of s.12 of the
principal Act

10. Section 24 of the principal Act is amended—

Amendment
of s.24 of the
principal Act

(a) in subsection (3), by deleting the words “Town and Country Planning Act” and substituting therefor the words “Physical Planning Act”; and

Cap. 23:01
Act No. 17
of 2016

(b) in subsection (5), by deleting the word “Deeds” and substituting therefor the word “Land”.

11. Section 25 of the principal Act is amended—

Amendment
of s.25 of the
principal Act

(a) by deleting the marginal note and substituting therefor the following new marginal note—

“reservation of a steep of land not exceeding 60m wide”; and

(b) in subsection (3)—

(i) by deleting the words “Commissioner for Surveys” and substituting therefor the words “Surveyor General”; and

(ii) by deleting the word “Deeds” and substituting therefor the word “Land”.

- Amendment of s.26 of the principal Act
- 12.** Section 26 of the principal Act is amended—
- (a) by deleting the word “Deeds” and substituting therefor the word “Land”; and
- (b) by deleting the words “Commissioner for Surveys” and substituting therefor the words “Surveyor General”.
- Amendment of s.28 of the principal Act
- 13.** Section 28 of the principal Act is amended, in subsection (1), by deleting the word “President” and substituting therefor the word “Republic”.
- Amendment of s.29 of the principal Act
- 14.** Section 29 of the principal Act is amended by deleting the first and second proviso to subsection (5).
- Amendment of s.44 of the principal Act
- 15.** Section 44 of the principal Act is amended—
- (a) in subsection (1), by deleting the words “Whenever, under this Act” and substituting therefor the word “Where”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection (2)—
- “(2) In any case in which such compensation is limited to compensation in respect of surface rights, if the land on which such surface right exists, is private land, the amount of compensation shall be based on the loss or damage suffered by the claimant arising from the damage to or destruction of, his interest in the surface rights on such land valued at the valuation date and shall include—
- (a) the damage, if any, sustained by the person interested at the valuation date by reason of the severance of such land from his other land or other injurious matter affecting his other property, movable or immovable, by reason of the exercise of the powers conferred by this Act; and
- (b) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change, but shall not include any sum in respect of improvements on land in a road reserve effected since the land became a road reserve.”.
- Amendment of s.45 of the principal Act
- 16.** Section 45 of the principal Act is amended—
- (a) in subsection (1)—
- (i) by deleting paragraph (a) and substituting therefor with the following new paragraph (a)—
- “(a) in the case of a customary estate, subject to subsection (2), the occupier shall be entitled to reasonable compensation in respect of disturbance and the amount of such compensation shall be assessed using open market value based on the loss suffered by the

claimant arising from damage to or destruction of his interest in the land, and surface rights on such land may include compensation for other disturbance—

(i) where he has to move his residence or place of business;

(ii) where alternative land cannot be made available to him and the land remaining to him for any purposes is not an economic unit; or

(iii) where alternative land is made available to him, and where the making of the alternative land equally as fit for use as the land of which he has been deprived of, is likely to involve a loss in terms of money, materials or work, however, in assessing compensation under this paragraph, the total compensation for disturbance shall not in any case exceed the total of—

A. what would have been the value of the land in its improved condition at the valuation date less its value at such date in an unimproved condition;

B. the damage, if any, sustained by the occupier by reason of severing such land from other land occupied by him; or

C. the reasonable expenses, if any, incidental to a change of residence or place of business if, in consequence of the matters giving rise to the claim, he is compelled to effect such change;”;

(b) in subsection (2) (b), by inserting the words “and to interest in the land itself” immediately after the words “surface rights”.

17. Section 46 of the principal Act is amended—

(a) in subsection (1), by deleting the words “and no others” ;

(b) in subsection (1) (c), by inserting the words “and good-will thereof” immediately after the word “change” appearing in the last line; and

(c) in subsection (2) (a), by deleting the words “within two (2) years before the valuation date” and substituting therefor the words “, after the notice to acquire,”.

Amendment
of s.46 of the
principal Act

18. Section 47 of the principal Act is amended—

(a) by deleting the words “compensation board” wherever they appear in that Section and substituting therefor the words “Land Tribunal”;

(b) in subsection (1), by deleting paragraph (a) to the proviso and substituting therefor the following new paragraph (a)—

Amendment
of s.47 of the
principal Act

“(a) in the case of a customary estate, the claim may be made orally to a customary land committee which shall be required to record the claim in writing through the assistance of the land clerk who shall forward the claim to the officer responsible for land matters within the local government area and such officer shall in turn forward the claim to the relevant highway authority;”;

(c) in subsection (4)—

(i) by deleting the word “Minister” and substituting therefor the phrase “Judicial Service Commission, on the recommendation of the Ministry responsible for land matters”; and

(ii) by deleting the word “board” and substituting therefor the word “tribunal”; and

(d) in subsection (5) by deleting the words “Chief of such land” and substituting therefor the words “customary land committee of such area”.

Replacement
of s.48 of the
principal Act

19. Section 48 of the principal Act is repealed and replaced by the following new section—

“Procedure
before
Land Tribunals **48.** The Chief Justice may make rules to regulate the procedure to be followed before a Land Tribunal and for constituting the Land Tribunal.”.

Replacement
of s.49 of the
principal Act

20. Section 49 of the principal Act is repealed and replaced by the following new section—

“Procedure
before
Land
Tribunals **49.** Where the claimant or the highway authority is not satisfied with the amount of compensation awarded, he may apply to the High Court for judicial review within one month from the date of the award by the Land Tribunal in accordance with the rules made by the Chief Justice under the Court’s Act.”

Cap 3:02

Repeal of s.50
of the
principal Act

21. Section 50 of the principal Act is repealed.

Amendment
of s.51 of the
principal Act

22. Section 51 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words “customary land” and substituting therefor the words “a customary estate”; and

(ii) by deleting the word “the Chief” and substituting therefor the words “a customary land committee”; and

(b) in subsection (4), by deleting the word “District Council” and substituting therefor the words “local government authority”.

23. Section 53 of the principal Act is amended by deleting the words “K500” and substituting therefor the words “K50,000”. Amendment
of s.53 of the
principal Act

Passed in Parliament this twenty second day of November, two thousand and sixteen.

FIONA. KALEMBA
Clerk of Parliament

