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H.B. 4, 2005

ATTORNEY-GENERAL'S OFFICE BILL 2005

MEMORANDUM

The purpose of this Bill is to establish the Attorney-General's Office Board ("the Board"), to constitute the Attorney-General's Office as a service outside the Public Service, and to provide for the administration of the Office and conditions of service of its members. In more detail the Parts of the Bill provide as follows—

Part I

Clause 1 sets out the Bill's short title and provides for the date of its commencement if it becomes an Act. Clause 2 contains definitions of terms used throughout the Bill.

Part II

Clause 3 provides for the Constitution of Attorney-General's Office. Clause 4 provides for the establishment and composition of the Attorney-General's Office Board. Clause 5 sets out the functions of the Board. Clause 6 encourages the Board to devolve its decision-making powers to the Attorney-General and Deputy Attorneys-General. Clause 7 provides for the Attorney-General to make annual and other reports to Parliament.

Part III

Clause 8 is intended to provide for the security of tenure of the Deputy Attorneys-General along lines similar to those provided under the Constitution for judges. Clause 10 provides for the creation of departments in the Attorney-General's Office and classification of members of Office. It further establishes the Department of Administration and provides for its control and supervision. Clause 11 empowers the Board to engage persons under contract as members of the Office. Clause 12 provides that members of the Attorney-General's Office engaged otherwise than on contract must undergo a probationary period of not less than six or more than twelve months. Clause 13 provides for the Board to fix the conditions of service of members of the Attorney-General's Office. Clause 14 provides for the secondment and deployment of members of the Attorney-General's Office. Board to engage in regular consultations on conditions of service with associations or organisations representing members of the Attorney-General's Office and recognised by the Minister. Clause 15 provides for the secondment and deployment of members of the Office. Clause 16 provides for the recognised association and organisation.

Part IV

This Part provides an outline for the procedure to be followed in connection with the discipline of members of the Attorney General's Office.

Part V

Clause 20 provides for the funds of the Attorney-General's Office. The investment of moneys not immediately required by the Office, the accounts to be kept by the Office and their audit by the Comptroller and Auditor-General are provided for in clauses 21, 22 and 23.

Part VI

Clause 24 applies the State Liabilities Act [*Chapter 8:14*] to legal proceedings against the Attorney-General's Office. Clause 25 deals with the transfer of pensions benefits of members of the Attorney General's Office payable from the Consolidated Revenue Fund. Clause 26 empowers the Board to make regulations providing for the conditions of service of members of the Attorney-General's Office. Clause 28 as read with the Second Schedule amends Acts whose provisions will be affected by this Bill and Clause 29 contains transitional provisions.

H.B. 4, 2005

ATTORNEY-GENERAL'S OFFICE BILL, 2005

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PRESENTED BY THE MINISTER OF JUSTICE, LEGAL AND
PARLIAMENTARY AFFAIRS

BILL

To constitute the Attorney-General's Office; establish the Attorney General's Office Board and to provide for its functions; to provide for its administration and the conditions of service of members of the Attorney-General's Office; 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.

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 functions, and shall perform such other functions as the Attorney-General may assign to him.

(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 make provision by Act of Parliament—

- (a) for certain of the conditions of service fixed by the President under section 76(14a) of the Constitution for the Attorney-General and every Deputy Attorney-General in order to improve their security of tenure; and
- (b) for the conditions of service of legally qualified persons and other persons employed in the office of the Attorney-General in order to better attract and retain suitable staff:

NOW, THEREFORE, be it enacted by the President and the 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, 2005.

(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, 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;

"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, Legal and Parliamentary 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 the persons referred to in section 3;

“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, for a person in respect of his or her service as a member of the Board, 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;

"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 16(1);

“service regulations” means regulations made in terms of section 26 regulating conditions of service of members of the Office.

PART II

ATTORNEY GENERAL’S OFFICE BOARD

3 Constitution of Attorney-General's Office

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;
- (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 and such other persons in the employment of the Office as may be prescribed;
- (d) persons seconded by the Office to other Ministries of Government or other approved services under section 15 or deemed to have been so seconded under section 30.

4 Establishment and composition of Attorney General’s Office Board

(1) There is hereby established a Board, to be known as the Attorney General’s Office Board, which shall consist of—

- (a) the Attorney General, who shall be Chairperson of the Board; and
- (b) every Deputy Attorney General; and
- (c) a member of the Public Service Commission appointed by the Chairperson of the Public Service Commission; and
- (d) three 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 head of that Ministry; and
 - (iii) one shall be a person appointed for his or her ability and experience in human resources management and development.

(2) 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 section 2(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, 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 or 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) 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 purposes of audit by the Auditor-General of those funds of the Board 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 shall—

- (a) 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 Attorney-General and the Deputy Attorneys-General; 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)—

- (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 under subsection (1)(a) to the Attorney-General or a Deputy Attorney-General, any conditions or limitations applicable to the exercise of that function by the Board shall apply to the exercise of the function by the Attorney-General or Deputy Attorney-General to whom it has been delegated.

(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 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 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

The Attorney-General—

- (a) shall lay before Parliament, within three months after the 31 December in each year, or, if no sitting of Parliament takes place within that period, on one of the fourteen days on which Parliament first sits after that period, an annual report upon the matters dealt with by the Board during that year;
- (b) may at any time lay before Parliament a special report on any matter upon which the Board considers desirable to report.

PART III

ADMINISTRATION OF ATTORNEY-GENERAL'S OFFICE

8 Tenure of office of Deputy Attorneys-General

(1) A Deputy Attorney-General shall retire when he or she attains the age of sixty-five years, and thereafter may, with the approval of the Board, be engaged in the same capacity on an annual basis until he or she attains the age of seventy years.

(2) A Deputy Attorney-General may at any time resign from office by notice in writing to the President and the Board.

(3) The office of a Deputy Attorney-General shall not, without his or her consent, be abolished during his or her tenure of office otherwise than by an Act of Parliament.

9 Departments and classification of members of Office

(1) The Attorney-General's Office shall have such departments and sub-departments as the Board may establish from time to time, each headed by a Deputy Attorney-General or a chief law officer or other member of the Office of an equivalent grade.

(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 manner as may be prescribed.

10 Department of Administration

(1) In addition to the departments referred to in section 9, 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;

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

(2) The Department of Administration shall be controlled and supervised 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 and other staff of the Department of Administration shall be members of the Office.

(4) The Board shall prescribe the conditions of service of the Director and other staff of the Department of Administration.

11 Persons under contract

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

(2) There may be incorporated in the conditions referred to in subsection (1) such provisions of any service regulations applicable to members of the Office not engaged under contract 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 Office, unless the contract is renewed or the member 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 or 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 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 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 *re* conditions of service of members of Office

(1) The Board shall engage in regular consultations with recognised associations and organisations in regard to the conditions of service of members of the Office, 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 Secondment and deployment of members of Office

(1) A member may at any time be deployed or seconded by the Board to a post in an approved service.

(2) The terms and conditions of service of a member while on secondment shall, subject to any policy directive issued by the Board, be governed by contract between the member and the approved service concerned.

(3) A member who, having been seconded from the Office to an approved service—

(a) resigns therefrom; or

(b) is discharged on account of misconduct or on the grounds that he or she is unfit or incapable of performing efficiently the duties of his or her post;

shall be deemed to have resigned, retired or been discharged from the Office in similar circumstances with effect from the date that he or she resigned or was discharged from the approved service unless the Board reinstates that person as a member of the Office with effect from the date following the said date.

16 Recognised associations and organisations

(1) The Minister 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 purposes of this Act.

(2) The Minister 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) Without derogation from section 14—

- (a) 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 members of the recognised association or organisation, as the Board thinks appropriate; and
- (b) 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

17 Investigation and adjudication of misconduct cases

Subject to section 18, 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.

18 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(2) is alleged 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(2) 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 appointed under subsection (1), and the penalties additional or alternative to discharge that it may impose upon a member

alleged to have committed an act of misconduct, shall be as prescribed.

19 Appeals to Labour Court

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

- (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;

in respect of misconduct committed or alleged to have been committed by him or her may, subject to this section, 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) The Labour Act [*Chapter 28:01*] applies with necessary changes to an appeal in terms of subsection (1) in all respects as if the appeal were against a verdict or penalty reached or imposed, as the case may be, under an employment code of conduct registered under section 101 of that Act.

PART V

FINANCIAL PROVISIONS

20 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 moneys 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 the Minister; 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.

21 Investment of moneys not immediately required by Office

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

22 Accounts to be kept by Office

The Office shall keep proper books of accounts and other records relating thereto in respect of each financial year of the Office, and shall, as soon as possible after 31st December prepare audited accounts reflecting the operations of the Office during that financial year.

23 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 8 and 9 of the Audit and Exchequer Act [*Chapter 22:03*].

(2) Any person under the authority or supervision of the Board who refuses to provide 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) 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 Board.

PART VI

GENERAL

24 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.

25 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 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 subsequent to his or her engagement.

(2) The transfer of persons from the Public Service to the Office in terms of subsection (1) shall be deemed to involve also the transfer of the offices held by such persons from the Public Service to the Office, 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.

(3) Any person who is engaged by the Office after the fixed date shall, on the date of his or her engagement, shall 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.

26 Service regulations

(1) Subject to this Act, the Board may, with the concurrence of the President, 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 members of the Office and to other persons in respect of the members' service with the State or the Office, the contributions payable in respect of such pension 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 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 or 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 of employment and other termination of service of members of the Office;
- (l) the transfer, secondment and appointment of members of the Office to positions, offices, posts or grades in an approved service and *vice versa* and the terms and conditions upon which such transfers, secondments and appointments may be made;
- (m) the conduct of investigations, inspections and examinations for the purposes of this Act;
- (n) 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, 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 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.

27 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.

28 Amendment of Acts

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

29 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 Attorney-General’s Office shall, on the fixed date—

- (a) be deemed to have been transferred to the Office, unless they opt out of employment with the Office in writing to the Board and the Public Service Commission within thirty days from the fixed date;
- (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) Every member of the Public Service who, immediately before the fixed date, was employed in any post in the Ministry of Justice, Legal and Parliamentary Affairs required to be held by a legally qualified person, or in any post in any other Ministry required to be held by a legally qualified person, shall, on a date no later than six months after the fixed date as the Board will fix—

(a) be deemed to have been—

- (i) transferred to the Office; and
- (ii) seconded from the Office to that post;

unless he or she opts out of employment with the Office in writing to the Board and the Public Service Commission within thirty days from the date fixed by the Board for the purposes of this subsection; 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.

(4) The transfer of persons from the Public Service to the Office in terms of subsection (3) shall be deemed to involve also the transfer of the offices held by such persons from the Public Service to the Office, 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.

(5) Any regulations governing 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 Office is registered in terms of section 59 of the Labour Act [Chapter 28:01].

(6) 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 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.

(7) 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 necessary modifications, as a reference to the Attorney-General's Office Board.

FIRST SCHEDULE (*Section 4(2)*)

PROVISIONS APPLICABLE TO THE BOARD

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

Interpretation in First Schedule

1. In this Schedule—

"appointed member", in relation to the Board, means a member appointed under section

4(1)(d);

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

Disqualification for appointment to Board

2.(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 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 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 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.

Term of office and conditions of service of appointed members

3.(1) Subject to this Part, the term of office of an appointed member of the Board shall be such period not exceeding three 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 Part, the conditions of service of an appointed member of the Board, including allowances, shall be fixed by the President either at the time of his or her appointment or, subject to section 109(5) of and Schedule 6 to the Constitution, at any time thereafter.

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

Vacation of office by members of Board

4.(1) An appointed member of the Board may resign 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 2 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 he or she and the President may agree.

(2) A member of the Board shall be deemed to have resigned 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(1)(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 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.

Tenure of office of appointed members

5. 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 110 of the Constitution in relation to members of the Judicial Service Commission.

Filling of vacancies on Board

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

Procedure of meetings of Board

7.(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 such a notice to a member, shall not invalidate the meeting.

(5) 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).

(6) The Chairperson or, in his or her absence, a member designated by him or her shall preside at all meetings of the Board.

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

(8) The Board will endeavour to make decisions by consensus among the members present at a 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 present at that meeting.

(9) 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 deliberative vote.

(10) 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 of or experience in any matter to be considered at that meeting.

(11) A person invited to attend a meeting of the Board under subparagraph (10) 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.

(12) 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 subsection shall not apply to the proposal.

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

Committees of Board

8.(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 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, 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.

(2) Meetings of a committee may be convened at any time and at any place by the Chairperson of the Board.

(3) 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.

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

(5) Anything authorised to 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.

(6) 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.

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

Minutes of proceedings

9.(1) The Board shall cause minutes of all proceedings of and decisions taken at their respective meetings and the meetings of their respective 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.

Validity of decisions and acts of Board

10.(1) No decision or act of a 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.

SECOND SCHEDULE (Section 28)

AMENDMENT OF ACTS

PART I

INTERPRETATION ACT [Chapter 1:01]

In section 3 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, 2005;

“Attorney-General’s Office Board” means the Attorney-General’s Office Board established by section 4 of the Attorney-General’s Office Act, 2005;”.

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 Deputy Attorney-General to whom responsibility for public prosecutions is assigned under the Attorney-General's Office Act, 2005, shall exercise all of 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 section 76(5) of the Constitution, this Act or any other enactment, whether or not they relate to criminal proceedings.

(3) The Deputy Attorney-General 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 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.

PART III

PENSIONS REVIEW ACT [*Chapter 16:03*]

In section 2—

- (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, the Attorney-General's Office Board".

PART IV

PUBLIC SERVICE ACT [*Chapter 16:04*]

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

"or

- (d) the Attorney-General's Office;".