

Malawi

Urban Areas (Public and Private Streets) Act Chapter 23:02

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1956/13/eng@2014-12-31

There may have been updates since this file was created.

PDF created on 21 February 2024 at 14:16.

Collection last checked for updates: 31 December 2014.

[Check for updates](#)



About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.laws.africa
info@laws.africa

There is no copyright on the legislative content of this document.
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Urban Areas (Public and Private Streets) Act Contents

| | |
|---|----|
| Part I – General | 1 |
| 1. Short title | 1 |
| 2. Interpretation | 1 |
| 3. Operation of the Act | 2 |
| 4. Borrowing powers | 2 |
| Part II – Public streets | 2 |
| 5. Responsibility for repair and maintenance of public streets | 2 |
| 6. Council to declare public streets | 2 |
| 7. Power to construct new streets and to acquire land for the purpose | 3 |
| 8. Power to close public streets temporarily | 3 |
| 9. Notice of intention to close | 3 |
| 10. Procedure for stopping up, diverting or turning public streets | 3 |
| 11. Application for order that a public street shall cease to be repairable by Council | 4 |
| 12. Register of public streets to be kept and amended in terms of court's order | 4 |
| 13. Planning approval necessary before construction, stopping up, diverting, turning or discontinuing use by public of public streets | 4 |
| 14. Planting of trees and laying out grass margins | 5 |
| 15. General offences | 5 |
| Part III – Private street works | 5 |
| 16. Making of private streets or widening, etc., of existing private streets | 5 |
| 17. Conditions may be imposed by Councils and Planning Committees | 6 |
| 18. Planning approval to be obtained | 6 |
| 19. Approved plans, etc., to be complied with | 7 |
| 20. Power for Council to undertake private street works | 7 |
| 21. Appeals by persons aggrieved by resolution to do any private street works or by provisional apportionment of costs thereof | 8 |
| 22. Power to amend proposals | 9 |
| 23. Apportionment of expenses of private street works and objections and appeals in connexion therewith | 9 |
| 24. Unpaid apportionments to be a charge on the land | 9 |
| 25. Recovery of expenses by action | 10 |
| 26. Temporary construction of private street works | 10 |
| 27. Incidental works | 10 |
| 28. Adoption of, private streets as public streets | 11 |
| 29. Liability on change of ownership | 11 |

| | |
|--|----|
| 30. Penalties | 11 |
| Part IV – Miscellaneous | 12 |
| 31. Numbering of houses and naming of street | 12 |
| 32. Owner to have bridge over drain leading to his house | 12 |
| 33. Application to Government | 12 |
| Schedule (Sections 17, 20, 27 and 28) | 12 |

Malawi

Urban Areas (Public and Private Streets) Act

Chapter 23:02

Commenced on 20 July 1956

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to regulate the making and repair of Public Streets in Urban Areas, the construction of Private Streets in Urban Areas and their adoption by Municipal Councils and Town Councils and for other matters incidental thereto and connected therewith

Part I – General

1. Short title

This Act may be cited as the Urban Areas (Public and Private Streets) Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Council**” means Municipal Council or Town Council within the meaning of the Local Government (Urban Areas) Act;

[Cap. 22:01]

“**court**” means a Resident Magistrate or a magistrate of the first grade having jurisdiction in an Urban Area;

“**owner**” means—

- (a) in relation to freehold property (excluding public land) the person owning such property; and
- (b) in relation to leasehold or other immoveable property, the person holding such property directly from the Government or from the owner of the freehold estate or from a Council as lessee or licensee,

and includes—

- (i) any agent who receives rents or profits for any such person;
- (ii) any superintendent, overseer or manager of any such person in respect of any holding on which he resides as superintendent, overseer or manager;

“**Planning Area**” means a Planning Area so declared under the Town and Country Planning Act, within which an Urban Area is included;

[Cap. 23:01]

“**Planning Committee**” means a Planning Committee appointed under the Town and Country Planning Act;

[Cap. 23:01]

“**private street**” means any street other than a public street;

“**private street works**” means the doing in relation to a private street of any of the following things, that is to say, the levelling, paving, flagging, metaling, macadamizing, asphaltting, gravelling, kerbing, channelling or lighting thereof or the making of a sewer or drain, or the making of a carriage-way or footpath whether by the doing of any of the foregoing things or otherwise;

“**public street**” means any street declared to be a public street by a resolution passed under [section 6\(1\)](#) subject to any amendment by the court made under this Act and any other street declared to be a public street under any of the other provisions of this Act;

“**street**” means any highway, road, lane, thoroughfare, footway, court, square or passage within the area of an Urban Area, used or intended to be used as a means of access to two or more premises or areas of land in different occupation, whether the public have a right of way thereover or not, and includes all channels, ditches, drains, sidewalks, bridges, culverts and other works appurtenant thereto;

“**Urban Area**” means a Municipality or a Township within the meaning of the Local Government (Urban Areas) Act.

[Cap. 22:01]

3. Operation of the Act

The Minister may, from time to time, by order, apply all or any of the provisions of this Act to any Urban Area or part thereof and upon the publication of any such order the said provisions shall extend to and be in force in the Urban Area or such part thereof as may be specified in the order.

4. Borrowing powers

Any Council may, for the purpose of carrying out any works under this Act and with the sanction of the Minister, raise loans on such terms and conditions as the Minister may approve.

Part II – Public streets

5. Responsibility for repair and maintenance of public streets

A Council shall bear the cost of and shall be responsible for the repair and maintenance of any public street in trust to keep and maintain the same in a reasonable state of repair for the use and benefit of the general public.

6. Council to declare public streets

(1) A Council shall, within four calendar months of the publication of any order made under [section 3](#) in respect of its Urban Area or any part thereof, by resolution declare which streets or parts thereof within the area in question are public streets and shall cause a copy of such resolution and a copy of subsections (2) and (3) to be published within one calendar month of the passing of such resolution in the *Gazette* and in two issues of a newspaper circulating in Malawi.

(2) Objections to declaration

Any person who may consider that he is or may be injured or aggrieved by such resolution either by the inclusion therein of any street or streets or any part or parts thereof or by the exclusion therefrom of any street or streets or any part or parts thereof may, within three calendar months of the date of the passing of the resolution or such extended time as the court may (whether before or after the said period for special reasons to be recorded by it) allow, lodge with the court an objection to the resolution stating in such objection his reasons for making it.

(3) Any person lodging an objection under subsection (2) shall within seven days of lodging such objection forward a copy thereof by registered post to the Council concerned.

- (4) On receipt of any objection lodged pursuant to subsection (2) the court shall inform the Council and the objector in writing of the date of the hearing.
- (5) Powers of court

On the hearing of an objection the court shall adjudicate thereon and may set aside the resolution or amend it in such manner as it shall think fit and shall in any event make such order as to costs as it considers just.
- (6) If on the hearing of an objection the court is satisfied that any street or part thereof has for the period of one calendar year immediately preceding the date of a resolution made under subsection (1) been ordinarily repaired or ordinarily maintained by a Council or that the general public have enjoyed the use thereof without lawful interruption for the period of twelve calendar years immediately preceding the date of such resolution, where such street has not been declared a public street by such resolution, the court shall declare such street or part thereof as the case may be to be a public street.
- (7) In hearing any objection, the court may take into consideration any matter it considers relevant notwithstanding that testimony regarding such matter would not be admissible under the law relating to evidence.
- (8) The decision of the court on any objection shall be final and shall not be subject to any appeal.

7. Power to construct new streets and to acquire land for the purpose

A Council may make and construct new streets and may by agreement acquire land for such purpose, and may by resolution declare any such street to be a public street, giving notice thereof in accordance with [section 28](#) (3).

8. Power to close public streets temporarily

A Council may, if it deems it necessary, temporarily close any public street.

9. Notice of intention to close

A Council shall, whenever practicable, give at least seven days' notice of its intention to close temporarily, any public street by notice published in the *Gazette* and in a newspaper circulating in Malawi and by posting up notices in or near the street to be closed.

10. Procedure for stopping up, diverting or turning public streets

- (1) Whenever a Council shall deem it expedient that any public street should be stopped up, diverted or turned, either entirely or reserving a footway along the whole or any part or parts thereof, the Council shall cause a notice, giving brief particulars of such proposed stopping up, diversion or turning, to be affixed in some conspicuous place at each end of such street and shall cause such notice to be inserted once in the *Gazette* and at least twice in a newspaper circulating in Malawi; every such notice shall be dated and shall be signed by a responsible official of the Council.
- (2) The Council shall, for a period of four weeks from the date of such notice, make available at its offices for inspection by the public, full particulars of the proposals the subject of such notice.
- (3) Any person who may consider that he would be injured or aggrieved by such stopping up, diverting or turning, may within four weeks of the date of the publication of such notice in the *Gazette*, lodge with the Council an objection to any such proposal stating in such objection his reasons for making it.
- (4) The Council may, at any time after the expiration of six weeks from the date of such notice, apply to the court for an order that the public street shall be stopped up, diverted or turned either entirely or partly, as the case may be, and shall, with such application, deliver to the court a copy of such

notice with evidence of publication thereof and a plan verified by a competent surveyor delineating such public street together with sufficient copies of any objections lodged under subsection (3).

- (5) The court may, if satisfied that the public street should be stopped up, diverted or turned in the terms of the proposals contained in the application, make an order accordingly, or it may refuse such application in whole or in part, making such order and awarding such costs in the proceedings as it may deem appropriate.

11. Application for order that a public street shall cease to be repairable by Council

- (1) Whenever a Council shall consider that a public street is unnecessary for public use but does not desire to have the same stopped up, the Council may, on affixing and publishing a notice of what is intended, in the manner prescribed in [section 10\(1\)](#) and, on complying with the requirements of subsection (2) of that section, apply to the court after the period and in the manner prescribed in subsection (4) of that section, for an order that such public street is not required for public use and that it shall cease to be a public street repairable by the Council.
- (2) Any person who may consider that he would be injured or aggrieved by any such order may, within four weeks of the date of such notice, lodge with the court an objection to the grant of such application stating in such objection his reasons for making it.
- (3) The court may, if satisfied that the public street should cease to be a public street repairable by the Council, make an order accordingly, or it may refuse such application and may award such costs in the proceedings as it may deem appropriate.

12. Register of public streets to be kept and amended in terms of court's order

The Council shall keep a register of public streets and whenever, under the terms of an order of the court, a public street is stopped up, diverted or turned or ceases to be a public street repairable by the Council, the Council shall amend such register accordingly.

13. Planning approval necessary before construction, stopping up, diverting, turning or discontinuing use by public of public streets

- (1) Any proposals by a Council for the construction in a Planning Area of new streets under [section 7](#), or for the stopping up, diverting or turning of a public street under [section 10](#), or that a public street shall cease to be repairable by the Council under [section 11](#), shall first be submitted to the Planning Committee and no action shall be taken under the provisions of those sections by the Council to implement such proposals without the written approval of the Planning Committee being first obtained.

[26 of 1988]

- (2) Any proposal by a Council in respect of any area not being a Planning Area—
 - (a) for the construction of new streets; or
 - (b) for the stopping up, diverting or turning of a public street under [section 10](#); or
 - (c) for a public street to cease to be repairable by the Council under [section 11](#), shall first be submitted by the Council to the Commissioner for Town and Country Planning and the Council shall take no action towards the implementation of such proposal without the written approval of the Commissioner for Town and Country Planning being first obtained.

[26 of 1988]

14. Planting of trees and laying out grass margins

- (1) A Council may cause trees or shrubs to be planted and grass margins to be laid out in any public street and may erect and maintain guards and fences and otherwise do anything expedient for the maintenance or protection of such trees, shrubs and grass margins.
- (2) No such tree, shrub, grass margin, guard or fence shall be placed, laid out or allowed to remain in such a situation as to hinder the reasonable use of the street by any person entitled to the use thereof or so as to be a nuisance or injurious to the owner or occupier of any land or premises adjacent to such street.

15. General offences

Any person who—

- (a) leaves or places on or over any public street any timber, stones or other material so as to obstruct such public street or endanger persons using it;
- (b) encroaches on any public street by making or erecting any building, fence, ditch or other thing or obstacle or by planting trees or in any other manner;
- (c) digs up, removes or alters in any way the soil, surface or scraping of any public street;
- (d) fills up, alters, or obstructs any ditch or drain which is constructed for the purpose of leading storm water from such public street;
- (e) causes or allows any timber, stones or other heavy thing or material which is not wholly raised above the ground on wheels to be dragged on any public street;
- (f) uses on a wheeled vehicle any locking or other device not being a skid-pan, calculated to cause the wheels to drag;
- (g) operates a tracked vehicle without fitting proper street plates to the tracks,

shall be liable to a fine of K 200 or, in default of payment, to imprisonment for six months.

Part III – Private street works

16. Making of private streets or widening, etc., of existing private streets

- (1) Any person who intends to form or lay out a private street, or materially to widen, extend or alter any existing private street shall make written application to the Council for sanction to do so and shall with every such application submit plans longitudinal and cross-section and specifications showing the following particulars—
 - (a) the mode of construction and the materials proposed to be used;
 - (b) the intended lines, levels, gradients and dimensions of any proposed sewers and drains or other means of sewerage or drainage;
 - (c) the intended levels and gradients of the street and of any sewers and drains;
 - (d) the means of drainage of the buildings erected or to be erected fronting or abutting thereon;
 - (e) if required by the Council, the estimated volume, expressed in cubic feet per second, of sewage and rain-water to be conveyed by any proposed sewers and drains and the carrying capacity of such sewers and drains;
 - (f) the proposed method of the disposal of the sewage and rainwater conveyed by any proposed sewers and drains;

- (g) the direction, width and alignment of the street and the building lines and the lines of carriage-ways and footways and, if any, the lines of spaces to be reserved for the planting of trees or shrubs;
- (h) the relative level of the street with the adjacent land and the level of such adjacent land;
- (i) the provision of suitable and convenient junctions with existing or other proposed streets and the provision of lanes or other secondary means of access to buildings for the purpose of removing refuse:

Provided that any of the requirements of this subsection may be dispensed with or waived by the Council, in cases where application is made to form or lay out a private street in a non-permanent manner.

[8 of 1971]

- (2) Any person who makes application under subsection (1) shall furnish such additional plans, sections, specifications, and information as the Council, may require.

17. Conditions may be imposed by Councils and Planning Committees

- (1) The conditions subject to which the Council may sanction and approve the formation and lay out of any private street or the widening, extension or alteration of any existing private street, shall in all respects be complied with by the person to whom such sanction and approval is granted or by his assigns:

Provided that the Council when sanctioning or approving the formation and layout of any private street or the widening, extension or alteration of any existing private street, shall not impose conditions which require any such proposed private street or part thereof or any such existing private street or part thereof to be constructed or maintained to a higher standard than the specification prescribed in the Schedule.

- (2) Any person who fails to comply with subsection (1) shall be guilty of an offence.
- (3) Appeals by persons aggrieved

Any person aggrieved by the conditions imposed under subsection (1) may, within one month of receipt of written notification from the Council of such conditions, appeal to the court, whose decision shall be final.

- (4) The court may, upon any appeal under subsection (3), amend or set aside any conditions imposed under subsection (1), for any such reasons as the court may deem appropriate and in particular—
 - (a) if in the opinion of the court any such conditions require in any respect any proposed private street or any part thereof, or any existing private street or any part thereof, to be constructed or maintained to a higher standard than the specification prescribed in the schedule;
 - (b) in the case of an application to form or lay out a private street in a non-permanent manner and where the Council has imposed conditions requiring the formation or layout of such street in a permanent manner, if, in the opinion of the court, the standards of construction or maintenance prescribed by such conditions are too high taking into account the nature and volume of traffic which the private street is at that time required to bear.

[8 of 1971]

18. Planning approval to be obtained

- (1) In respect of a private street or proposed private street within a Planning Area a Council shall not sanction any application made under [section 16](#), nor waive any of the requirements of [section 16](#) (1), nor impose any conditions under [section 17](#) without first obtaining the written approval of the Planning Committee concerned.

- (2) In respect of a private street or proposed private street in any area not being a Planning Area, the Council shall not sanction any application made under [section 16](#), nor waive any of the requirements of [section 16](#) (1), nor impose any conditions under [section 17](#) without first obtaining the written approval of the Commissioner for Town and Country Planning.

[26 of 1988]

[8 of 1971]

19. Approved plans, etc., to be complied with

- (1) No person shall form, lay out or construct, or begin to form, lay out or construct, any private street or erect, or begin to erect, any buildings on any plots abutting thereon, or materially widen, extend or otherwise alter any existing private street or make any excavation for any of the aforementioned purposes otherwise than in accordance with plans, sections and specifications approved by the Council.

[8 of 1971]

- (2) If any proposed private street or any part thereof for the formation and layout of which sanction has been obtained is not formed or laid out within two years from the date of the sanction, such sanction shall lapse and no person shall thereafter form or lay out such street or any part thereof without first submitting a new application and obtaining sanction thereon.
- (3) Any person who acts in contravention of any of the provisions of this section shall be guilty of an offence.

20. Power for Council to undertake private street works

- (1) If any private street or any part thereof is not constructed or maintained to the satisfaction of the Council, the Council may resolve with reference to such street or part thereof to undertake private street works and that part of the total expenses incurred by the Council in the execution of such works as shall be incurred in order to bring such street or part thereof up to the standard of the specification prescribed in the Schedule, or such lesser part of such total expenses as may be deemed reasonable by the Council, shall be apportioned among the lands fronting, adjoining, abutting on or served by such street or part thereof and shall be recoverable by the Council from the owners of such lands. Any expenses incurred by the Council in bringing any such street or part thereof up to a standard higher than that of the specification prescribed in the Schedule shall be borne by the Council and shall be a charge upon the rates levied by the Council.
- (2) Any such resolution may include several streets or parts of streets or may be limited to any part or parts of a street.
- (3) Before making any such resolution the Council shall serve upon the owners of all lands affected by any proposed private street works a notice—
- (a) stating the private street works proposed to be undertaken and the provisional apportionment of the costs thereof as it affects the recipient of the notice;
 - (b) stating the place at which the plans, specifications and estimated cost of the proposed private street works, together with the provisional apportionment of the cost thereof, may be inspected,

and shall afford an opportunity for the owner of any lands affected thereby to object, within two months of the service of such notice, to the proposed private street works or to the provisional apportionment of the cost thereof or to any specific matter contained in the plans, specifications and estimate of the cost thereof.

- (4) In apportioning the expenses of any private street works the Council shall have regard to the frontage of the lands affected thereby, and to the amount and the value of works done by the owners or occupiers of such lands, and may, if the Council considers it just, have regard to the

greater or lesser degree of benefit to be derived by any lands from any private street works so undertaken.

- (5) The Council may include in any apportionment any lands which do not front, adjoin, or abut on the street or any part thereof but access to which is obtained from the street by means of a lane, passage or otherwise and which, in the opinion of the Council, would be benefited by any private street works so undertaken and may fix the sum to be apportioned against any such lands accordingly.
- (6) The Council may at any time resolve to contribute any proportion of the expenses of any private street works which would otherwise be recoverable from the owners of the lands affected thereby.
- (7) Every resolution to do any private street works and every provisional apportionment made by the Council shall be published once, at least, in the *Gazette*, and in one newspaper circulating within Malawi.
- (8) In determining, for the purposes of subsection (3), the total estimated cost of any private street works, an amount representing not more than ten *per centum* of such estimated expenses may be included in respect of expenses of administration.
- (9) In the case of private streets or any part thereof on public land, the proposal by the Council for the construction of private street works and the apportionment of the costs thereof shall, in the first instance and before any resolution is passed under subsection (1), be submitted to the Minister and agreed between the Council and the Minister.

21. Appeals by persons aggrieved by resolution to do any private street works or by provisional apportionment of costs thereof

- (1) Any person aggrieved by any resolution to do any private street works under [section 20](#), or [section 20](#) and [section 26](#), or by any provisional apportionment of the costs thereof may, within one month of the publication in the *Gazette* of such resolution and provisional apportionment or such extended time as the court may, whether before or after the said period, allow, appeal to the court, whose decision shall be final.
- (2) The court may, upon any appeal under this section, set aside or amend any resolution to do private street works or may direct that any such resolution or any plans, sections or specifications of such private street works or any provisional apportionment of the cost thereof be amended in such manner as to the court may seem proper.
- (3) The court may set aside any resolution to do any private street works for any such reasons as the court may deem appropriate and, in particular, if the court is not satisfied with the extent to which the public has used and has need to continue to use the private street as a thoroughfare.
- (4) The court may amend any resolution to do private street works or may direct that any such resolution or any plans, sections or specifications of such private street works or any provisional apportionment of the cost thereof shall be amended for any of the following reasons or for any other reason which the court may deem appropriate—
 - (a) if, in the opinion of the court, the private street is already constructed and maintained to a reasonable standard, taking into account the nature and volume of traffic which it is required to bear;
 - (b) if the private street works proposed to be undertaken are of an unnecessarily high standard, taking into account the nature and volume of traffic which the private street is then required to bear;
 - (c) if the provisional apportionment proposed would impose undue hardship on the persons appealing against it;
 - (d) if, in the opinion of the court, the private street is proposed or planned by the Council, to become a major thoroughfare and if, in consequence, the court is of the opinion that the

whole or a part, or a great part, of the expenses of the private street works proposed should be borne by the Council.

[8 of 1971]

- (5) The costs of any proceedings before the court shall be in the discretion of the court, and the court may, if it thinks fit, direct that the whole or any part of such costs ordered to be paid by an appellant shall be charged as part of the expenses of the private street works against the land of such appellant.

22. Power to amend proposals

The Council may, from time to time, amend the plans, sections, specifications, estimates and provisional apportionments of any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment of the cost thereof shall be published in the manner prescribed in [section 20](#) (7) and shall be open to inspection at a place to be notified in the *Gazette* and in such newspaper at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby; and objections may be made to the increase and apportionment, and, if made, shall be dealt with and determined in the like manner as objections to the original proposals.

23. Apportionment of expenses of private street works and objections and appeals in connexion therewith

- (1) When any private street works have been completed and the expenses thereof ascertained, the Council shall make a final apportionment of the expenses in the same proportion as that in which the estimated expenses were apportioned in the provisional apportionment, and shall serve a notice of such final apportionment upon the owners of the lands affected thereby and shall afford an opportunity for such owners to object to the Council, within one month of the service of such notice or such extended time as the court may, whether before or after the said period, allow, to such final apportionment on any of the following grounds—
 - (a) that the actual expenses have, without sufficient reason, exceeded the estimated expenses by more than fifteen *per centum*;
 - (b) that the final apportionment has not been made in accordance with this section;
 - (c) that there has been unreasonable departure from the plans, sections or specifications of the private street works undertaken.
- (2) Any person who has objected to a final apportionment under this section and who is aggrieved by the decision of the Council in respect of such objection may, within one month of being notified by the Council of such decision, appeal to the court, whose decision shall be final.

24. Unpaid apportionments to be a charge on the land

- (1) Any sum, or any portion thereof remaining unpaid, apportioned against any land liable for the payment of a proportionate part of the expenses of any private street works undertaken by a Council, shall be a charge on such land and the Council shall, for the recovery of such sum, have and may exercise all the powers and remedies under the Conveyancing and Law of Property Act, 1881, of the United Kingdom and the Conveyancing Act, and otherwise as if it were a mortgagee having the powers of sale and to grant leases and of appointing a receiver. Such sum shall become payable as from the date that the account is rendered to the owner of the land affected.

[44. & 45 Viet,]

[c. 41]

[Cap. 58:03]

- (2) If any such sum is not paid within six months of becoming payable the Council may charge interest thereon from the date upon which the principal sum became payable, at such rate, not exceeding four pounds *per centum* per annum as the Council may fix and such interest shall be a charge on the said land and be recoverable in like manner as the principal sum.
- (3) A charge against any land created by this section shall take priority over all encumbrances and charges (whether created prior thereto or not) except Government debts and Municipality or Township rates.
- (4) The Council shall keep a register of charges created under this Act and of the payments made in satisfaction thereof and such register shall at all reasonable times be open to inspection by the public on payment of a fee of two shillings in respect of each search and the Council shall furnish copies of any part of such register to any person applying therefor upon payment of such reasonable sum as may be fixed by resolution by the Council.
- (5) Any sum apportioned against any land by and under this Act may, if the Council by resolution so determine, be paid by instalments over a period not exceeding twenty years.

25. Recovery of expenses by action

If it thinks fit the Council may from time to time (in addition and without prejudice to any other remedy) recover, as a simple contract debt, by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due in respect of private street works, the whole or any portion of such sum, together with interest at rate not exceeding four pounds *per centum* per annum from the date that the final apportionment is rendered to the owner until payment thereof.

26. Temporary construction of private street works

- (1) Where, in the opinion of a Council, the immediate construction of any private street works on any private street or part thereof, in a permanent manner, is not required, any resolution made under [section 20](#) may provide for the construction of such works in a temporary manner.
- (2) A Council shall, as from the date of the completion of any private street works in a temporary manner in any private street or part thereof, be responsible for the repair and maintenance of such street or any part thereof.
- (3) The construction of temporary private street works shall not preclude a Council from resolving at a later date that such works shall be replaced by other private street works constructed in a permanent manner or that the works be extended or that new private street works on the same street be constructed:

Provided that a period of at least two years shall elapse before a new resolution in respect of the construction of such new works on the same street shall be passed.

- (4) Sections [20](#), [21](#), [22](#), [23](#), [24](#) and [25](#) shall apply in the case of private street works which are carried out in accordance with subsections (1) and (3):

Provided that the whole of the expenses incurred by the Council in executing such private street works, or such part of the expenses as may be deemed reasonable by the Council, shall be apportioned and recoverable in accordance with [section 20](#).

27. Incidental works

A Council may include many works to be done under this Part, with respect to any street or part of a street, any works which they think necessary for bringing the street or part of a street as regards sewerage, drainage, levels or other matters, into conformity with any other streets (whether repairable or not by the Council) including the provision of separate sewers for the reception of sewage and of surface water respectively:

Provided that in the case of any private street or part of any private street, the expenses only of such works so included as shall be required to be executed so as to bring any such street or part thereof up the standard of the specification presented in the Schedule shall be apportioned among the lands fronting, adjoining, abutting on or served by such street or part thereof and shall be recoverable by the Council from the owners of such lands.

28. Adoption of, private streets as public streets

- (1) Whenever any works undertaken and completed in accordance with [section 19](#) have been executed to the satisfaction of the Council in accordance with the standard of the specification prescribed in the Schedule, the Council may, and shall, if so requested by the owner or owners of seventy-five *per centum* of the frontage of such street, or the part thereof affected by the said works, or the Minister in the case of private streets on public land ordinarily repaired and maintained wholly by the Government, by resolution within three months of the date of such completion or request, whichever is the earlier, declare the same to be a public street, and thereupon such street or part thereof, as defined in the said resolution, shall become a public street and shall thereafter be repairable by the Council.
- (2) Whenever all or any of private street works undertaken and completed in accordance with [section 20](#) have been satisfactorily executed to the standard of the specification prescribed in the Schedule in any street or in any part thereof the Council shall, within three months of the completion of such works, by resolution declare such street or part thereof to be a public street and thereupon such street or part thereof as defined in the said resolution, shall become a public street and shall thereafter be repaired and maintained by and at the expense of the Council.
- (3) A copy of the resolution made under subsection (1) or (2) shall be published once, at least, in the *Gazette* and in a newspaper circulating within Malawi and shall be publicly posted once, at least, in or near the street to which it relates.
- (4) The name and a short description of the street or of any part thereof as defined in the resolution made under subsection (1) or (2) shall, following publication as aforesaid, be entered by the Council in the register of public streets.

29. Liability on change of ownership

- (1) Where the ownership of land charged with the expenses of private street works has changed between the date of a resolution charging such land, or of an order of the court arising out of any appeal under [section 21](#), and the date on which any payment becomes due, the new owner shall be liable for the sum due.
- (2) Where the land has been subdivided between the dates mentioned in subsection (1), the decision regarding the apportionment of the sum due or of any sums which may subsequently become due under the resolution or the order of the court as aforesaid between the owners of the subdivisions shall rest with the Council and shall be final.

30. Penalties

Any person who commits an offence against any of the provisions of this Part shall be liable to a fine of £100 or, in default of payment, to imprisonment for six months and the Council may, at the expense of such person, take such steps as may be necessary to do anything omitted to be done in contravention of this Part or to remove or restore to its original condition any work or thing so done, and such expense shall be recoverable as a civil debt.

Part IV – Miscellaneous

31. Numbering of houses and naming of street

- (1) A Council may, from time to time, by notice in writing given to the owner, require any house, building or erection fronting upon any street or other public place to be marked with such number as it may think fit at the expense of such owner and may, at its own expense, cause the name by which any street or other public place is known, or to be known, to be put up or painted on a conspicuous part of any fence or wall fronting thereon, and may also, at its discretion, require any such number or cause any such name to be changed whether or not such number or name existed before the commencement of this Act.
- (2) In the event of any owner failing to number his house, building or erection, as required by the Council, the Council may itself, at the expense of such owner, cause such house, building or erection to be marked with such number, and may recover the cost of such work as a simple contract debt in any court of competent jurisdiction.
- (3) Any person who destroys, pulls down, or defaces any such number or name or fails to put up such number or, without the permission of the Council, puts up any number or name different from the number or name required to be put up or put up by the Council, shall be liable to a fine of £10.

32. Owner to have bridge over drain leading to his house

If the owner or occupier of any house or premises adjoining a street by the side of which a drain has been made or excavated requires a means of access to such house or premises from such street, he shall place over such drain a bridge, platform or arch which shall be constructed in a permanent form of material and which shall in no case cover less than four feet of the length of such drain and which, where there is a sidewalk or footpath to such street, shall extend to the side of such sidewalk or footpath nearest such house or premises and the Council, where any such owner or occupier has any access to any house or premises so situated without such bridge, platform or arch, may call upon such owner or occupier forthwith to construct the same, and, if he shall fail to do so within a reasonable time, may cause the same to be done and recover the cost incurred from such owner or occupier.

33. Application to Government

This Act shall bind the Government unless there is something in the subject or context inconsistent with its so doing.

Schedule (Sections 17, 20, 27 and 28)

Specification for a private street formed or laid out in a permanent manner

A private street shall be constructed to the lines, levels, widths, general dimensions and character, and shall be paved, bituminized, channelled, kerbed, sewered, drained and lighted to such specifications as shall be approved by the Council.

[8 of 1971]