

CHAPTER 7:19

ATTORNEY-GENERAL'S OFFICE ACT

Act 4/2011

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AN ACT to establish the Attorney-General's Office Board and to provide for its functions; to constitute the Attorney-General's Office and to provide for its administration and the conditions of service of its members; to provide for the transfer of persons from the Public Service to the Attorney-General's Office; to make consequential amendments to various Acts; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement : Not yet in force]

WHEREAS sections 76(1), (9), (12) and (14a) of the Constitution provide as follows:

76.(1) There shall be an Attorney-General who shall be the principal legal adviser to the Government and whose office shall be a public office but shall not form part of the Public Service.

(9) There shall be one or more Deputy Attorneys-General whose offices shall be public offices but shall not form part of the Public Service.

(12) A Deputy Attorney-General shall assist the Attorney-General in the exercise of his or her functions, and shall perform such other functions as the Attorney-General may assign to him or her.

(14a) The Attorney-General and every Deputy Attorney-General shall hold office on such terms and conditions, including terms and conditions relating to the payment of salary, allowances and pension, as the President may fix, and any amounts so payable shall be charged upon and paid out of the Consolidated Revenue Fund.

AND WHEREAS it is desirable to constitute the Attorney-General's Office as a separate entity in order to enhance its independence, effectiveness and efficiency:

NOW, THEREFORE, be it enacted by the President and Parliament of Zimbabwe as follows:—

PART I

PRELIMINARY

1 Short title and date of commencement

(1) This Act may be cited as the Attorney-General's Office Act [*Chapter 7:19*] (Act No 4 of 2011).

(2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Interpretation

In this Act—

“approved service” means—

- (a) the Public Service; or
- (b) a uniformed force; or
- (c) the service of Parliament; or
- (d) the service of a government or statutory body, local authority or institution approved by the Minister, after consultation with the Board, for the purposes of this Act;

“Board” means the Attorney-General's Office Board established by section 4;

“committee” means a committee established by the Board in terms of paragraph 8 of the First Schedule;

“Director” means the Director of Administration appointed in terms of section 9;

“fixed date” means the date fixed in terms of section 1(2) as the date of commencement of this Act;

“member”, in relation to the Office, means a member of the Office referred to in section 3;

“Minister” means the Minister of Justice and Legal Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“Office” means the Attorney-General's Office constituted by persons referred to in section 3;

“pension benefit” means any pension, commutation of pension, gratuity or other similar allowance or benefit or any refund of pension contributions, including any interest payable thereon, for a person in respect of his or her service as a member of the Office, or in respect of any ill-health or injury arising out of and in the course of his or her official duties as such a member, or for a dependant or personal representative of such member in respect of such service, ill-health or injury or on the death of such member;

“prescribe” means prescribe by service regulations;

“recognised association or organisation” means an association or organisation declared to be a recognised association or recognised organisation, as the case may be, in terms of section 14(1);

“service regulations” means regulations made in terms of section 24 regulating conditions of service of members of the Office.

PART II

ATTORNEY-GENERAL'S OFFICE BOARD

3 Constitution of Attorney-General's Office

- (1) The Attorney-General's Office shall consist of the following members—
 - (a) the Attorney-General appointed in terms of section 76(2) of the Constitution; and
 - (b) every Deputy Attorney-General appointed in terms of section 76(9) of the Constitution; and
 - (c) every person who occupies a post in the Office, including the Director of Public Prosecutions referred to in section 7 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] and the staff of the department of administration referred to in section 9, and such other persons in the employment of the Office as may be prescribed; and
 - (d) persons seconded by the Office to any Ministry of the Government or other approved service.
- (2) Officers in the Attorney-General's Office are public officers but do not form part of the Public Service.
- (3) The Board may, for and in connection with its functions in terms of this Act, have the additional powers specified in the Second Schedule.

4 Establishment and composition of Attorney-General's Office Board

- (1) Subject to subsection (2), there is hereby established a Board, to be known as the Attorney-General's Office Board, which shall consist of—
 - (a) a person who has been or is qualified to be a judge of the High Court or Supreme Court, who shall be the Chairperson of the Board appointed by the President after consultation with the Judicial Service Commission;
 - (b) the Attorney-General appointed in terms of section 76(2) of the Constitution;
 - (c) a Commissioner of the Public Service Commission appointed by the Chairperson of the Public Service Commission; and
 - (d) not more than four members appointed, subject to subsection (2), by the President, of whom—
 - (i) one shall be qualified to be appointed as a judge of the Supreme Court or the High Court; and
 - (ii) one shall be a person employed in the Ministry responsible for finance nominated by the Minister of Finance; and
 - (iii) one shall be a person appointed for his or her ability and experience in human resources management and development.
- (2) At least three or four of the members of the Board shall be women.
- (3) The First Schedule shall apply—
 - (a) to the qualifications, terms and conditions of office, vacation of office, suspension and dismissal of members of the Board appointed in terms of subsection (1)(d);
 - (b) to the procedure to be followed by the Board at its meetings.

5 Functions of Board

- (1) The Board shall have the following functions—
 - (a) administering and supervising the Office; and
 - (b) appointing persons to the Office, whether as permanent members on pensionable conditions of service or on contract or otherwise, and assigning and promoting them to offices, posts and grades in the Office, and fixing their conditions of service; and
 - (c) inquiring into and dealing with complaints and grievances made by or against members of the Office; and
 - (d) exercising disciplinary powers in relation to members of the Office; and
 - (e) exercising any other functions that may be imposed or conferred upon it in terms of this Act or any other enactment.
- (2) The Board shall exercise its functions under this Act so as to ensure the well-being and good administration of the Office and its maintenance in a high state of efficiency.
- (3) Subject to section 8, in the exercise of the above functions, the Board shall not be subject to the control or direction of any person or authority, other than for the purpose of audit by the Comptroller and Auditor-General of those funds of the Office that are voted by Parliament or charged on the Consolidated Revenue Fund by this Act or any other law.

6 Delegation of functions

- (1) For the better exercise of its functions and in the interest of ensuring the greatest degree of devolution of decision-making consistent with good administration, the Board may—
 - (a) by regulations ensure that the exercise of its functions, including in particular the appointment of persons to the Office, whether as permanent members or on contract or otherwise, and the assignment and promotion of members of the Office to offices, posts and grades in the Office, is delegated wherever practicable to the Director; and

- (b) take whatever steps as are necessary to encourage the greatest possible delegation of decision-making to all departments and sub-departments of the Office.
- (2) The delegation of a function by the Board in terms of subsection (1)—
 - (a) may be made absolutely or subject to conditions; and
 - (b) may be amended or revoked at any time; and
 - (c) shall not preclude the Board from exercising the function so delegated.
- (3) Where the Board has delegated a function in terms of subsection (1)(a) to the Director, any conditions or limitations applicable to the exercise of that function by the Board shall apply to the exercise of that function by the Director.
- (4) Where a person has been or is about to be appointed to or promoted within the Office pursuant to a power delegated by the Board under subsection (1)(a), and the Board considers that—
 - (a) the person does not have the qualifications or ability necessary to carry out the duties of the position he or she occupies or would occupy, as the case may be; or
 - (b) his or her appointment or promotion has contravened or would contravene, as the case may be, any condition under which the power was delegated;the Board shall without delay revoke the appointment or promotion or direct that the appointment or promotion shall not be made, as the case may be, and may take such other action in the matter as the Board thinks necessary:
Provided that before taking any action in terms of this subsection, the Board shall give the person whose appointment or promotion is in issue and the person who appointed or promoted him or her or proposed to appoint or promote him or her, an adequate opportunity to make representations in the matter.
- (5) This section shall not be construed as limiting any power which the Board or any other person may have under any other law to delegate functions to another person.

7 Reports of Board

- (1) The Board shall, as soon as possible after the end of each financial year, submit an annual report to the Minister.
- (2) In addition to the report referred to in subsection (1), the Board—
 - (a) shall submit to the Minister any other report, and provide him or her with any other information, that he or she may require in regard to the operation of the Office; and
 - (b) may submit to the Minister any other report that the Board considers desirable.
- (3) The Minister—
 - (a) shall lay before Parliament every annual report submitted to him or her by the Board in terms of subsection (1); and
 - (b) may lay before Parliament any report submitted to him or her by the Board in terms of subsection (2).

PART III

ADMINISTRATION OF ATTORNEY-GENERAL'S OFFICE

8 Policy directions as to exercise of Board's functions

- (1) Subject to subsections (2) and (3), the Minister may give the Board such directions of a general character relating to the policy which the Board is to observe in the exercise of its functions, as the Minister considers to be requisite in the national interest.
- (2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board in writing of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal and the possible effects which the proposal may have on finances and other resources of the Office.
- (3) Where the Board maintains, in views submitted to the Minister in terms of subsection (2), that a proposed direction will have a material effect on the Office's finances, the Minister shall not proceed to give the Board the direction until he or she has consulted the Minister responsible for finance.
- (4) The Board shall, with all due expedition, comply with any direction given to it in terms of subsection (1).
- (5) When any direction has been given to the Board in terms of subsection (1), the Board shall ensure that the direction and any views it has expressed thereon in terms of subsection (2) are set out in the Board's annual report.

9 Department of Administration

- (1) There shall be a department of the Office known as the Department of Administration which shall be responsible for—
 - (a) managing the administrative and financial affairs of the Office and implementing the decisions of the Board; and
 - (b) providing technical advice and support to the Board; and

- (c) formulating administrative rules, guidelines and procedures to facilitate the achievement of the mission of the Office; and
- (d) exercising any other functions that may be imposed or conferred upon it by this Act or any other enactment.

(2) The Department of Administration shall be controlled by a Director (subject to the general control of the Board and to any specific directions given to him or her by the Board) and staffed by such persons as the Board may think necessary to ensure that the Department is able to discharge its functions.

(3) The Director shall be the Secretary of the Board.

(4) The Director is prescribed for the purposes of section 10 of the Public Finance Management Act [*Chapter 22:18*] (No. 12 of 2009) to be the accounting officer of the Office.

10 Departments and classification of members of Office

(1) In addition to the department referred to in section 9, the Office shall have such departments and sub-departments as the Board may establish from time to time, each headed by an officer of such grade and designation as the Board shall determine.

(2) For each department the Board shall assign such members of the Office as may be necessary to carry out the department's functions.

(3) Members of the Office shall be classified in such a manner as may be prescribed.

11 Persons under contract

(1) The Board may engage as members of the Office persons under contract, on such conditions as it may prescribe.

(2) There may be incorporated in the conditions referred to in subsection (1) such provisions of any service regulations applicable to a member of the Office.

(3) Upon the termination of a contract entered into in terms of subsection (1), the person under contract shall cease to be a member of the Office, unless the contract is renewed or he or she is appointed to the Office in some other capacity.

12 Probationary period

(1) A member of the Office appointed otherwise than under contract shall serve a probationary period of not less than six months and not more than one year, as the Board may prescribe or fix in relation to that member.

(2) The appointment of a member under subsection (1) shall be confirmed at the end of the probationary period unless, at any time during the probationary period, the Board considers that the member does not meet the required standard of performance, in which case the Board may—

- (a) discharge the member; or
- (b) extend the probationary period by not more than six months, at the end of which period the member shall be discharged if he or she fails to meet the required standard of performance.

13 Conditions of service of members of Office

(1) Subject to the Constitution and any other enactment, the conditions of service applicable to members of the Office, including their remuneration, allowances, pension benefits, leave of absence, hours of work, discipline and discharge, shall be fixed by the Board:

Provided that, to the extent that such conditions may result in an increase in expenditure chargeable on the Consolidated Revenue Fund, the concurrence of the Minister responsible for finance shall be obtained.

(2) Conditions of service may be fixed in terms of subsection (1) by means of service regulations, notices, circulars or in any other manner that the Board considers will best bring the conditions to the attention of members of the Office who are affected by them:

Provided that, in the event of any conflict between service regulations and the contents of any notice, circular or other instrument by means of which any conditions of service are made known to members, the service regulations shall prevail to the extent of the conflict.

(3) Subject to the Sixth Schedule to the Constitution, the Board may, in terms of subsection (1), alter the conditions of service of existing members of the Office:

Provided that no member's fixed salary or salary scale shall be reduced except when the member has been found guilty of misconduct or has consented to the reduction.

(4) Without derogation from the generality of subsection (1), conditions of service fixed in terms of that subsection may provide for the dismissal or discharge of a member of the Office—

- (a) owing to—
 - (i) the abolition of his or her office or post; or
 - (ii) a reduction in, or an adjustment of the Office;or
- (b) if the removal will help to improve efficiency or economy in the Office.

(5) Except with the written permission of the Board, no member of the Office shall engage in any occupation or work for remuneration outside his or her employment in the Office.

14 Consultations on conditions of service of members of Office with recognised associations and organisations

(1) The Minister responsible for labour may, after consultation with the Board, by written notice to the association or organisation concerned, declare any association or organisation representing all or any members of the Office to be a recognised association or a recognised organisation, as the case may be, for the purpose of this Act.

(2) The Minister responsible for labour may, after consultation with the Board, at any time, by written notice to the recognised association or organisation concerned, revoke any declaration made in terms of subsection (1).

(3) The Board may consult with a recognised association or organisation on such matters affecting the efficiency, well-being or good administration of the Office or the interests of the members of the recognised association or organisation, as the Board thinks appropriate; and a recognised association or organisation may make representations to the Board concerning the conditions of service of the members of the Office represented by the association or organisation, and the Board shall pay due regard to any such representations when exercising any function in terms of this Act.

(4) Any member of the Office who is eligible to do so may join a recognised association or organisation and, subject to this Act, participate in its lawful activities.

(5) A member of the Office who fails or refuses to join a recognised association or organisation shall not, on account of such failure, be debarred from or prejudiced in respect of any appointment, promotion or advancement within the Office.

PART IV

DISCIPLINE OF MEMBERS OF ATTORNEY-GENERAL'S OFFICE

15 Investigation and adjudication of misconduct cases

Subject to section 17, any case involving misconduct or suspected misconduct on the part of a member of the Office shall be investigated, adjudicated upon and, where appropriate, punished by the Board or by such person or authority as may be prescribed.

16 Removal of members from office

(1) If the Attorney-General advises the Board that a member of the Office who has been confirmed as a member under section 12 is found to have committed such an act of misconduct as may justify the member's discharge from the Office, the Board shall appoint a disciplinary committee consisting of—

- (a) the head of the department in which the member is employed; and
- (b) two other members of the Office who have been confirmed as members under section 12 and who shall not be junior in rank to the member alleged to have committed the act of misconduct in question.

(2) The procedure to be followed by a disciplinary committee and the penalties that it may impose upon a member found by it to have committed an act of misconduct, shall be as prescribed.

17 Appeals to Labour Court

Any member or former member of the Office who is aggrieved by—

- (a) any decision reached; or
- (b) any penalty imposed upon him or her; or
- (c) both the decision reached and the penalty imposed upon him or her;

in respect of misconduct found to have been committed by him or her may appeal against the decision or penalty to the Labour Court within thirty days from the date of the decision or imposition of the penalty.

PART V

FINANCIAL PROVISIONS

18 Funds of Office

(1) The funds of the Office shall consist of—

- (a) moneys appropriated by Act of Parliament for the salaries and allowances payable to and in respect of members of the Office and the recurrent administrative expenses of the Office; and
- (b) any other moneys that may be payable to the Office from monies appropriated for the purpose by Act of Parliament; and
- (c) any donations, grants, bequests or loans made by any person or organisation or any government of any country to the Office and accepted by the Board; and
- (d) any other moneys that may vest in or accrue to the Office, whether in terms of this Act or otherwise.

(2) The Board shall apply the funds referred to in subsection (1) to the fulfilment of its functions.

19 Investment of moneys not immediately required by Office

Moneys not immediately required by the Office may be invested in such a manner as the Board considers appropriate.

22 Accounts of Office and appointment of internal auditor

(1) The Office shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Office's activities, funds and property, including such particular accounts and records as the Board may direct.

(2) As soon as possible after the end of each financial year, the Office shall prepare and submit to the Board a statement of accounts in respect of that financial year or in respect of such other period as the Board may direct.

(3) Section 80 of the Public Finance Management Act [*Chapter 22:19*] (No. 12 of 2009) shall apply, with such changes as may be necessary, to the appointment of an internal auditor to the Office in all respects as if the Office were a Ministry or department of a Ministry.

21 Audit of Accounts

(1) The accounts of the Office shall be audited by the Comptroller and Auditor-General, who for that purpose shall have the functions conferred on him or her by sections 7 and 8 of the Audit Office Act [*Chapter 22:18*] (Act No. 12 of 2009).

(2) Any person under the authority or supervision of the Board who refuses to provide the Comptroller and Auditor-General with an explanation or information required by him or her for the purposes of an audit in terms of subsection (1), or knowingly provides the Comptroller and Auditor-General with a false explanation or information, or an explanation or information that the person has no grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Notwithstanding anything contained in subsection (1), the Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of the Office, and if he or she does so—

- (a) subsections (1) and (2) shall apply in respect of the person so appointed as if he or she were the Comptroller and Auditor-General; and
- (b) any expenses incurred by the person so appointed in carrying out his or her audit shall be met from the funds of the Office.

PART VI

GENERAL

22 Legal proceedings against Office

The State Liabilities Act [*Chapter 8:14*] applies with necessary changes to legal proceedings against the Office, including the substitution of references therein to a Minister by references to the Attorney-General.

23 Pension rights of members of Office

(1) Every member of the Public Service who, immediately before the fixed date, is employed in the Attorney-General's Office on pensionable conditions of service and who on that date is engaged as a member of the Office, shall continue to contribute towards the Public Service Pension Scheme as if his or her service with the Office forms part of and is continuous with his or her service with the Public Service prior to his or her engagement.

(2) Any person who is engaged by the Office after the fixed date shall, on the date of his or her engagement, have the option to contribute—

- (a) towards the Public Service Pension Scheme; or
- (b) towards any pension scheme that the Board may establish or permit members of the Office to participate in.

24 Service regulations

(1) Subject to this Act, the Board may, with the concurrence of the Minister, make regulations providing for the conditions of service of members of the Office.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the appointment, classification, qualifications, salaries, allowances and other remuneration and benefits of members of the Office, and their promotion, functions, hours of work and leave of absence;
- (b) the pension benefits payable to the members of the Office and other persons in respect of members' service with the Public Service, the contributions payable in respect of such benefits and the circumstances in which such pension benefits may be reduced, suspended or withdrawn;
- (c) a code of ethical and professional conduct for members of the Office;
- (d) training and development courses for members of the Office and the attendance of such members thereat;

- (e) the use by members of the Office of vehicles, equipment and other property of the State, their indemnification in respect of such use and additionally, or alternatively, the recovery from them of compensation and penalties in respect of damage or loss caused by such use;
- (f) the manner in which members of the Office may make representations in regard to matters affecting their conditions of service and general welfare;
- (g) the manner in which grievances of members of the Office may be expressed, investigated and redressed;
- (h) the terms and conditions of contracts entered into in terms of section 11;
- (i) the circumstances in which the Board may assent to cessions of salary, allowances or other remuneration;
- (j) the discipline of members of the Office, and the penalties that may be imposed upon them and other measures that may be taken against them for misconduct if they are inefficient or unsuitable or incapable of performing their duties or if they are convicted of criminal offences;
- (k) the suspension, retirement, resignation, discharge, abandonment and employment and other termination of service of members of the Office;
- (l) the conduct of investigations, inspections and examinations for the purposes of this Act;
- (m) any other matter which, in the opinion of the Board, it is necessary or convenient to prescribe in order to ensure the well-being and good administration of the Office and its maintenance in a high state of efficiency.

(3) To the extent that regulations made in terms of subsection (1) may result in an increase in expenditure chargeable on the Consolidated Revenue Fund, the Board shall obtain the concurrence of the Minister responsible for finance before they are enacted.

(4) Regulations made in terms of subsection (1) may provide that any enactment relating to the conditions of service of members of the Public Service shall apply to or in respect of any members of the Office, subject to such modifications or conditions as may be specified in the regulations, and thereupon the enactment concerned shall apply to or in respect of those members of the Office.

(5) If, after an enactment has been made applicable to any members of the Office as provided in subsection (4), the enactment concerned is amended, the amendment shall also apply to or in respect of the members concerned unless the Board provides in regulations that it shall not apply.

25 Act not to affect application of certain other laws

To the extent that the appointment, conditions of service, termination of service or pension benefits of a member of the Office is or are provided for by or under the Constitution or any other enactment, this Act shall not apply to or in respect of that member.

26 Amendment of Acts

The Act specified in each Part of the Third Schedule is amended to the extent set out in that Part.

27 Transitional provisions

(1) In this section—

“transferred member” means a person who is transferred from the Public Service to the Attorney-General’s Office in terms of subsection (2).

(2) Every member of the Public Service who, immediately before the fixed date, was employed in the Office of the Attorney-General shall, on the fixed date—

(a) be deemed to have been transferred to the Office, unless such member chooses to remain a member of the Public Service:

Provided that where a member chooses to remain in the Public Service he or she shall in writing notify the Office and the Public Service Commission accordingly within thirty days from the fixed date; and

(b) be engaged for employment with the Office on terms and conditions not less favourable than those that were applicable to him or her immediately before his or her engagement.

(3) Any regulations regarding the negotiation of terms and conditions of service by or on behalf of transferred members which, immediately before the fixed date were in force under the Public Service Act [*Chapter 16:04*] shall continue in force until an employment council for the Attorney-General’s Office is registered in terms of section 59 of the Labour Act [*Chapter 28:01*].

(4) Any regulations and circulars governing the terms and conditions of service of transferred members of the Office which, immediately before the fixed date, were in force under the Public Service Act [*Chapter 16:04*] shall continue in force until amended, varied or repealed by regulations made in terms of section 24 or a collective bargaining agreement, and in the event of any inconsistency between such regulations and circulars and any law governing the terms and conditions of employees generally, the former shall prevail.

(5) Any reference to the Public Service Commission in any regulation, notice, circular or other document referred to in subsections (3) and (4) shall be construed, with such changes as may be necessary, as a reference to the Attorney-General’s Office Board.

(6) Notwithstanding section 9(4) the accounting officer of the Ministry responsible for this Act on the fixed date shall continue to be the accounting officer of the Office until the end of the financial year on the 31st December, 2010, or such longer period as the Minister, in consultation with the Board may agree.

(7) The assets and rights of the State which—

(a) before the fixed date, were used by or otherwise connected with the Ministry responsible for this Act and the Office of the Attorney-General; and

(b) are specified by the Minister by notice in a statutory instrument;

together with any liabilities or obligations attaching to them, shall be transferred with effect from the date specified in the notice, in any one or more of the following ways—

(i) exclusively to the Office; or

(ii) exclusively to the Ministry responsible for this Act or exclusively to the Judicial Service constituted by the Judicial Service Act [*Chapter 7:18*]; or

(iii) in joint and undivided shares to the Judicial Service, the Ministry responsible for this Act and the Office, in which event the accounting officer of the Ministry responsible for this Act shall continue to be the accounting officer in respect of those assets.

(8) If on the fixed date—

(a) there were any disciplinary proceedings in terms of the Public Service Act [*Chapter 16:04*] pending against a person who, but for this subsection, would be a transferred member, such proceedings shall continue after the fixed date in all respects as if such person is a member of the Public Service and, if the proceedings result in the dismissal of that person, that person shall not be transferred to the Office;

(b) any promotion or advancement was being processed in terms of the Public Service Act [*Chapter 16:04*] in relation to any transferred member, such promotion or advancement shall be processed and completed after the fixed date in all respects as if such transferred member is a member of the Public Service and, if the promotion or advancement proceedings result in the promotion or advancement of that transferred member, that member shall be transferred to the Office at the equivalent grade or post;

(c) any civil proceedings that on the fixed date, were pending against any transferred member in his or her official capacity shall continue and be completed after the fixed date in all respects as if such transferred member is a member of the Public Service.

FIRST SCHEDULE (SECTIONS 2 AND 4(3))

PROVISIONS APPLICABLE TO BOARD

1. Interpretation in First Schedule.
2. Disqualification for appointment to Board.
3. Term of office and conditions of service of members of Board.
4. Vacation of office by members of Board.
5. Tenure of office of appointed members.
6. Filling of vacancies of Board.
7. Procedure of Board.
8. Committees of Board.
9. Minutes of proceedings.
10. Validity of decisions and acts of Board.

1. Interpretation in First Schedule

In this Schedule—

“appointed member”, in relation to the Board, means a member appointed under section 4;

“Chairperson” means the Chairperson of the Board referred to in section 4(1)(a).

2. Disqualification for appointment to Board

(1) Subject to this Act, a person shall not be qualified for appointment as a member of the Board, nor shall he or she hold office as an appointed member, if—

- (a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or
- (b) he or she is a member of two or more other statutory bodies; or
- (c) he or she is a member of Parliament; or
- (d) he or she is a member of a local authority or is in the full-time employment of a local authority; or
- (e) in terms of the law in force in any country—
 - (i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) he or she has made an assignment to or composition with his or her creditors which has not been rescinded or set aside; or
- (f) within the period of five years immediately preceding his or her proposed appointment, he or she has been sentenced in a country to a term of imprisonment imposed with or without the option of a fine, whether or not any portion thereof has been suspended, and has not received a free pardon.

(2) For the purposes of subparagraph (1)(b)—

- (a) a person who is appointed to a council, Board or authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
- (b) “statutory body” means—
 - (i) any Commission established by the Constitution; or
 - (ii) any corporate body established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a Commission established by the Constitution.

3. Term of office and conditions of service of members of Board

(1) Subject to this Schedule, the term of office of an appointed member of the Board shall be such period not exceeding five years as the President may fix on his or her appointment.

(2) On the expiry of an appointed member’s term of office, he or she shall be eligible for re-appointment.

(3) Subject to this Schedule, the conditions of service of an appointed member of the Board, including allowances, shall be fixed by the President at the time of his or her appointment.

(5) Notwithstanding any other provision of this paragraph, the allowances payable to an appointed member of the Board shall not be reduced during his or her tenure of office.

4. Vacation of office by members of Board

(1) An appointed member of the Board may resign from his or her office at any time by giving the President and the Board such notice of his or her intention to resign as may be fixed in his or her conditions of service in terms of paragraph 3 or, if no such period has been fixed, after the expiry of thirty days from the date he or she gives notice or after the expiry of such other period of notice as he or she and the President may agree.

(2) An appointed member of the Board shall be deemed to have resigned from his or her office and his or her office shall become vacant—

- (a) if he or she becomes disqualified for appointment to the Board in terms of paragraph 2(a), (b), (c), (d) or (e); or
- (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion was suspended, imposed with or without the option of a fine—
 - (i) in Zimbabwe, in respect of an offence; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence.

5. Tenure of office of appointed members

An appointed member of the Board shall not be removed from office except on the same grounds, and following the same procedure, as is specified in section 87 of the Constitution in relation to members of the Judicial Service Commission.

6. Filling of vacancies of Board

On the death of, or vacation of office by, an appointed member of the Board, the President shall fill the vacancy within three months.

7. Procedure of Board

(1) Subject to subparagraph (2), the Board shall meet at such dates, times and places as may be fixed by the Chairperson:

Provided that the Board shall meet at least once every three months.

(2) The Chairperson—

- (a) may convene a special meeting of the Board at any time; and
- (b) shall convene a special meeting of the Board on the written request of not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the Chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened:

Provided that a failure by a member to receive such a notice, or an inadvertent failure to send notice to a member, shall not invalidate the meeting.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the Chairperson where he or she convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where the Chairperson convened the meeting in terms of subparagraph (2)(b).

(5) In the absence of the Chairperson or Deputy Chairperson, the members present shall, if they constitute a quorum, elect one of their number to preside over the meeting of the Board as chairperson.

(6) At any meeting of the Board, four of the members of the Board shall form a quorum.

(7) The Board will endeavour to make decisions by consensus among the members present at the meeting of the Board at which a quorum is present, failing which anything authorised or required to be done by the Board shall be decided by a majority vote of the members at that meeting.

(8) At all meetings of the Board each member present shall have one vote on each question before the Board:

Provided that, in the event of an equality of votes, the Chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(9) With the approval of the Board, the Chairperson may invite any person to attend a meeting of the Board where the Chairperson considers that the person has special knowledge or experience in any matter to be considered at the meeting.

(10) A person invited to attend a meeting of the Board under subparagraph (9) may take part in the meeting as if he or she were a member of the Board, but shall not have a vote on any question before the meeting.

(11) Any proposal circulated among all members of the Board and agreed to in writing by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the members and shall be incorporated into the minutes of the next meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subparagraph shall not apply to the proposal.

(12) Except as otherwise provided in this paragraph, the procedure for the convening and conduct of meetings of the Board shall be as fixed from time to time by the Board.

8. Committees of Board

(1) For the better exercise of its functions, the Board may establish one or more committees in which it may vest such of its functions as it considers appropriate.

(2) The vesting of a function in a committee in terms of subparagraph (1)—

(a) may be made absolutely or subject to conditions and may be amended or withdrawn at any time; and

(b) shall not divest the Board of that function;

and the Board may amend or rescind any decision of the committee in the exercise of that function.

(3) On the establishment of a committee under subparagraph (1) the Board—

(a) shall appoint at least one of its members as a member of the committee, and that member or one of those members designated by the Board, as the case may be, shall be chairperson of the committee; and

(b) may appoint as members of the committee persons who are not members of the Board and fix the terms and conditions of their appointment.

(4) Meetings of a committee may be convened at any time and at any place by the chairperson of the committee.

(5) If the chairperson of the committee is absent from a meeting of the committee, the members present may elect one of their number to preside at that meeting as chairperson.

(6) A majority of members of a committee shall form a quorum at any meeting of a committee.

(7) Anything authorised or required to be done by a committee may be decided by a majority vote at a meeting of the committee at which a quorum is present.

(8) At all meetings of a committee each member present shall have one vote on each question before the committee:

Provided that, in the event of an equality of votes, the chairperson or person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(9) Subject to this paragraph, the procedure to be followed at any meeting of a committee shall be fixed by the Board.

9. Minutes of proceedings

(1) The Board shall cause minutes to be taken at its meetings and at meetings of its committees and enter them in books kept for the purpose.

(2) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Board or committee, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.

(3) The Board and any committee of the Board shall cause copies of all minutes that have been signed to be sent to the Minister for his or her information.

10. Validity of decisions and acts of Board

(1) No decision or act of the Board or act done under the authority of the Board shall be invalid solely because there were one or more vacancies on the Board when the decision was taken or the act was done or authorised or a disqualified person partook in the act or decision.

(2) If any decision or other act of the Board is rendered invalid through a procedural irregularity, the Board may at a duly convened meeting ratify the decision or act, and any decision or act so ratified shall be valid in all respects with effect from the date of its ratification.

SECOND SCHEDULE (SECTION 3(3))

POWERS OF THE ATTORNEY-GENERAL'S OFFICE BOARD

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights thereof and concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets, or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To open bank accounts in the name of the Attorney-General's Office and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions and to modify and rescind such contracts or rescind such suretyships or guarantees.
8. With the approval of Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Board considers appropriate or necessary for the proper exercise of the functions of the Attorney-General's Office.
9. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to members as it considers fit.
10. To provide pecuniary benefits for members on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, provident funds or make such other provision as may be necessary to secure for members and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
11. To purchase, take on lease or in exchange or otherwise acquire land or dwelling-houses for use or occupation by members.
12. To construct dwellings, outbuildings or improvements for use or occupation by members.
13. To sell or lease dwelling-houses and land for residential purposes to members.
14. To provide or guarantee loans made to members for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling houses or land which are the property of members, subject to any conditions that may be imposed by the Board from time to time.
15. To provide security in respect of loans by the deposit of securities, in which the Attorney-General's Office may invest such money as the Board may consider necessary for the purpose.
16. Subject to any conditions that may be imposed by the Board from time to time, to provide loans to any members—
 - (a) for the purpose of purchasing vehicles, tools or other equipment to be used by members in carrying out their duties; or
 - (b) not exceeding six months' salary or wages payable to the members concerned, for any purpose and on such security as the Board thinks adequate.
17. To do anything for the purpose of improving the skill, knowledge or usefulness of members and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training.
18. To provide technical advice or assistance, including training facilities, to the Attorney-General's Offices of other countries.
19. To accept, with the approval of the Minister, any donations, gifts or assistance from any organisation or person.
20. To do anything which by this Act is required or permitted to be done by the Attorney-General's Office.
21. Generally to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the functions of the Attorney-General's Office in terms of this Act or any other enactment.

THIRD SCHEDULE (SECTION 26)

AMENDMENT OF ACTS

PART I

INTERPRETATION ACT [CHAPTER 1:01]

In section 3 (“Definitions”) by the insertion in subsection (3) of the following definitions—

““Attorney-General’s Office” means the Attorney-General’s Office referred to in section 3 of the Attorney-General’s Office Act [Chapter 7:19];

“Attorney-General’s Office Board” means the Attorney-General’s Office Board established by section 4 of the Attorney-General’s Office Act [Chapter 7:19];”.

PART II

CRIMINAL PROCEDURE AND EVIDENCE ACT [CHAPTER 9:07]

1. By the repeal of section 6 and the substitution of—

“6 Delegation of functions by Attorney-General

(1) Subject to the general or specific instructions of the Attorney-General, the officer to whom responsibility for public prosecutions is assigned under the Attorney-General’s Office Act [Chapter 7:19] shall exercise all the rights and powers and perform all of the functions conferred upon the Attorney-General by section 76(5) of the Constitution, this Act or any other enactment, insofar as they relate to criminal proceedings.

(2) The Attorney-General may, when he or she deems it expedient, appoint any legal practitioner entitled to practise in Zimbabwe to exercise (subject to the general or specific instructions of the Attorney-General) all or any of the rights and powers or perform all or any of the functions conferred upon the Attorney-General by subsection 76(5) of the Constitution, this Act or any other enactment, whether or not they relate to criminal proceedings.

(3) The officer referred to in subsection (1) or a legal practitioner appointed in terms of subsection (2) may, subject to any conditions which the Attorney-General may impose—

- (a) sign any certificate, authority or other document required or authorised by an enactment referred to in those subsections; and
- (b) appoint a member of the Attorney-General’s Office constituted in terms of the Attorney-General’s Office Act [Chapter 7:19] (Act No. 4 of 2011), or a legal practitioner entitled to practise in Zimbabwe, as the case may be, to exercise the rights and powers or perform the functions delegated to him or her in terms of subsection (1) or (2), and the provisions of this subsection shall apply, with such changes as may be necessary, in respect of that appointment.”.

2. By the repeal of section 7 and the substitution of—

“7 Director of Public Prosecutions

There shall be a Director of Public Prosecutions appointed in terms of the Attorney-General’s Office Act [Chapter 7:19] (Act No. 4 of 2001).”

PART III

PENSIONS REVIEW ACT [CHAPTER 16:03]

In section 2 (“Review of Pensions”)—

- (a) in subsection (2) by the insertion after “Public Service,” of “the Attorney-General’s Office,”;
- (b) in subsection (3)—
 - (i) in paragraph (a) by the insertion after “Public Service,” of “the Attorney-General’s Office,”;
 - (ii) in paragraph (d) by the deletion of “or Public Service Commission” and the substitution of “, Public Service Commission or the Attorney-General’s Office Board”.

PART IV

PUBLIC SERVICE ACT [CHAPTER 16:04]

1. In section 2 (“Interpretation”) by the insertion in the definition of “approved service”, after paragraph (c), of the following paragraph—

- “or
- (d) the Attorney-General’s Office;”.