

CHAPTER 15:16

HEALTH SERVICE ACT

Act 28/2004, 6/2005 (s. 25), 5/2011 (s. 10).

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and date of commencement.
2. Interpretation.

PART II

HEALTH SERVICE BOARD

3. Establishment of Health Service Board.
4. Functions of Board.
5. Membership of Board.
6. Delegation of functions by Board.
7. Reports of Board.
8. Minister of may give policy directions to Board.

PART III

MEMBERSHIP OF HEALTH SERVICE

9. Constitution of Health Service.
10. Appointment of Health Service Secretariat.
11. Responsibility for administration of Health Service.
12. Appointments, promotions and dismissals.
13. Conditions of service of members of Health Service.
14. Consultations re conditions of service of members of Health Service.
15. Persons under contract.
16. Recognised associations and organisations.
17. Investigation and adjudication of misconduct cases.

PART IV

HOSPITALS AND HOSPITAL MANAGEMENT BOARDS

18. Corporate status of central, provincial, district and general hospitals.
19. Establishment and composition of hospital management boards.
20. Functions of hospital management boards.
21. Administration, application and income of health services fund.
22. Accounts to be kept by hospital management boards.
23. Audit of accounts.

PART V

GENERAL

24. Appeals to Labour Court.
25. Pension benefits on transfer to Health Service.
26. Service regulations.
27. Regulatory powers of Minister.
28. Amendment of section 3 of Cap. 1:01.
29. Amendment of section 69 of Cap. 27:19.
30. Amendment of section 5 of Act No. 27 of 1998.
31. Amendment of section 5 of Cap. 15:09.
32. Repeal of Cap. 15:07 and savings.
33. Transitional provisions.

SCHEDULES

First Schedule : Central and Provincial Hospitals.

Second Schedule: Provisions applicable to the Board and Hospital Management Boards.

Third Schedule : Powers of Hospital Management Boards.

To provide for the establishment of the Health Service Board and its functions; to constitute the Health Service and to provide for its administration and the conditions of service of its members; to provide for the transfer of persons engaged in public health service delivery from the Public Service to the Health Service and to provide for matters connected with or incidental to the foregoing.

[Date of commencement : 25th February, 2005]

PART I

PRELIMINARY

1 Short title and date of commencement

This Act may be cited as the Health Service Act [*Chapter 15:16*].

2 Interpretation

In this Act—

“Board” means the Health Service Board established in terms of section 3;

“central hospital” means any hospital—

(a) listed in Part I of the First Schedule; or

(b) designated by the Minister by notice in a statutory instrument amending Part I of the First Schedule;

“district or general hospital” means any Government hospital other than a central or provincial hospital designated by the Minister by notice in the *Gazette* and includes a mission hospital or any State-aided hospital that is so designated;

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

“Government hospital” means a central, provincial, district or general hospital;

“Health Service” means the services constituted by the persons referred to in section 9;

“Health Service Secretariat” includes all administrative staff of the Health Service Board;

“hospital management board” means any hospital management board established in terms of section 19;

“member”, in relation to the Health Service, means a person employed in the Health Service, including a person employed under contract in terms of section 15;

“Minister” means the Minister of Health and Child Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“mission hospital” means a private hospital sponsored by any religious body;

“pension benefit” means any pension, commutation of a pension, gratuity or other similar allowance or benefit or any refund of pension contributions, including any interest payable thereon, payable to a person in respect of his or her service as a member of the Health Service 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 person in respect of such service, ill-health or injury or on the death of such person;

“provincial hospital” means any hospital—

(a) listed in Part II of the First Schedule; or

(b) designated by the Minister by notice in a statutory instrument amending Part II of the First Schedule;

“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 16(1);

“service regulations” means regulations made in terms of section 26 regulating conditions of service of members of the Health Service;

“State-aided hospital” means any private hospital, including a mission hospital, which receives a grant from the State and includes a mission hospital.

PART II

HEALTH SERVICE BOARD

3 Establishment of Health Service Board

There is hereby established a board to be known as the Health Service Board which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of doing anything that a body corporate may do by law.

4 Functions of Board

- (1) The functions of the Board shall, in consultation with the Minister, be—
 - (a) to appoint persons to offices, posts and grades in the Health Service; and
 - (b) to create grades in the Health Service and fix conditions of service for its members; and
 - (c) to supervise and monitor health policy planning and public health; and
 - (d) to inquire into and deal with complaints made by members of the Health Service; and
 - (e) to supervise, advise and monitor the technical performance of hospital management boards and State-aided hospitals; and
 - (f) to set financial objectives and the framework for hospital management boards and State-aided hospitals; and
 - (g) to handle appeals in relation to disciplinary powers exercised by hospital management boards over members of the Health Service employed in any Government hospital; and
 - (h) to assist in resource mobilisation for the Health Service; and
 - (i) to exercise any other functions that may be imposed or conferred upon the Board 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 Health Service and its maintenance in a high state of efficiency.

5 Membership of Board

- (1) The Board shall consist of—
 - (a) a full-time Executive Chairperson; and
 - (b) not less than three full-time and not more than two part-time members appointed, subject to subsection (2), by the Minister.

(2) The majority of members referred to in subsection (1)(b) shall be chosen for their ability and experience in health service delivery or administration:

Provided that the Minister shall appoint as a member at least one person registered as a legal practitioner in terms of the Legal Practitioners Act [*Chapter 27:07*].

(3) The Second Schedule shall apply to the qualifications of members of the Board, their terms and conditions of office, vacation of office, dismissal and the procedure to be followed by the Board at its meetings.

6 Delegation of functions by Board

(1) In the interests of ensuring the greatest degree of delegation of decision-making functions consistent with good administration, the Board, in consultation with the Minister, shall—

- (a) ensure that the functions vested in it by or under this Act are delegated wherever practicable to hospital management boards and members of the Health Service engaged in public health service delivery; and
- (b) take such steps as are necessary to encourage the greatest possible delegation of decision-making functions within all parts of the Health Service.

(2) A delegation of a function by the Board in terms of subsection (1)(a)—

- (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) A person to whom the Board has delegated a function in terms of subsection (1)(a) may, with the consent of the Board, further delegate the function, either absolutely or subject to conditions, to any other member of the Health Service who is under his or her control or authority.

(4) Where the Board has delegated a function in terms of subsection (1)(a) to any person, any conditions or limitations applicable to the exercise of that function by the Board shall apply to the exercise of the function by the person to whom it has been delegated.

(5) Where a person has been or is about to be appointed to or promoted within the Health Service pursuant to a power delegated by the Board in terms of 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 will 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 think necessary:

Provided that—

- (i) 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;
- (ii) where a person has been appointed or promoted and the Board is satisfied that the appointment or promotion was not effected as a result of any fraud or wilful misrepresentation on his or her part, the Board shall not revoke the appointment or promotion.

(6) 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—

- (a) shall report to the Minister as occasion requires and shall, within three months after the 31st December in that year, submit to the Minister an annual report dealing generally with all the proceedings and activities of the Board during that financial year; and
- (b) may at any time submit to the Minister a special report on any matter upon which the Minister requests the Board to report.

(2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the reports are received by him or her—

- (a) the annual report submitted to him or her in terms of subsection (1)(a); and
- (b) any special report submitted to him or her in terms of subsection (1)(b) which the Board requests be laid before Parliament.

8 Minister may give policy directions to Board

(1) The Minister may give general directions of policy to the Board and the Board shall take all necessary steps to comply with them.

(2) If the Board has failed to carry out any duty imposed upon it by this Act or any other law, the Minister may direct the Board to take such action as he or she considers necessary to rectify the matter within such time as he or she may specify:

Provided that before doing so the Minister shall give the Board an opportunity to make such representations as it may wish to make in the matter.

(3) If the Board fails to take action in accordance with a direction in terms of subsection (2) within the time specified by the Minister, the Minister may take appropriate action on behalf of the Board to rectify the matter.

PART III

MEMBERSHIP OF HEALTH SERVICE

9 Constitution of Health Service

The Health Service shall consist of the following persons—

- (a) every person who occupies a post in the Ministry responsible for the delivery of health services, which is required to be held by a medically qualified person; and
- (b) every person, whether or not medically qualified, who is employed to assist any person referred to in paragraph (a); and
- (c) every person employed by a Government hospital; and
- (d) every person employed by local authority or mission hospital who is transferred to the Health Service in terms of section 33; and
- (e) such other persons in the employment of the State as are mentioned in section 33.

10 Appointment of Health Service Secretariat

(1) The Board shall appoint the Health Service Secretariat and such other members of staff as may be necessary for the proper functioning of the Health Service.

(2) The Executive Chairperson shall, subject to the general control of the Board, be responsible for—

- (a) managing the affairs of the Health Service and implementing the decisions of the Board;
- (b) providing technical advice to the Board;
- (c) co-ordinating work programmes;
- (d) formulating administrative rules, guidelines and procedures to facilitate the achievement of the targets set up by the Board;
- (e) exercising any other functions that may be imposed or conferred upon him or her in terms of this Act or any other enactment.

11 Responsibility for administration of Health Service

Subject to this Act—

- (a) the number of offices, posts and grades in the Health Service shall be fixed by the Board in consultation with the Minister and with the concurrence of the Minister responsible for finance;
- (b) the general supervision of members of the Health Service shall be the responsibility of the Board.

12 Appointments, promotions and dismissals

(1) The appointment, assignment and promotion of persons to offices, posts and grades within the Health Service Secretariat shall be effected by the Board.

(2) Subject to such directions as the Board may give, the appointment, assignment and promotion of persons to offices, posts and grades at central and provincial or district hospitals shall be effected by hospital management boards.

(3) When considering persons for appointment to or promotion within the Health Service, the Board or hospital management board concerned shall—

- (a) have regard to the merit principle, that is, the principle that preference should be given to the person who in its opinion is the most efficient and suitable for appointment to the office, post or grade concerned; and
- (b) ensure that there is no discrimination on the ground of race, tribe, place of origin, political opinion, colour, creed, gender or physical disability.

(4) The discipline, suspension and dismissal of persons from the Health Service Secretariat shall be effected by the Board.

(5) The discipline, suspension and dismissal of persons employed at any central, provincial or district hospital shall be effected by the hospital management board of the hospital concerned.

13 Conditions of service of members of Health Service

(1) The conditions of service applicable to members of the Health Service, including their remuneration, allowances, pension benefits, leave of absence, hours of work, discipline and discharge, shall be fixed by the Board, in consultation with the Minister:

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 Health Service who are affected by them:

Provided that, in the event of any conflict between service regulations and the contents of any such notice or circular, the service regulations shall prevail to the extent of the conflict.

(3) Subject to Schedule 6 to the Constitution, the Board may, in terms of subsection (1) alter the conditions of service of existing members of the Health Service:

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) Conditions of service fixed in terms of subsection (1) may provide that, before a member of the Health Service is permitted to undergo a course of training or study, he or she shall enter into an agreement with the Board whereby the member undertakes that—

- (a) he or she will serve the Health Service for a period specified in the agreement following the completion of all or any part of such course; and
- (b) should he or she be discharged from or leave the Health Service at any time during the course or before the expiry of the period specified in paragraph (a), he or she will repay to the State such amount as may be provided for in the agreement;

and any amount referred to in paragraph (b) shall be a debt due by him or her to the State and may be sued for or otherwise recovered from him or her by the Minister.

(5) 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 Health Service—

- (a) owing to—
 - (i) the abolition of his or her office or post; or
 - (ii) a reduction in or an adjustment of the organisation of any part of the Health Service;

or

- (b) if the removal will help to improve efficiency or economy in the Health Service, or in the Ministry or the department of the Health Service in which he or she is serving.

(6) Conditions of service fixed in terms of subsection (1) may provide that, in addition to any other penalty that may be imposed upon them, members of the Health Service who have been found guilty of misconduct or who have been convicted of an offence may be ordered to pay compensation to the State, a statutory body, a local

authority or any other person or fund in an amount not exceeding the amount of any damage to or loss of property arising out of or occasioned by the misconduct or offence.

(7) Upon the making of an order referred to in subsection (6), the amount specified therein shall become a debt due by the member concerned to the State or to the statutory body, local authority, person or fund in whose favour the order was made, and may be sued for or otherwise recovered from the member concerned by the Minister or by that statutory body, local authority, person or fund, as the case may be.

14 Consultations re conditions of service of members of Health Service

(1) The Board shall endeavour to engage in regular consultations and negotiations with hospital management boards and recognised associations and organisations in regard to the conditions of service of members of the Health Service who are represented by the recognised associations or organisations concerned.

(2) Notwithstanding subsection (1), conditions of service fixed or determined under this Act shall not be invalid solely on the ground that they were not agreed to by all the parties to any consultation in terms of subsection (1).

15 Persons under contract

(1) The Board or a hospital management board may engage persons under contract, on such conditions as may be prescribed by the Board:

Provided that, if the effect of any such conditions would be to increase the fixed salary or salary scale applicable to any post or grade, the Minister shall obtain the concurrence of the Minister responsible for finance.

(2) There may be incorporated in the conditions referred to in subsection (1) such provisions of any enactment relating to conditions of service of members of the Health Service as may be considered necessary or desirable in the light of the nature of the contract.

(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 Health Service, unless the contract is renewed or the member is appointed to the Health Service in some other capacity.

16 Recognised associations and organisations

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

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

(3) Without derogation from section 14—

(a) the Minister and the Board may consult with a recognised association or organisation on such matters affecting the efficiency, well-being or good administration of the Health Service or the interests of members of the recognised association or organisation as the Minister and the Board think appropriate; and

(b) a recognised association or organisation may make representations to the Minister and the Board concerning the conditions of service of the members of the Health Service represented by the association or organisation, and the Minister 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 Health Service 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 Health Service 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 Health Service.

17 Investigation and adjudication of misconduct cases

(1) Any case involving misconduct or suspected misconduct on the part of a member of the Health Service employed by a Government hospital shall be investigated, adjudicated upon and punished by the appropriate hospital management board, or by such person or authority as may be prescribed in service regulations.

(2) Any case involving misconduct on the part of a member of the Health Service Secretariat shall be investigated, adjudicated upon and punished by the appropriate person or authority prescribed in service regulations.

(3) The procedure to be followed in the investigation and adjudication of misconduct cases referred to in subsection (1) or (2), and the punishments that may be imposed upon members of the Health Service found guilty of misconduct, shall be as prescribed in service regulations or, in the absence of such prescription, as fixed by the Board.

(4) Any person who is aggrieved by a verdict reached or punishment imposed following misconduct proceedings conducted in terms of subsection (1) or (2) may appeal to the Board in the form and manner prescribed in service regulations.

PART IV

HOSPITALS AND HOSPITAL MANAGEMENT BOARDS

18 Corporate status of central, provincial, district and general hospitals

(1) Subject to subsection (3), each central, provincial, district or general hospital shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, performing all acts that bodies corporate may by law perform.

(2) Each central, provincial, district or general hospital shall be managed by a hospital management board.

(3) Any legal suit or action to which a Government hospital is a party shall be immediately reported to the Health Service Board by the appropriate hospital management board.

19 Establishment and composition of hospital management boards

(1) The Minister shall establish a hospital management board for each Government hospital which shall be the responsible authority for the hospital concerned.

[Subsection amended by section 25 of Act 6 of 2005]

(2) Subject to subsection (4), each hospital management board shall consist of not more than seven members of whom—

(a) one shall be the superintendent or chief executive officer of the hospital;

[Paragraph substituted by section 10 of Act 5 of 2011]

(b) in the case of a teaching hospital, one shall be appointed by the Minister from a panel of three persons who are staff members of any faculty or college of medicine involved in training health personnel in a university operating in the province or in the vicinity in which the hospital is located, whose names have been submitted by the governing body of the university;

(c) the chairperson and the remaining members shall be appointed by the Minister for their professional or managerial skills.

[Paragraph substituted by section 10 of Act 5 of 2011]

(3) If a university referred to in subsection (2)(b) fails, neglects or refuses to submit any names or make any nomination or appointment for the purposes of that provision, or if a suitable person cannot be found in the area concerned, the Minister may in terms of that provision appoint any person, whether that person is qualified in terms of that provision or not, whom he considers fit to be a member.

(4) In every case where a hospital management board is appointed for a district or general hospital which is a mission hospital, there shall be seven members of the board appointed by the Minister, through the Board, of whom—

(a) three, including the chairperson of the board, shall be nominated by the religious body sponsoring the mission hospital; and

(b) in the case of a teaching hospital, one shall be appointed by the Minister from a panel referred to in subsection (2)(b); and

(c) three or four (as the case may be) shall be appointed by the Minister in accordance with subsection (2)(c).

(5) The Minister shall designate one of the members of each hospital management board appointed under subsection (2)(b) or (c) or (4)(b) or (c) to be the vice-chairperson of the board.

(6) The Second Schedule shall apply to the conditions of office, disqualifications and vacation of office of members of a hospital management board and related matters, and to the meetings and procedure of a hospital management board.

20 Functions of hospital management boards

(1) Subject to any directions of the Minister, the functions of each hospital management board shall be to—

(a) provide for the care and treatment of the patients at the hospital for which the board is the responsible authority (hereinafter referred to as "the hospital"); and

(b) hire and fire staff; and

(c) in the case of a teaching hospital, to provide facilities for the teaching and training of medical practitioners, medical student nurses and other personnel; and

(d) conduct negotiations with the Ministry responsible for health with respect to the provision and terms of any grants appropriated or to be appropriated by Act of Parliament or otherwise obtained for the benefit of the hospital or Government and State-aided hospitals generally; and

(e) ensure the best use of the resources available to the hospital in the interests of the patients; and

(f) implement Government health policy as communicated to the hospital management board from time to time by the Board; and

(g) devise means of financing the operations of the hospital on a continuing and sustainable basis; and

(h) maintain and improve the hospital.

(2) In exercising its functions in terms of subsection (1) a hospital management board shall—

- (a) have regard to the social obligation of the hospital as a Government hospital to provide for the health needs of the public;
- (b) assist in the implementation of national health policies and the formulation of institutional health management arrangements.

(3) Every hospital management board shall, before the commencement of each year to which the plan relates, devise an annual plan setting out the manner in which it proposes to spend the funds at its disposal and to fulfil its functions during that year.

(4) Subject to this Act, any directions of the Board and the terms of the constitution referred to in section 21(1), every hospital management board shall, for the better exercise of its functions, have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Third Schedule.

21 Administration, application and income of health services fund

(1) Each hospital management board shall, subject to the constitution drawn up for the regulation of the fund in terms of section 30 of the Audit and Exchequer Act [*Chapter 22:03*], administer the health services fund established for the hospital for which the hospital management board is the responsible authority.

(2) The health services fund shall be applied for the purpose of enabling the hospital management board to fulfil its functions and exercise its powers in terms of section 20.

(3) The health services fund established for each central, provincial, district or general hospital shall consist of—

- (a) such moneys as may be appropriated by Act of Parliament for the hospital concerned; and
- (b) the fees and charges payable for services and facilities provided at the hospital concerned; and
- (c) any donation or grant permitted by the Minister to be accepted by the hospital management board and paid into the fund; and
- (d) any income derived from the investment of the surplus moneys of the fund.

22 Accounts to be kept by hospital management boards

(1) Each hospital management board shall keep proper books of accounts in relation to the health services fund and other records relating thereto and, as soon as possible after the end of each financial year, shall prepare audited accounts reflecting the operations of the hospital concerned during the financial year and the financial condition of the hospital at the end of the financial year.

(2) Each hospital management board shall furnish to the Board one copy of the audited accounts prepared in terms of subsection (1) together with the report of the hospital management board within three months after the end of the financial year to which the accounts and the report relate.

23 Audit of accounts

(1) The accounts of a hospital management board shall be audited by the Comptroller and Auditor-General, who for that purpose shall have the function conferred on him or her by sections 8 and 9 of the Audit and Exchequer Act [*Chapter 22:03*].

(2) Any member of the hospital management board or Health Service who—

- (a) fails or refuses to provide the Comptroller and Auditor-General with any explanation or information required by him or her for the purpose of an audit in terms of subsection (1); or
- (b) hinders or obstructs the Comptroller and Auditor-General in the conduct of an audit in terms of subsection (1);

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(3) Notwithstanding subsection (1) the Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of a hospital management board 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 health services fund.

PART V

GENERAL

24 Appeals to Labour Court

(1) Any member or former member of the Health Service who is aggrieved by the decision of the Health Service Board under section 17 in respect of—

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

for misconduct committed or alleged to have been committed by him or her may appeal against the verdict or penalty to the Labour Court within six months from the date of the verdict or imposition of the penalty.

(2) Sections 90, 91(1), 92 and 97 of the Labour Act [*Chapter 28:01*] shall apply, with necessary modifications, in relation to any appeal in terms of subsection (1) as if the decision appealed against were a determination in terms of that Act.

25 Pension benefits on transfer to Health Service

(1) Members of the Public Service transferred to the Health Service shall be entitled to continue contributing towards a pension in terms of the Public Service (Pensions) Regulations, 1992, published in Statutory Instrument 124 of 1992, as amended or replaced from time to time (hereinafter referred as the “Public Service Pension Scheme”), subject to such terms and conditions as the Public Service Commission may fix with the approval of the Minister responsible for the Public Service and the Health Service Board.

(2) The pensionable service of a person in the Public Service who is transferred to the Health Service shall be deemed, for the purpose of calculating any pension or other benefit, to have been pensionable service in the Health Service.

(3) A person other than a member of the Public Service who is transferred to the Health Service in terms of section 33(7) and who contributed to any pension scheme may elect to continue contributing to that pension scheme or to contribute towards the Public Service Pension Scheme, and if he or she makes the latter election he or she shall—

- (a) cease to contribute to the other pension scheme on the date of his or her transfer to the Health Service and contribute towards the Public Service Pension Scheme; and
- (b) be deemed to have contributed in respect of an approved previous employment for the purposes of the Public Service Pension Scheme; and
- (c) pay to the Consolidated Revenue Fund all terminal benefits upon ceasing to contribute to that pension scheme, whereupon the following portion of his or her previous pensionable service shall be deemed to be pensionable service in the Health Service, that is, the portion equivalent to the length of pensionable service in the Health Service that the amount of his or her terminal benefits would have purchased if such amount represented arrear contributions for the purposes of the Public Service (Pensions) Regulations, 1992 (Statutory Instrument 124 of 1992).

(4) A person other than a member of the Public Service who is transferred to the Health Service in terms of section 33(7) and who has not contributed to any pension scheme shall, on the date of his or her transfer to the Health Service, contribute towards the Public Service Pension Scheme.

(5) Persons referred to in subsections (3) and (4) may elect to make arrear contributions for the purposes of the Public Service Pension Scheme.

26 Service regulations

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

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

- (a) the appointment, qualifications, salaries, allowances and other remuneration and benefits of members of the Health Service, and their promotion, functions, hours of work and leave of absence;
- (b) the pension benefits payable to members of the Health Service and to other persons in respect of the members’ service with the State or with any other person or authority, the contributions payable in respect of such pension benefits and the circumstances in which such pension benefits may be reduced, suspended or withdrawn;
- (c) training and development courses for members of the Health Service and the attendance of such members thereat;
- (d) the use by members of the Health Service 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;
- (e) the manner in which members of the Health Service, may make representations in regard to matters affecting their conditions of service and general welfare;
- (f) the manner in which grievances of members of the Health Service may be expressed, investigated and redressed;
- (g) the terms and conditions of contracts entered into in terms of section 15;
- (h) the circumstances in which heads of department may assent to cessions of salary, allowances or other remuneration;
- (i) the discipline of members of the Health Service, and the penalties that may be imposed upon them and other measures that may be taken against them for misconduct or if they are inefficient or unsuitable or incapable of performing their duties or if they are convicted of criminal offences;

- (j) the suspension, retirement, resignation, discharge, abandonment of employment and other termination of service of members of the Health Service;
- (k) the transfer, secondment and appointment of—
 - (i) members of the Health Service to positions in an approved service; and
 - (ii) persons in an approved service to offices, posts or grades in the Health Service;and the terms and conditions upon which such transfers, secondments and appointments may be made;
- (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 Health Service 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, through the Minister, 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 Health Service, subject to such modifications, exceptions or conditions as may be specified in the regulations, and thereupon the enactment concerned shall so apply to or in respect of those members of the Health Service.

(5) If, after an enactment has been made applicable to any members of the Health Service 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.

27 Regulatory powers of Minister

Subject to this Act, the Minister, in consultation with the Board, may make regulations for—

- (a) the furnishing of statistics and information for the purposes of this Act;
- (b) the privileges of recognised associations and organisations;
- (c) the recognition and revocation of recognition of recognised associations and organisations and the criteria for such recognition or revocation;
- (d) any other matter, other than a matter referred to in section 26, which by this Act is required or permitted to be prescribed or which, in the Minister's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

28 Amendment of section 3 of Cap. 1:01

Section 3 of the Interpretation Act [*Chapter 1:01*] is amended by the insertion in subsection (3) of the following definitions—

““Health Service” means the Health Service constituted in terms of section 9 of the Health Service Act [*Chapter 15:16*];

“Health Service Board” means the Health Service Board established by section 3 of the Health Service Act [*Chapter 15:16*];”.

29 Amendment of section 69 of Cap. 27:19

Section 69 of the Health Professions Act [*Chapter 27:19*] is amended by the deletion in paragraph (b) of subparagraph (ii) and the substitution of the following subparagraph—

“(ii) at least three shall be members of the Health Service designated by the Secretary of the Ministry responsible for health.”.

30 Amendment of section 5 of Act No. 27 of 1998

Section 5 of the Medical Services Act, 1998 (No. 27 of 1998) is amended by the deletion in subsection (2) of “Public Service” wherever it occurs and the substitution of “Health Service”.

31 Amendment of section 5 of Cap. 15:09

Section 5 of the Public Health Act [*Chapter 15:09*] is amended by the deletion in subsections (2) and (3) of “Public Service” and the substitution of “Health Service”.

32 Repeal of Cap. 15:07 and savings

(1) Subject to subsection (2), the Parirenyatwa Hospitals Act [*Chapter 15:07*] is repealed.

(2) Notwithstanding subsection (1), anything done or commenced or any decision made in terms of the repealed Act which immediately before the fixed date had or was capable of acquiring effect shall continue to have or be capable of acquiring, as the case may be, effect as if it had been done, commenced or made in terms of this Act.

33 Transitional provisions

(1) In this section—

“transferred member” means a person who is transferred from the Public Service to the Health Service in terms of subsection (2).

(2) The persons who are specified in section 9(a), (b) and (c) and who, immediately before the fixed date, were members of the Public Service shall be deemed to have been transferred to the Health Service on the fixed date.

(3) All persons transferred to the Health Service in terms of subsection (2) shall be employed on terms and conditions not less favourable than those that applied immediately before the fixed date.

(4) Any regulation, notice, circular or other document which, immediately before the fixed date, regulated the conditions of service of any class of transferred members in terms of the Public Service Act [*Chapter 16:04*] shall continue, on and after that date, to regulate the conditions of service of—

(a) those transferred members; and

(b) any persons who join the Health Service after the fixed date and who are in the same class as those transferred members;

until the Board, replaces the regulation, notice, circular or other document concerned or otherwise alters the conditions of service concerned in terms of this Act.

(5) Any reference to the Public Service Commission in any regulation, notice, circular or other document referred to in subsection (3) shall be construed, with necessary modifications, as a reference to the Board.

(6) The transfer of persons from the Public Service to the Health Service in terms of this section shall be deemed to involve also the transfer of the offices held by such persons from the Public Service to the Health Service, and accordingly any person who refuses to be so transferred shall be entitled to the terminal benefits upon resignation from, not abolition of, an office in the Public Service.

(7) At such date as shall be fixed by the Minister by notice in a statutory instrument, persons in the employment of the State not referred to in subsection (2) who are concerned with the provision of health services not referred to in subsection (2) may be transferred to the Health Service.

FIRST SCHEDULE (Section 2)

PART I

CENTRAL HOSPITALS

1. Parirenyatwa Hospital.
2. United Bulawayo Hospital.
3. Harare Hospital.
4. Mpilo Hospital.
5. Ingutsheni Hospital.
6. Chitungwiza Hospital.

PROVINCIAL HOSPITALS

1. Bindura Hospital.
2. Chinhoyi Hospital.
3. Gweru Hospital.
4. Gwanda Hospital.
5. Marondera Hospital.
6. Masvingo Hospital.
7. Mutare Hospital.

SECOND SCHEDULE (Section 5(3) and 19(6))

PROVISIONS APPLICABLE TO THE BOARD AND HOSPITAL MANAGEMENT BOARDS

Paragraph

1. Interpretation.
2. Disqualification for appointment to Board.
3. Terms and conditions of office of members of Board.
4. Vacation of office by appointed members of Board.
5. Dismissal of appointed members.
6. Filling of vacancies on Board.
7. Procedure of Board.
8. Committees of Board.
9. Minutes of proceedings.

10. Validity of decisions and acts of Board.

1. Interpretation

(1) In this Schedule—

“Board” means the Health Service Board or a hospital management board, as the case may be;

“member” means a member of the Health Service Board or a hospital management board, as the case may be;

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 the person hold office as a 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 a 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 any country by a competent court to a term of imprisonment imposed 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 paragraph (b) of subsection (1)—

(a) a person who is appointed to a council, commission or other 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 body corporate 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. Conditions of service of members of Board

(1) Subject to this Schedule, the term of office of a member of the Board shall be such period, not exceeding three years, as the Minister may fix on his appointment.

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

(3) Subject to this Schedule, the conditions of service of members, including their salaries, allowances and pension benefits, shall be fixed by the Minister from time to time:

Provided that members of hospital management boards shall be entitled to sitting allowances only.

(4) When fixing a member’s conditions of service in terms of subparagraph (3), the Minister may direct that any enactment relating to the conditions of service of members of the Public Service or the Health Service shall apply to the member, subject to such modifications, exceptions or conditions as the Minister may specify, and thereupon the enactment concerned shall so apply to the member concerned.

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

4. Vacation of office by members of Board

(1) A member may resign his or her office at any time by giving the Minister such notice of his or her intention to resign as may be fixed in the member’s 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 such notice or after the expiry of such other period of notice as the member and the Minister may agree.

(2) A member of the Board shall be deemed to have resigned his or her office and the member’s office shall become vacant—

(a) if he or she becomes disqualified for appointment to the Board concerned in terms of paragraph (a), (b), (c), (d) or (e) of subparagraph (1) of paragraph 2; or

(b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion was suspended, imposed 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. Dismissal of members

- (1) Subject to subparagraph (2), if the Minister is satisfied on reasonable grounds that—
 - (a) the Board has contravened this Act or any other law and has failed to rectify the contravention within a specified period after being requested to do so by the Minister; or
 - (b) the Board has failed to comply with any direction in terms of section 8; or
 - (c) whether through disagreements among its members or otherwise, the Board is unable to carry out its function in terms of this Act;and that it is in the national interest to do so, the Minister may, by written notice to the Executive Chairperson or chairperson, as the case may be, dismiss all members and their offices shall become vacant as soon as the chairperson receives the notice.
- (2) Before dismissing all members of the Health Service Board in terms of subparagraph (1), the Minister shall consult the President and act in accordance with any directions the President may give him.

6. Filling of vacancies on Board

On the death of or the vacation of office by a member, the Minister 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 of the Board—
 - (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 the Minister or 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 such a 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 of the Board, where he or she convened the meeting in terms of paragraph (a) of subparagraph (2); or
 - (b) the business specified in the request for the meeting, where the chairperson of the Board, convened the meeting in terms of paragraph (b) of subparagraph (2).
- (5) The chairperson of the Board or, in his or her absence, the vice-chairperson shall preside at all meetings of the Board:
 - Provided that, if the chairperson and vice-chairperson are both absent from any meeting, the members present may elect one of their number to preside at that meeting as chairperson.
- (6) At any meeting of the Board, a majority of all the members of the Board shall form a quorum.
- (7) All acts, matters or things authorised or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present:
 - 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.
- (8) With the approval of the Board, the chairperson of the Board 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 that meeting.
- (9) A person invited to attend a meeting of the Board in terms of subparagraph (8) may take part in the meeting as if he or she were a member of the Board, but he or she shall not have a vote on any question before the meeting.
- (10) 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 succeeding 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.
- (11) 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 the Board 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, 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, 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 may 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 Board.
- (5) If the chairperson of a 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 as fixed by the Board

9. Minutes of proceedings

- (1) The Board shall cause minutes of all proceedings of and decisions taken at its meetings and the meetings of its committees to be entered in books kept for the purpose.
- (2) Any minutes referred to in subparagraph (1) 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 the 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 as provided in subparagraph (2) to be sent to the Minister for his 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.
- (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.

THIRD SCHEDULE (Section 20(4))

POWERS OF HOSPITAL MANAGEMENT BOARDS

1. To acquire movable property by purchase, loan, hire or exchange.
2. To maintain, alter or improve the property of the hospital.
3. To sell, exchange, lease, pledge, dispose of, turn to account or otherwise deal with any property of the Board for such consideration as the Board may determine.
4. To borrow money in such amounts, on such terms and conditions and for such purposes as may be approved by the Minister and the Minister responsible for finance.
5. To secure group professional indemnity cover for members of the staff of the hospital while performing public duties.
6. To insure against any loss, risk or liability which the hospital may incur or any damage which the hospital may suffer.
7. To enter into agreements and to modify or rescind such agreements:

Provided that the Board shall not enter into agreements of suretyship or guarantee without the approval of the Minister and the Minister responsible for finance.
8. To draw, make, accept, endorse, discount, execute and issue, for the purpose of the business of the hospital, promissory notes, bill of exchange, securities and other negotiable and transferable instruments.

Law Development Commission, Zimbabwe

9. To invest moneys not immediately required by the hospital.
10. To fix the terms and conditions, including fees, subject to which patients are admitted to, accommodated and treated in and discharged from the hospital and to fix different terms and conditions for different classes of patients:
 Provided that in fixing fees in terms of this subparagraph the Board shall do so subject to the directions of the Minister and the Minister responsible for finance.
11. Subject to the directions of the Minister and the Minister responsible for finance, to provide for the remission of fees paid by a specific patient or class of patients.
12. To accept a grant, donation or bequest of movable property, including money, made to the Board:
 Provided that, if a grant, donation or bequest referred to in this paragraph—
 - (a) is made subject to any conditions; or
 - (b) would involve additional or recurrent expenditure on the part of the Board;the Board shall not accept the grant, donation or bequest without the consent of the Minister.
13. Generally, to do all such things as are incidental or conducive to the exercise of the functions or the performance of the duties of the Board or which are incidental to the powers specified in this Schedule or which are calculated, directly, to enhance the value of, or to develop, the services provided at the hospital.