

**DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM
NOTICE 976 OF 2017**

The Minister of Rural Development and Land Reform hereby publishes the Land Survey Amendment Bill, 2017 and the explanatory memorandum of objects for public comment.

Members of the public are invited to submit written comments within 60 calendar days of the publication of this notice to the following address:

By post to: The Chief Surveyor-General: Rural Development and Land Reform

Attention: Mr Nhlanhla Mazibuko

Private Bag X954

PRETORIA

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By e-mail to: Nhlanhla. Mazibuko@drdlr.gov.za

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

LAND SURVEY AMENDMENT BILL, 2017

*(As introduced in the National Assembly as a section 75; explanatory summary of
Bill published in the Government Gazette No. 41350 of 22 December 2017)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B-----2017]

It080217

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Land Survey Act, 1997, so as to align certain sections with the structure of the Department of Rural Development and Land Reform,; to provide for the appointment of certain members of the Survey Regulations Board; to regulate the survey of land in the Republic of South Africa; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 8 of 1997 as amended by section 8 of Act 61 of 1998

1. Section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997) (hereinafter referred to as the “principal Act”), is hereby amended by—
 - (a) the deletion of the definition of "Chief Director";
 - (b) by the insertion of the following definition after the definition of “general plan”:
“**geodetic**’ in relation to geodesy, which is the scientific discipline that deals with the measurement and representation of the Earth, including its shape and gravitational field, in a three-dimensional time-varying space.”;

- (c) by the insertion of the following definition after the definition of "this Act":
- “**topographical**’ in relation to topography means the arrangement or accurate measurement and representation (depiction on maps) of the physical features and landscape of the earth and human-made infrastructure.”;
- (d) by the insertion of the following definition after the definition of “township”:
- “**trigonometrical** relates to the method accurately determining the position of points as part of the national control survey network.”; and
- (e) the substitution for the definition of "trigonometrical station" of the following definition:
- " '**trigonometrical station**' means any survey station, including a town survey mark, erected by or under the direction of the Chief **[Director]** Surveyor-General as part of the national control survey system and for which he or she has published, or intends to publish, official co-ordinate values, and includes such other stations as may be prescribed."

Repeal of section 2A of Act 8 of 1997, as amended by section 10 of Act 61 of 1998 and section 38 of Act 19 of 2013

2. Section 2A of the principal Act is hereby repealed.

Amendment of section 3 of Act 8 of 1997, as amended by section 11 of Act 61 of 1998

3. Section 3 of the principal Act is hereby amended by—

(a) the substitution for the words preceding paragraph (a) of the following words:

“(1) The Chief Surveyor-General shall be in charge of such geodetic, topographical and cadastral surveying, geospatial and land information services in the Republic as the Minister may direct and, subject to this Act, shall —”;

(b) the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) conduct such cadastral, trigonometrical, topographical, geodetic and other relevant survey related operations and research as may be required;” and

(c) the substitution for subsection (2) of the following subsection:

“(2) Any land surveyor employed [**in the office**] under the direction of the Chief Surveyor-General may, if authorised thereto by the Chief Surveyor-General, perform any specified act or task which may be performed in terms of this Act or any other law by the Chief Surveyor-General.”.

Repeal of section 3A of Act 8 of 1997, as amended by section 12 of Act 61 of 1998

4. Section 3A of the principal Act is hereby repealed.

Amendment of section 8 of Act 8 of 1997, as amended by section 14 of Act 61 of 1998

5. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Director-General may, by notice in the *Gazette*, prescribe the fees to be charged in respect of any act or matter required or permitted to be performed or dealt with in or in connection with the offices of the Chief Surveyor-General, **[the Chief Director and]** the Surveyors-General and any office operating under the direction of the Chief Surveyor-General.".

Amendment of section 9 of Act 8 of 1997, as amended by section 38 of Act 19 of 2013

6. Section 9 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) three land surveyors nominated by the South African Geomatics Council established by section 3 of the Geomatics Profession Act, 2013 (Act No. 19 of 2013) and appointed by the Minister in writing.".

(b) the substitution for subsection (2) of the following subsection:

"(2) For every member of the board appointed in terms of subsection (1) (b) and (1) (c) there shall be an alternate member. The alternate shall be appointed in the same manner as the member referred. Any alternate member so appointed shall act in the place of the member in respect of whom he or she has been appointed or as alternate member, during the absence of that member or during his or her inability to act as a member of the board;"

(c) the substitution for subsection (4) of the following subsection:

"(4) (a) A member of the board referred to in subsection (1) (b) and (c) shall hold office for a term **[determined by the Minister]**, not exceeding two years from the date of appointment by the Minister, but the Minister may at any time remove **[that]** a member from office on grounds of misconduct, incapacity or incompetence and in case of a member referred to in subsection (1) (c), the Minister shall remove such a member after consultation with the South African Geomatics Council.

(b) **[A member of the board referred to in subsection (1) (c) shall hold office for a term determined by the]** The South African Geomatics Council **[but not exceeding two years, but that Council]** may, at any time submit a written request to the Minister to remove [that member] a member appointed in terms of subsection (1) (c) from office on grounds of misconduct, incapacity or incompetence.

(bA) The Minister shall, within 14 days from the date of receipt of the written request in terms of paragraph (b), grant or dismiss such a request: Provided that should there be no response from the Minister within 30 days from the date of receipt of the written request, such written request shall be deemed to have been granted by the Minister.

(d) the substitution for subsection (5) of the following subsection:

"(5) Should a member of the board die or vacate office before the expiration of his or her term of office, the Minister **[or the South African Geomatics Council, as the case maybe,]** may appoint a person to fill the vacancy for the unexpired part of the term for which the member was appointed or nominated **[.] for appointment by the Minister in terms of subsection (1) (c).**"

Amendment of section 14 of Act 8 of 1997

7. Section 14 of the principal Act is hereby amended by the deletion of the provisos.

14. No general plan or diagram of any piece of land shall be accepted in any deeds registry in connection with any registration therein of that land, unless the general plan or diagram has been approved by the Surveyor-General. **[_]: Provided that, in the event of a general plan having been prepared in terms of any law which regulates the establishment of townships, the Surveyor-General may, at the request of the land surveyor who has signed the general plan, approve it provisionally, and that provisionally approved general plan may be accepted in a deeds registry for the registration of registrable acts in respect of erven indicated thereon, if a**

certificate has been submitted to the Registrar in which the responsible land surveyor declares that the beacons of the erf or erven to be registered have been placed in positions that correspond with the data appearing on the provisionally approved general plan, and that he or she will submit the final general plan to the Surveyor-General for approval within the prescribed period: Provided further that the land surveyor shall, simultaneously with the submission of the certificate to the Registrar, submit a copy thereof to the Surveyor-General.]”.

Substitution of section 42 of Act 8 of 1997, as amended by sections 16 and 19 of Act 61 of 1998

8. The following section is hereby substituted for section 42 of the principal Act:

42. (1) If the Chief **[Director]** Surveyor-General is satisfied that town survey marks should be officially erected in any area or part of an area under the jurisdiction of a local authority, to enable the positions of the corner points of all pieces of land therein to be accurately determined, he or she may order the erection and survey of such town survey marks as provided in this section.

(2) The erection and survey of the town survey marks shall for all purposes be deemed to be part of and in continuation of the **[national control survey system]** trigonometrical survey operations referred to in section 3 [3A]: Provided that a local authority may at its own cost erect the town survey marks in positions approved by the Chief **[Director]** Surveyor-General.

- (3) When the town survey marks have been erected and surveyed the Chief **[Director]** Surveyor-General shall give notice of this fact to the Surveyor-General and the local authority concerned, and shall furnish each of them with the official co-ordinates and a plan showing the positions of those town survey marks, and shall cause a notice to be published in one issue of the *Gazette* stating that the town survey marks have been officially erected in terms of this section and that as from a specified date, which shall not be earlier than a date one month after the date of the publication of the notice, a land surveyor, in surveying or subdividing land or in replacing a beacon in the vicinity, shall base the survey on town survey marks as prescribed.
- (4)(a) A local authority shall within its area of jurisdiction be responsible for the maintenance to the satisfaction of the Chief **[Director]** Surveyor-General, of any town survey marks erected in terms of this section, and should the local authority fail to maintain any town survey mark the Chief **[Director]** Surveyor-General may undertake any necessary work at the expense of that local authority;
- (b) A local authority established after the commencement of this Act shall by the mere fact be responsible for the maintenance of the town survey marks which were erected within its area of jurisdiction before its establishment".

Amendment of section 43 of Act 8 of 1997, as amended by section 19 of Act 61 of 1998

9. Section 43 of the principal Act is hereby amended by the substitution in subsection (1) for the following subsection:

"(1) Except with the consent of the Chief **[Director]** Surveyor-General, no person shall place any fence-post, fence-anchor or any other erection or make any excavation within one meter of any trigonometrical station, excluding a town survey mark."

Amendment of section 44 of Act 8 of 1997, as amended by section 19 of Act 61 of 1998

10. Section 44 of the principal Act is hereby amended by the substitution in subsection (3) for the following subsection:

"(3) For the purpose of awarding compensation in respect of any damage caused by an offence, any beacon in connection with which the offence was committed shall be deemed to be the property of the person upon whose land or upon a boundary of whose land that beacon was situate, and any bench-mark, reference mark or trigonometrical station in connection with which the offence was committed shall be deemed to be the property of the Chief **[Director]** Surveyor-General."

Amendment of section 45 of Act 8 of 1997, as amended by section 17 of 1998

11. Section 45 of the principal Act is hereby amended by—

(a) the substitution for the words preceding paragraph (a) of the following words:

"(1) The Chief Surveyor-General, **[the Chief Director,]** a Surveyor-General, any person generally or specifically deputed in writing by such officer, or a land surveyor may, for the purpose of performing any functions in terms of this Act or any other law -;"
and

(b) the substitution for subsection (2) of the following subsection:

"(2) The Chief Surveyor-General, **[the Chief Director,]** a Surveyor-General, any person authorised by such officer, or a land surveyor shall, before exercising any power referred to in subsection (1), give reasonable notice to the owner or occupier of the land concerned of the intention to exercise the power, except when that power is exercised in carrying out any provision of section 26."

Amendment of section 50 of Act 8 of 1997, as amended by section 18 of Act 61 of 1998

12. Section 50 of the principal Act is hereby amended by the deletion of subsection (8).

Short title and commencement

13. This Act is called the Land Survey Amendment Act, 2017 and comes into operation on a date fixed by the President by Proclamation in the *Gazette*.

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MEMORANDUM ON THE OBJECTS OF THE LAND SURVEY AMENDMENT BILL, 2017

1. OBJECTS OF THE BILL

The Land Survey Amendment Bill, 2017 ("Bill") seeks to amend the Land Survey Act, 1997 (Act No. 8 of 1997) ("Act"), in order to, amongst others—

- (a) amend certain definitions;
- (b) align certain sections with the structure of the Department of Rural Development ("Department");
- (c) provide for the appointment of certain members of the Survey Regulations Board ("Board"); and
- (d) regulate the survey of land in the Republic of South Africa and provide for matters connected therewith.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 CLAUSE 1

2.1.1 Clause 1 seeks to delete the definition of 'Chief Director'. As a result of this deletion, the definition of 'Chief Director' becomes obsolete. Section 2A of the Act provides for appointment, powers and functions of Chief Director: Surveys and Mapping.

2.1.2 The current definition of "trigonometrical station" makes provision for the erection of any survey station under the direction of the Chief Director, instead of the Chief Surveyor-General who bears the responsibility of national control of the survey system. Clause 1 proposes that the erection of survey stations take place under the authority of the Chief Surveyor-General.

2.2 CLAUSE 2

This clause seeks to delete section 2A of the Act in order to align the Act with the structure of the Department.

2.3 CLAUSE 3

In line with clause 1, this clause seeks to create certainty regarding the duties of the Chief Surveyor-General by clarifying the role played by the Chief Surveyor-General in respect of his or her functions. This clause empowers the Chief Surveyor-General to take charge of geodetic, topographical and cadastral surveys in the Republic of South Africa.

2.4 CLAUSE 4

This clause seeks to delete section 3A which provides for the duties of the Chief Director.

2.5 CLAUSE 5

This clause seeks to empower the Director-General to prescribe fees for any office that operates under the authority of the Chief Surveyor-General.

2.6 CLAUSE 6

- 2.6.1 Section 9 of the Act deals with the establishment of the Board which consist of the Chief Surveyor-General, three land surveyors who are appointed by the Minister and three land surveyors who are nominated by the South African Geomatics Council ("Council"). Section 9 (1) (b) of the Act makes provision for land surveyors to be appointed by the Minister. Furthermore, section (1) (b) of the Act does not make provision for land surveyors nominated by the Council to be appointed by the Minister. The Bill seeks to address this issue.
- 2.6.2 Section 9 of the Act does not provide for the term of the Board. The proposed amendments to section 9 (4) (a) of the Act seeks to prescribe the term of Board.
- 2.6.3 Section 9 of the Act does not provide for the manner within which the Minister may remove, upon request, a member nominated by the Council from office. The proposed amendment to section 9 (4) (b) of the Act seeks to address this issue.
- 2.6.4 Members of the Board are at times not capable of finalising their duties before their term of office expires. This situation requires that the members concerned be appointed for a second term for purposes of continuity. The proposed amendment to section 9 (4) (c) of the Act seeks to address this issue.

2.7 CLAUSE 7

Section 14 of the Act makes provision for the lodging of general plans and the manner in which they may be handled. The Board resolved that provisional general plans have become an unnecessary burden on the cadastral system of the Republic of South Africa and there is no longer a need for them. As a result the Board resolved to substitute regulation 20 (2) which makes provision for the lodging of provisional general plans.

2.8 CLAUSE 8

Clause 8 makes provision for the erection of town survey marks that falls within the jurisdiction of a local authority under the direction of the Chief Surveyor-General as well as the maintenance of such town survey marks by the local authority concerned.

2.9 CLAUSE 9

This clause proposes an amendment to section 43 of the Act by providing that no person shall place any fence-post, fence-anchor or any other erection or make any excavation within one meter of any trigonometrical station, excluding a town survey mark without the consent of the Chief Surveyor-General.

2.10 CLAUSE 10

This clause proposes an amendment to section 44 of the Act by providing that any beacon in connection with which an offence has been committed shall be deemed to be the property of the person upon whose land or upon a boundary of whose land that beacon was situate, and any bench-mark, reference mark or trigonometrical station in connection with which an offence was committed shall be deemed to be the property of the Chief Surveyor-General for the purpose of awarding compensation in respect of any damage caused by such offence.

2.11 CLAUSE 11

This clause proposes an amendment to section 45 of the Act by deleting the 'Chief Director' as one of the officials who is empowered in terms of the Act to enter upon land for the purposes of performing their functions in accordance with the provisions of the Act.

2.12 CLAUSE 12

Clause 12 proposes the deletion of section 50(8) of the Act which makes provision for the transitional arrangement in respect of the appointment of the Chief Director.

2.13 CLAUSE 13

This clause contains the short title of the Bill.

3. FINANCIAL IMPLICATIONS FOR THE STATE

None

4. SOCIO-ECONOMIC IMPLICATIONS

None. The Bill is purely for house-keeping and technical in nature.

5. DEPARTMENTS/ BODIES/ PERSONS TO BE CONSULTED

- 5.1 The South African Geomatics Council;
- 5.2 The South African Geomatics Institute;
- 5.3 The GISSA; and
- 5.4 The Institute of mining surveyors of South Africa

6. CONSTITUTIONAL IMPLICATIONS

None

7. COMMUNICATIONS IMPLICATIONS

To be undertaken by the Department of Rural Development and Land Reform.

8. PARLIAMENTARY PROCEDURE

- 8.1 The State Law Advisors and the Department are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, ("Constitution") since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

8.2 The State Law Advisors are of the opinion that it is not necessary to send the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since the Bill contains no provisions pertaining to customary law and customs of traditional communities.