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Act No. 5 of 2011

Gazetted and into force 17th May 2011

History

Bill gazetted: 22nd October 2010

Passed by House of Assembly with amendments: 7th April 2011

Amended Bill transmitted to Senate for consideration: 7th April 2011

Passed by Senate: 10th May 2011

ACT

To amend the Administrative Court Act [*Chapter 7:01*], Judicial Services Act [*Chapter 7:18*] (No. 10 of 2006), Criminal Procedure and Evidence Act [*Chapter 9:07*], Ombudsman Act [*Chapter 10:18*], Police Act [*Chapter 11:10*], Civil Aviation Act [*Chapter 13:161*] (No. 7 of 1998), National Biotechnology Authority Act [*Chapter 14:31*] (No. 3 of 2006), Indigenisation and Economic Empowerment Act [*Chapter 14:33*] (No. 14 of 2007), Health Services Act [*Chapter 15:16*] (No. 28 of 2004), Parks and Wildlife Act [*Chapter 20:14*], Environmental Management Act [*Chapter 20:27*] (No. 13 of 2002), Procurement Act [*Chapter 22:14*] (No. 2 of 1999), Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (No. 5 of 1999), Building Societies Act [*Chapter 24:02*], Banking Act [*Chapter 24:20*] (No. 9 of 1999), Printed Publications Act [*Chapter 25:14*] and the Labour Act [*Chapter 28:01* to backdate Statutory Instrument 12 of 2011; and to provide for the matters connected with or incidental to the foregoing .

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the General Laws Amendment Act, 2011.

2 Amendment of Cap. 7:01

The Administrative Court Act [*Chapter 7:01*] (No. 10 of 2006) is amended by the insertion after section 3 of the following section—

"3A Oath of office

Every President of the Court shall, before entering upon his or her office, take and subscribe before the President or some person authorized by the President in that behalf the oath of loyalty and the judicial oath specified in Schedule 1 of the Constitution."

3 Amendment of Cap. 7:18

The Judicial Service Act [*Chapter 7:18*] (No. 10 of 2006) is amended

(a) in section 10 ("Appointment and functions of Secretary of Commission")(3) by the deletion of "Audit and Exchequer Act [*Chapter 22:03*]" and the substitution of "Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009)";

(b) in section 28 ("Transitional Provisions") by the insertion of the following subsections after subsection (4)--

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

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

(a) 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) to the Judicial Service exclusively; or

(ii) to the Ministry responsible for this Act and the Attorney-General's Office exclusively; or

(iii) in joint and undivided shares to the Judicial Service, the Ministry responsible for this Act and the Attorney-General's 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.

(6) 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 Judicial Service after the fixed date and who are in the same class as those transferred members;

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

(7) 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 Judicial Service;

(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 Judicial Service at the equivalent grade or post;

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

4 Amendment of Cap. 9:07

The Criminal Procedure and Evidence Act [*Chapter 9:07*] is amended

- (a) by the repeal of section 370 and the substitution of the following--

"370 No payment of security de restituendo where court makes award against accused

Where a court makes an award or order in terms of this Part it shall not require the injured party to give security for the repayment of the compensation or the return of the property.";

- (b) by the repeal of section 372 and the substitution of the following

"372 Enforcement of awards and orders

(1) No later than thirty days after an award or order is made in terms of this Part by a court, any interested party shall, unless the accused has earlier complied with the award or order, lodge a copy of the award or order with the clerk or registrar of the court that made the award or order or, if that court has no civil jurisdiction, with the clerk of a court within the same province having civil jurisdiction or the nearest High Court registry, as the case may be:

Provided that if the award or order is not registered within the period allowed, the interested party must apply to the registering court showing good cause why the period should be extended in his or her favour.

(2) Upon lodgement of a copy of an award or order in terms of subsection (1) the clerk or registrar shall record the award or order, and thereupon the award or order shall have the same effect as a civil judgment of the court given against the person who is named in the order as being liable to pay the compensation or restore the property, as the case may be.

(3) Where an accused against whom an award or order is made in terms of this Part appeals against his or her conviction, sentence or both, such appeal shall

- (a) not be regarded as an appeal against the award or order, even if the execution of the sentence is suspended conditionally upon payment of the compensation or restitution of the property required by the award or order; and

- (b) not suspend or affect the award or order even if such appeal is successful.

(4) Where an accused against whom an award or order is made in terms of this Part appeals against the award or order such appeal shall —

- (a) be made only after the award or order is registered in terms of subsection (1) or, if no such registration is made within the period there provided, not earlier than thirty days from the date when the award or order is made; and

- (b) be lodged in the court where the award or order is made or, where the award or order is registered in a different court, in that court.";
- (c) in Part I of the Third Schedule ("Offences in respect of which Magistrate may not grant bail without consent of Attorney-General") by the repeal of paragraph 7 and the substitution of the following paragraphs
 - "7. Contravening section 128 of the Parks and Wild Life Act [*Chapter 20:14*].
 - 8. An offence referred to in Part II—
 - (a) where the accused person has been previously convicted of an offence referred to in that Part or in this Part; or
 - (b) which was allegedly committed while he or she was released on bail in respect of an offence referred to in that Part or this Part."

5 Amendment of Cap. 10:18

(1) The Ombudsman Act [*Chapter 10:18*] is amended

- (a) in the long title, by the deletion of "Ombudsman" and "Deputy Ombudsman" wherever they occur and the substitution of "Public Protector" and "Deputy Public Protector" respectively;
- (b) by the repeal of the preamble and the substitution of the following—

"WHEREAS sections 107 and 108 of the Constitution provide-

"107. (1) There shall be a Public Protector and, where the President has deemed it desirable, a Deputy Public Protector whose offices shall be public offices but shall not form part of the Public Service.

(2) The Public Protector and Deputy Public Protector shall be appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders.

(3) If the appointment of a Public Protector or Deputy Public Protector is not consistent with any recommendation made by the Judicial Service Commission, the President shall cause Parliament to be informed as soon as is practicable:

(4) The Deputy Public Protector shall—

- (a) assist the Public Protector in the exercise of his functions' and duties and the Public Protector may authorize him to exercise any of his functions or duties on his behalf;*
- (b) act as Public Protector whenever the office of the Public Protector is' vacant or the Public Protector is for any reason unable to perform the functions of his office.*

(5) An Act of Parliament may make provision for the qualifications and remuneration of the Public Protector and the Deputy Public Protector.

108. (1) Subject to section 108B(7), the Public Protector may investigate

- (a) action taken by any officer, person or authority referred to in subsection (2) in the exercise of the administrative functions of that officer, person or authority in any case where it is alleged that a person has suffered injustice*

in consequence of that action and it does not appear that there is any remedy reasonably available by way of proceedings in a court or on appeal from a court; or

(b) allegations that any provision of the Declaration of Rights has been contravened by any officer; person or authority referred to in subsection (2).

(2) Subject to such exceptions and conditions as may be prescribed by or under an Act of Parliament, the provisions of subsection (1) shall apply in respect of any action taken by the, following officers and authorities—

(a) any Ministry or department or any member of such Ministry or department; and

(b) such other persons or authorities as may be prescribed by or under an Act of Parliament for the purposes of this paragraph.

(3) An Act of Parliament may confer other functions on the Public Protector, and may make provision for the exercise of his functions including, without prejudice to the generality of the foregoing, the officers and authorities whose actions are not subject to investigation by him.

NOW, THEREFORE, be it enacted as follows: -- "

(2) The Ombudsman Act [Chapter 10:181] is further amended to the extent specified in the First Schedule.

6 Amendment of Cap. 11:10

The Police Act [Chapter 11:10] is amended to the extent specified in the Second Schedule.

7 Amendment of section 79 of Cap. 13:16

Section 79 ("Regulations") of the Civil Aviation Act [Chapter 13:151 (No. 7 of 1998)] is amended by the repeal of subsection (5) and the substitution of the following subsections

"(5) Regulations made under this section may prescribe for any contraventions thereof—

- (a) criminal penalties not exceeding a fine of level fourteen or imprisonment for a period of five years or both such fine and such imprisonment;
- (b) civil penalties of a prescribed amount leviable by the Authority for each day during which a contravention continues, not exceeding a prescribed number of days:

Provided that the Authority shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if it is satisfied that the contravention was not wilful, or not due to the want of reasonable care.

(6) A civil penalty prescribed under subsection (5)(b) shall constitute a debt due to the Authority by the person against whom it is levied, and shall at any time after it becomes due be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority:

Provided that, for the avoidance of doubt, it is declared that the person against whom a civil penalty is levied may challenge the validity of the debt representing the civil penalty before the court in which the debt is sought to be recovered. "

8 Amendment of Cap. 14:31

(1) The National Biotechnology Authority Act [*Chapter 14:31*] (No. 3 of 2006) is amended in section 1 ("Short title and date of commencement") by the repeal of subsection (2).

(2) The National Biotechnology Authority Act [*Chapter 14:31*] (No. 3 of 2006) is deemed to have come into operation on the 1st September 2006:

Provided that any provision therein creating a criminal offence shall come into operation only the date of promulgation of this Act.

9 Amendment of section 3 of Cap. 14:33

The Indigenisation and Economic Empowerment Act [*Chapter 14:33*] (No. 14 of 2007) is amended in section 3(6) by the deletion of "company" and the substitution of "business".

10 Amendment of section 19 of Cap. 15:16

The Health Services Act [*Chapter 15:16*] (No. 28 of 2004) is amended in section 19 ("Establishment and composition of hospital management boards")(2)—

(a) by the repeal of paragraph (a) and the substitution of

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

(b) by the repeal of paragraph (c) and the substitution of-

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

11 Amendment of section 128 of Cap. 20:14

The Parks and Wildlife Act [*Chapter 20: 14*] is amended by the repeal of section 128 and the substitution of the following-

"128Special penalty for certain offences

(1) Notwithstanding any other provision of this Act, any person who is guilty of an offence under this Act involving—

(a) the unlawful killing or hunting of rhinoceros, or any other specially protected animal specified by the Minister by statutory instrument; or

(b) the unlawful possession of, or trading in, ivory or any trophy of rhinoceros or of any other specially protected animal that may be specified by the Minister by statutory instrument;

shall be liable—

(i) on a first conviction, to imprisonment for a period not less than nine years;

(ii) on a second or subsequent conviction, to imprisonment for a period of not less than eleven years:

Provided that where on conviction the convicted person satisfies the court that there are special circumstances in the particular case justifying the imposition of a lesser penalty, the facts of which shall be recorded by the court, the convicted person shall be liable to a fine four times the value specified in a notice published under section 104(2) for a rhinoceros, elephant or other specially protected animal, or four times the value of the

ivory or any trophy, as the case may be, or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Where no special circumstances are found by a court as mentioned in the proviso to subsection (1), no portion of a sentence imposed in terms of subsection (1) shall be suspended by the court if the effect of such suspension is that the convicted person will serve—

- (a) in the case of a first conviction, less than nine years imprisonment;
- (b) in the case of a second or subsequent conviction, less than eleven years."

12 Amendment of Cap 20:27

The Environmental Management Act [*Chapter 20:27*] (No. 13 of 2002) is amended—

- (a) in section 4 ("Environmental rights and principles of environmental management") (2) by the insertion after paragraph (i) of the following paragraph—
 - "(j) waste generated shall be controlled from the point of inception to final disposal in a manner that prevents and minimises pollution.";
- (b) in section 37 ("Powers of officers and inspectors") by the insertion after subsection (7) of the following subsection—
 - "(8) No officer or inspector shall be held liable for acts done in good faith and without negligence during the course and within scope of exercising his or her functions.";
- (c) by the deletion in section 57 ("Water pollution prohibition")(1) of "or fifteen million dollars, whichever is the greater"
- (d) by the deletion in section 63 ("Air quality standards")(2) of "or fifteen million dollars, whichever is the greater"
- (e) in section 70 ("Prohibition against discharge of wastes")—
 - (i) by the deletion in subsection (4) by the deletion of "one hundred and seventeen or one hundred and eighteen" and the substitution of "one hundred and fourteen or one hundred and fifteen.";
 - (ii) by the deletion in subsection (5) by the deletion of "shall be guilty of an offence and shall be liable to imprisonment for a period of not more than five years or to a fine not more than five million dollars or to both such fine and such imprisonment" and the substitution of "shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not more than five years or to both such fine and such imprisonment.";
- (f) in section 77 ("Offences relating to pesticides and toxic substances")—
 - (i) by the deletion in subsection (3) by the deletion of "ten million dollars" and the substitution of "level twelve";
 - (ii) by the deletion of "ten million dollars" and the substitution of "level fourteen";
- (g) by the deletion in section 97 (2) of "ten million dollars" and the substitution of "level fourteen";
- (h) by the insertion in after section 99(g) of the following paragraph—

- "(h) specify the results of public consultations done.";
- (i) by the repeal of section 115;
- (j) by the insertion after paragraph 6(e) of the First Schedule of the following -
 - "(f) billboards;
 - (g) telecommunications projects for the laying of fibre optic cables";
- (k) by the insertion in the Fifth Schedule Part I of the following
 - "Optunia Cactus rosea".

13 Amendment of section 2 of Cap. 22:14

Section 2 ("Interpretation")(2) of the Procurement Act [*Chapter 22:14*] (No. 2 of 1999), is amended by the repeal of the proviso and the substitution of the following-

"Provided that the Minister shall not make any such declaration in relation to a person, other than a body corporate wholly owned or controlled by the State, without that person's consent.".

14 New section inserted in Cap. 22:15

(1) With effect from the 18th June, 2010, the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (No. 5 of 1999) is amended by the insertion of the following section after section 63A-

"63B Legal proceedings against Bank

The State Liabilities Act [*Chapter 22:13*] applies with necessary changes to legal proceedings against the Bank, including the substitution of references therein to a Minister by references to the Governor.".

(2) The amendment made by subsection (1) shall apply to proceedings against the Reserve Bank of Zimbabwe that were pending on the 18th June, 2010.

15 Amendment of section 36 of Cap. 24:02

The Building Societies Act [*Chapter 24: 02*] is amended in section 36 ("Financial year of society") by the deletion of the "30th June" and the substitution of "31st December".

16 Amendment of section 2 of Cap. 24:20

The Banking Act [*Chapter 24:20*] (No. 9 of 1999) is amended—

- (a) in section 2 ("Interpretation") by the insertion of the following definitions—
 - ““insider”, in relation to a banking institution, means any employee, officer, director, or principal shareholder of the institution, and includes any related interest of such insider;
 - “minimum capital” means capital representing a permanent commitment of funds by the shareholders of the banking institution (net of any loans and advances given to an insider and any borrowed capital) which is available to meet losses incurred without imposing a fixed unavoidable charge on the institution’s earnings, and includes such of the following elements as are available to the institution after making any required deductions—
 - (a) issued and fully paid up ordinary shares or common stock;
 - (b) paid up non-cumulative irredeemable preference shares;

- (c) reserves consisting of—
 - (i) non-repayable share premiums;
 - (ii) disclosed reserves created by a charge to net income in the financial year immediately preceding the current one;
 - (iii) published retained earnings for the current year, including interim earnings, where these have been verified by external auditors; and
 - (iv) such other elements as may be prescribed from time to time;”;
- (b) in section 14 (“Cancellation of registration”) (1)(p)(ii) by the deletion of “minimum equity capital” and the substitution of “minimum capital”;
- (c) in section 29 (“Minimum equity of banking institutions”) by the deletion—
 - (ii) of the heading (“Minimum equity capital”) and the substitution of “Minimum capital”;
 - (iii) in subsections (1) and (2) of “minimum paid-up equity capital” and the substitution of “minimum capital”.

17 Amendment of section 5 of Cap. 25:14

The Printed Publications Act [*Chapter 25:14*] is amended in section 5 ("Delivery of books published in Zimbabwe to certain libraries")(1)(c) by the deletion of "the Public Library, Bulawayo." and the substitution of "the Historic Reference Collection in Bulawayo.".

18 Amendment of Cap. 28:01

The Labour Act [*Chapter 28:01*] is amended

- (a) by the insertion after section 84 of the following section--

"84A Oath of office

Every President of the Labour Court shall, before entering upon his/her office, take and subscribe before the President or some person authorized by the President in that behalf the oath of loyalty and the judicial oath specified in Schedule 1 of the Constitution."

- (b) by the insertion after section 92C of the following section—

"92CC Part-heard matters

Where the office of a President hearing a matter before the Labour Court becomes vacant—

- (a) by reason of retirement or the appointment of that President to the High Court, the President concerned shall continue hearing the matter to its conclusion as if he or she was still a President of the Labour Court; or
- (b) by reason of death or some cause other than those mentioned in paragraph (a), the Senior President shall re-assign the matter before a different President—
 - (i) for hearing at the stage which that matter had reached before the office of the first-mentioned President became vacant, if the parties to the matter so agree ; or

- (ii) in the absence of the agreement of the parties under subparagraph (i), for re-hearing of all the arguments and evidence led at the original hearing of the matter, for which purpose the registrar of the Labour Court shall notify the parties of the new date and place of the hearing.”;
- (a) in section 94F (“Appeals against decisions of the Labour Court”) (2) by the insertion after “from the President who made the decision” of “or, in his or her absence, from any other President,”.

(2) Subsection (1)(b) and (c) shall be deemed to have come into force on the date of promulgation of the Labour Amendment Act, 2005, that is, the 31st December, 2005.

19 Backdating of Statutory Instrument 12 of 2011 to 1st February, 2009

The High Court (Fees and Allowances) (Amendment) Rules, 2011 (No. 18), published in Statutory Instrument 12 of 2011, is deemed to have come into effect on the 1st February, 2009.

FIRST SCHEDULE (Section 5(2))

MINOR AMENDMENTS TO THE OMBUDSMAN ACT [CHAPTER 10:18]

<i>Provision</i>	<i>Extent of Amendment</i>
Section 1	By the deletion of "Ombudsman Act [Chapter 10:18]" and the substitution of "Public Protector Act [Chapter 10:18]".
Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, and 18	By the deletion of "Ombudsman" and the substitution of "Public Protector".
Sections 2, 3, 4, 5, 7 and 8	By the deletion of "Deputy Ombudsman" and the substitution of "Deputy Public Protector".

SECOND SCHEDULE (Section 6)

MINOR AMENDMENTS TO THE POLICE ACT (CHAPTER 11:10)

<i>Provision</i>	<i>Extent of Amendment</i>
Section 2	By the repeal of the definition of "Commissioner" and the substitution of : "Commissioner-General" means the Commissioner-General of Police appointed in terms of section 93 of the Constitution;"
Sections 5(1), 6(1), (2) and (4), 7, 8, 9, 10, 11(1), (2) and (3), 13(1) and (3)(b), 14(2), 15, 16(1) and (2), 18(2), 20(1), (2), and (3), 21(1) and (2), 22(3) (proviso), 22(4) (proviso), 26(1), 27(1), (2), 30(1), 30(3), 34(3), (3)(d) and proviso thereto, 34(4), 42(1), 44 and proviso thereto, 47(1), (1)(c), (4), 48, 49, 50(3)(b)) and (4), 53(1), 55(1)(a), (2) and proviso thereto and (3), 57, 60(1), and (2), 66(b), 68, 69(1), 72(1) and paragraphs 27, 37, 41, 43 and	By the deletion of "Commissioner" and the substitution of "Commissioner-General; ".

46 of the Schedule

Sections 6(2), 12, 13(2), 18(1) 22(1),
(2) and (5), 25 (1) and (2), 34(7),
50(1) and 60(3).

By the deletion of "Commissioner" wherever
it occurs and the substitution of
"Commissioner-General".