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H.B. 1, 2010

Gazetted 4th June 2010 [General Notice 117/2010]

**CRIMINAL LAW AMENDMENT (PROTECTION OF POWER, COMMUNICATIONS
AND WATER INFRASTRUCTURE) BILL, 2010**

MEMORANDUM

There is a prevalence of crimes prejudicing the vital economic interests of Zimbabwe, not least among them the vandalism and theft of equipment, apparatus and material essential to the provision of electricity, telecommunication, broadcasting and railway services.

With a view to combating the degradation of our communications and power infrastructure caused by such activities, this Bill seeks to amend the Criminal Procedure and Evidence Act [Chapter 9:07], the Postal and Telecommunications Act [Chapter 12:05] (No. 4 of 2000), the Broadcasting Services Act [Chapter 12:06] (No. 3 of 2001), Railways Act [Chapter 13:09] and the Electricity Act [Chapter 13:19] (No. 4 of 2002) and the Water Act [Chapter 20:24]. In more detail, the individual sections of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause seeks to amend the Fifth and Ninth Schedules to the **Criminal Procedure and Evidence Act**

This Fifth Schedule forbids a police officer of whatever rank to grant bail to accused persons for certain specified offences. The purpose of this amendment is to specify the additional offences referred to in the Ninth Schedule as amended by this Bill.

The Ninth Schedule specifies offences which constitute "serious economic crimes", in connection with which the Attorney-General may authorise the pre-trial detention of offenders for up to 21 days without possibility of bail. The amendment sought by paragraph (b) of this clause will add to the list of offences there mentioned certain of the offences created by this Bill in relation to Postal and Telecommunications Act, the Broadcasting Services Act, the Railways Act, the Electricity Act and the Water Act.

Clause 3

This clause seeks to amend the **Postal and Telecommunications Act** in several respects.

Firstly, it proposes to replace section 89 (creating offences in connection with wilful damage to or interference with telecommunication lines) of the Act by a more comprehensive and

deterrent penal provision to bring it into line with similar offences in the Electricity and Railways Acts. The latter offences impose mandatory prison terms for wilful damage to and theft of material essential to the functioning of electricity and railway infrastructure.

Secondly, a new special power of citizen's arrest of persons engaged in wilfully damaging or interfering with telecommunication lines is included in the new section 89A. This is similar to the power already contained in section 39 of the Railways Act.

Thirdly, to prevent the theft and trafficking in stolen telecommunication infrastructure material, persons wishing to transport such material must first obtain a special police clearance certificate from the police officer who, in terms of section 4 of the Public Order and Security Act [*Chapter 11:17*] (No. 1 of 2002), is the regulating authority for that area in which the transporting vehicle is ordinarily kept at night (a "vehicle" is defined to include a trailer, a pushcart or a scotch cart). The special police clearance certificate will be valid for 48 hours (or up to 30 days if the transporter is authorised by a telecommunication licensee). Failure to produce a special police clearance certificate to a police officer or a telecommunications inspector on demand will be an offence punishable by a fine not exceeding level 14 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment. (Importers of telecommunication infrastructure material into Zimbabwe or transporters of such material that is transiting through Zimbabwe between two countries do not have to obtain special police clearance where they are able to produce the appropriate customs clearance documentation instead).

In addition, a person who fails to produce a special police clearance certificate or the appropriate customs clearance documentation will have the burden of showing any lawful cause for being in possession of telecommunication infrastructure material, in the absence of which he or she will be charged with being in unlawful possession of such material, for which a mandatory penalty of imprisonment for a period of not less than 5 years or more than 10 years is provided under section 89(5) of the Act as inserted by this Bill (unless the offender can show special circumstances peculiar to the case why a lesser penalty should be imposed).

Finally, the amendment contemplates the additional penalty of seizure and forfeiture of certain property connected with the commission of the newly created offences in two circumstances (such forfeiture is expressly permitted by section 16(7)(b) of the Constitution¹): the forfeiture of any title to or interest in any land or premises on or in which stolen telecommunication infrastructure material is found, if the owner thereof knowingly concealed or stored such material on the land and premises; and (b) the seizure and forfeiture of any unlawfully transported telecommunication material and vehicles used in connection therewith. In the latter case, a distinction is drawn between property liable to seizure only and property liable to both seizure and forfeiture. Property in the first class consists of telecommunication infrastructure material that was not stolen or unlawfully obtained, and of the vehicle used to transport it, but in respect of which the possessor may be prosecuted simply because he or she failed to obtain the necessary special police clearance certificate or customs clearance documentation. Property in the second class consists of telecommunication infrastructure material that was stolen or unlawfully obtained (or for whose possession the possessor cannot

¹ *Note by Veritas (not part of the gazetted Bill).* Section 16 of the Constitution (which is part of the justiciable Declaration of Rights) provides for "protection from deprivation of property". See the Appendix at the end of this document for the text of section 16.

reasonably account), and the vehicle that is used to transport it. Only the latter are liable to forfeiture upon conviction for the offence concerned.

Clause 4

This clause seeks to amend the **Broadcasting Services Act** in several respects.

Firstly, the Act at present makes no provision for penalising wilful damage to or interference with broadcasting infrastructure. Accordingly, it proposes to insert a new Part dealing with this topic, which includes a new section 39G (wilful damage to, interference with or theft of infrastructural broadcasting apparatus, equipment or appliances). This offence is similar to offences already contained in the Electricity and Railways Acts. The latter offences impose mandatory prison terms for wilful damage to and theft of material essential to the functioning of electricity and railway infrastructure.

Secondly, a new special power of citizen's arrest of persons engaged in wilfully damaging or interfering with infrastructural broadcasting apparatus, equipment or appliances is included in the new section 39H

Thirdly, to prevent the theft and trafficking in stolen infrastructural broadcasting apparatus, equipment or appliances, persons wishing to transport such material must first obtain a special police clearance certificate from the regulating authority (as described under clause 3) for that area in which the transporting vehicle is ordinarily kept at night (a "vehicle" is defined to include a trailer, pushcart or scotch cart). The special police clearance certificate will be valid for 48 hours (or up to 30 days if the transporter is authorised by a broadcasting licensee). Failure to produce a special police clearance certificate to a police officer or a broadcasting services inspector on demand will be an offence punishable by a fine not exceeding level 14 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment. (Importers of infrastructural broadcasting apparatus, equipment or appliances into Zimbabwe or transporters of such material that is transiting through Zimbabwe between two countries do not have to obtain special police clearance where they are able to produce the appropriate customs clearance documentation instead).

In addition, a person who fails to produce a special police clearance certificate or the appropriate customs clearance documentation will have the burden of showing any lawful cause for being in possession of infrastructural broadcasting apparatus, equipment or appliances, in the absence of which he or she will be charged with being in unlawful possession of such material, for which a mandatory penalty of imprisonment for a period of not less than 5 years or more than 10 years is provided under section 39G(3) of the Act as inserted by this Bill (unless the offender can show special circumstances peculiar to the case why a lesser penalty should be imposed).

Finally, the amendment contemplates the additional penalty of seizure and forfeiture of certain property connected with the commission of the newly created offences in two circumstances (such forfeiture is expressly permitted by section 16(7)(b) of the Constitution): (a) the forfeiture of any title to or interest in any land or premises on or in which stolen infrastructural broadcasting apparatus is found, if the owner thereof knowingly concealed or stored such apparatus on the land and premises; and (b) the seizure and forfeiture of any unlawfully transported infrastructural broadcasting apparatus and vehicles used in connection therewith. In the latter case, a distinction is drawn between property liable to seizure only and

property liable to both seizure and forfeiture. Property in the first class consists of infrastructural broadcasting apparatus, equipment or appliances that were not stolen or unlawfully obtained, and of the vehicle used to transport it, but in respect of which the possessor may be prosecuted simply because he or she failed to obtain the necessary special police clearance certificate or customs clearance documentation. Property in the second class consists of infrastructural broadcasting apparatus, equipment or appliances that were stolen or unlawfully obtained (or for whose possession the possessor cannot reasonably account), and the vehicle that is used to transport it. Only the latter are liable to forfeiture upon conviction for the offence concerned.

Clause 5

This clause seeks to amend the **Railways Act** in several respects.

Firstly, it proposes to amend section 38 (creating offences in connection with wilful damage to or interference with railway lines) of the Act by including in the list of offences for which a mandatory penalty of imprisonment is imposed the following offences: (a) receiving equipment used for the provision of a railway service which the receiving person knows or suspects to have been stolen; and (b) having in one's possession, or under one's immediate control, or upon any land or upon or in any premises, any equipment used for the provision of a railway service, that is not being used in connection with any service lawfully provided to the possessor by the Railways.

Secondly, to prevent the theft and trafficking in stolen equipment used for the provision of a railway service, persons wishing to transport such equipment must first obtain a special police clearance certificate from the regulating authority (as described under clause 3) for that area in which the transporting vehicle is ordinarily kept at night. The special police clearance certificate will be valid for 48 hours (or up to 30 days if the transporter is authorised by the Railways). Failure to produce a special police clearance certificate to a police officer or a railways inspector on demand will be an offence punishable by a fine not exceeding level 14 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment. (Importers of railway equipment into Zimbabwe or transporters of such equipment that is transiting through Zimbabwe between two countries do not have to obtain special police clearance where they are able to produce the appropriate customs clearance documentation instead).

In addition, a person who fails to produce a special police clearance certificate or the appropriate customs clearance documentation will have the burden of showing any lawful cause for being in possession of equipment used for the provision of a railway service, in the absence of which he or she will be charged with being in unlawful possession of such equipment, for which a mandatory penalty of imprisonment for a period of not less than 5 years or more than 10 years is provided under section 38(4)(a) of the Act as inserted by this Bill (unless the offender can show special circumstances peculiar to the case why a lesser penalty should be imposed).

Finally, the amendment contemplates the additional penalty of seizure and forfeiture of certain property connected with the commission of the newly created offences in two circumstances (such forfeiture is expressly permitted by section 16(7)(b) of the Constitution): (a) the forfeiture of any title to or interest in any land or premises on or in which stolen equipment used for the provision of a railway service is found, if the owner thereof knowingly

concealed or stored such equipment on the land and premises; and (b) the seizure and forfeiture of any unlawfully transported railway equipment and vehicles used in connection therewith. In the latter case, a distinction is drawn between property liable to seizure only and property liable to both seizure and forfeiture. Property in the first class consists of railway equipment that was not stolen or unlawfully obtained, but in respect of which the possessor may be prosecuted simply because he or she failed to obtain the necessary special police clearance certificate or customs clearance documentation. Property in the second class consists of railway equipment that was stolen or unlawfully obtained (or for whose possession the possessor cannot reasonably account), and the vehicle that is used to transport it. Only the latter are liable to forfeiture upon conviction for the offence concerned.

Clause 6

This clause seeks to amend the **Electricity Act** in several respects.

Firstly, it proposes to amend section 60A (creating offences in connection with wilful damage to or interference with electricity lines) of the Act by including in the list of offences for which a mandatory penalty of imprisonment is imposed the following offences: (a) receiving material used in connection with the generation, transmission, distribution or supply of electricity which the receiving person knows or suspects to have been stolen; and (b) having in one's possession, or under one's immediate control, or upon any land or upon or in any premises, any material used in connection with the generation, transmission, distribution or supply of electricity, that is not being used in connection with any service lawfully provided to the possessor by an electricity licensee.

Secondly, a new special power of citizen's arrest of persons engaged in wilfully damaging or interfering with material used in connection with the generation, transmission, distribution or supply of electricity is included in the new section 60B

Thirdly, to prevent the theft and trafficking in stolen material used in connection with the generation, transmission, distribution or supply of electricity, persons wishing to transport such material must first obtain a special police clearance certificate from the regulating authority (as described under clause 3) for that area in which the transporting vehicle is ordinarily kept at night. The special police clearance certificate will be valid for 48 hours (or up to 30 days if the transporter is authorised by an electricity licensee). Failure to produce a special police clearance certificate to a police officer or an electricity inspector on demand will be an offence punishable by a fine not exceeding level 14 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment. (Importers of into Zimbabwe of material used in connection with the generation, transmission, distribution or supply of electricity or transporters of such material that is transiting through Zimbabwe between two countries do not have to obtain special police clearance where they are able to produce the appropriate customs clearance documentation instead).

In addition, a person who fails to produce a special police clearance certificate or the appropriate customs clearance documentation will have the burden of showing any lawful cause for being in possession of material used in connection with the generation, transmission, distribution or supply of electricity, in the absence of which he or she will be charged with being in unlawful possession of such equipment, for which a mandatory penalty of imprisonment for a period of not less than 5 years or more than 10 years is provided under section 60A(3b) of the

Act as inserted by this Bill (unless the offender can show special circumstances peculiar to the case why a lesser penalty should be imposed).

Finally, the amendment contemplates the additional penalty of seizure and forfeiture of certain property connected with the commission of the newly created offences in two circumstances (such forfeiture is expressly permitted by section 16(7)(b) of the Constitution): (a) the forfeiture of any title to or interest in any land or premises on or in which stolen material used in connection with the generation, transmission, distribution or supply of electricity is found, if the owner thereof knowingly concealed or stored such equipment on the land and premises; and (b) the seizure and forfeiture of any unlawfully transported material used in connection with the generation, transmission, distribution or supply of electricity and vehicles used in connection therewith. In the latter case, a distinction is drawn between property liable to seizure only and property liable to both seizure and forfeiture. Property in the first class consists of material used in connection with the generation, transmission, distribution or supply of electricity that was not stolen or unlawfully obtained, but in respect of which the possessor may be prosecuted simply because he or she failed to obtain the necessary special police clearance certificate or customs clearance documentation. Property in the second class consists of railway equipment that was stolen or unlawfully obtained (or for whose possession the possessor cannot reasonably account), and the vehicle that is used to transport it. Only the latter is liable to forfeiture upon conviction for the offence concerned.

Clause 7

This clause seeks to amend the **Water Act** in as manner similar to the foregoing clauses 3, 4, 5 and 6. However in addition to the documentation that must be produced on demand to the police when water infrastructure components or farm irrigation works components are being transported {that is, a special police clearance certificate or the appropriate customs clearance documentation), a transporter may produce instead a receipt from a dealer or other person evidencing the lawful sale of such components. This concession recognises the fact that many water components have a dual use not only related to public or municipal water supply works or farm irrigation works, but also to the provision of water for personal domestic use.

BILL

To amend the Criminal Procedure and Evidence Act [*Chapter 9:07*], the Postal and Telecommunications Act [*Chapter 12:05*], the Broadcasting Services Act [*Chapter 12:06*], the Electricity Act [*Chapter 13:19*], the Railways Act [*Chapter 13:09*] and the Water Act [*Chapter 20:24*] (No. 31 of 1998); and to provide for matters incidental to or connected with the foregoing.

ENACTED by the President and Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Criminal Law Amendment (Protection of Power, Communications and Water Infrastructure) Act, 2010.

2 Amendment of Ninth Schedule to Cap. 9:07

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

(a) in the Fifth Schedule (“Offences In Connection With Which Bail May Not be Granted in Terms of Section 132(1)”) by the repeal of paragraph 12 and the substitution of—

“12. Contravening—

- (i) section 89 (“Wilful damage to or interference with telecommunication lines and apparatus”) of the Postal and Telecommunications Act [*Chapter 12:05*]; or
- (ii) section 39G (“Wilful damage to, interference with or theft of infrastructural broadcasting apparatus, equipment or appliances”) of the Postal and Telecommunications Act [*Chapter 12:05*]; or
- (iii) section 37 (“Offences on railway premises”) or section 38 (“Certain offences and punishment therefor”) of the Railways Act [*Chapter 13:09*].
- (iv) section 60A (“Offences in relation to electric current and apparatus”) of the Electricity Act [*Chapter 13:19*]; or

- (v) section 111B (“Wilful damage to, interference with or theft of water infrastructure components and farm irrigation works components”) of the Water Act [*Chapter 20:22*].
- 13. A conspiracy, incitement or attempt to commit any offence referred to in paragraphs 1 to 12.”.
- (b) in the Ninth Schedule (“Offences Involving Corruption, Organised Crime or Harm to the National Economy by the repeal of paragraph 13 and the substitution of—
“13. Contravening—
 - (i) section 89 (“Wilful damage to or interference with telecommunication lines and apparatus”) of the Postal and Telecommunications Act [*Chapter 12:05*]; or
 - (ii) section 39G (“Wilful damage to, interference with or theft of infrastructural broadcasting apparatus, equipment or appliances”) of the Postal and Telecommunications Act [*Chapter 12:05*]; or
 - (iii) section 37 (“Offences on railway premises”) or section 38 (“Certain offences and punishment therefor”) of the Railways Act [*Chapter 13:09*].
 - (iv) section 60A (“Offences in relation to electric current and apparatus”) of the Electricity Act [*Chapter 13:19*]; or
 - (v) section 111B (“Wilful damage to, interference with or theft of water infrastructure components and farm irrigation works components”) of the Water Act [*Chapter 20:22*].
- 14. A conspiracy, incitement or attempt to commit any offence referred to in paragraphs 1 to 13.”.

3 Amendment of Cap. 12:05 (No. 4 of 2000)

The Postal and Telecommunications Act [*Chapter 12:05*] (No. 4 of 2000) is amended by the repeal of section 89 and the substitution of—

“89 Wilful damage to, interference with or theft of telecommunication lines and apparatus

- (1) In this section and sections 89B and 89C—
 - “telecommunication infrastructure material” means any material component essential for the maintenance of a telecommunication infrastructure, and includes (but is not limited to)—
 - (a) a telecommunication line, telephone cable or wire conductor used or commonly used by a telecommunication licensee; or
 - (b) any cellular telecommunication or telecommunication apparatus, equipment or appliance used or commonly that is essential for the maintenance of a cellular telecommunication or telecommunication service operated by a licensee.
- (2) Any person who without lawful excuse, the proof whereof shall lie on him or her, inserts into a community service or other telephone apparatus for the purpose of making a

call or otherwise any object other than a coin which is lawful currency in Zimbabwe or any object in substitution for any means of payment permitted by the licensee providing the apparatus in question shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Any person who without lawful excuse, the proof whereof shall lie on him or her—

- (a) wilfully disturbs, obstructs or impedes in any way the free use or working of any telecommunication line belonging to or used by a telecommunication licensee; or
- (b) without the consent of the licensee concerned, affixes or attaches any wire conductor or any other thing to any telecommunication line belonging to or used by a telecommunication licensee; or
- (c) interferes with or hinders the construction, alteration, restoration, maintenance or examination of any telecommunication line by a telecommunication licensee;

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

(4) Any person who—

- (a) without lawful cause, the proof whereof shall lie on him or her, tampers with any cellular telecommunication or telecommunication apparatus constructed or adapted for use in transmitting or receiving a cellular telecommunication or telecommunication service, with the result that such service is interrupted or cut off; or
- (b) without lawful cause, the proof whereof shall lie on him or her destroys, injures or removes any telecommunication line belonging to or used by a telecommunication licensee; or
- (c) receives or takes possession of any telecommunication infrastructure material—
 - (i) knowing that it has been stolen; or
 - (ii) realising that there is a real risk or possibility that it has been stolen;

shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (10), be liable to imprisonment for a period of not less than ten years.

(5) Any person, other than a cellular telecommunication licensee, a radio station licensee, a telecommunication licensee or a private telecommunication licensee, who, otherwise than for lawful cause (the proof whereof shall lie on him or her), has on his or her person, or in his or her possession, or under his or her immediate control, or upon any land or upon or in any premises, any telecommunication infrastructure material that is not being used in connection with any telecommunication service lawfully provided to him or her, shall be guilty of an offence and, if there are no special circumstances peculiar to the case as provided for in subsection (10), to imprisonment for a period of not less than five years or more than ten years.

- (6) If a person is charged with contravening subsection (5) in circumstances where—
- (a) the telecommunication infrastructure material in question was found on any land or in any premises to or in which the accused person has any title or interest whatsoever (including shares in a company that owns such land or premises); and
 - (b) the accused person knowingly used or permitted the use of the land or premises in question for the purpose of hiding or storing the telecommunication infrastructure material in question; and
 - (c) the accused person—
 - (i) had stolen the telecommunication infrastructure material in question; or
 - (ii) knew that the telecommunication infrastructure material in question had been stolen; or
 - (iii) realised that there was a real risk or possibility that the telecommunication infrastructure material in question had been stolen;

the accused person shall not be charged concurrently or alternatively with contravening subsection (4)(c), but a prosecutor may, for the purposes of subsection (7), adduce evidence showing that the offence was committed in the circumstances referred to in paragraphs (a), (b) and (c).

(7) If a court convicts a person for contravening subsection (5) and finds that the offence was committed in the circumstances referred to in subsection (6)(a), (b) and (c), then, in addition to imposing the penalty provided for that offence under subsection (5), the court shall order to be forfeited to the State any title to or interest in the land or premises belonging to that person which is referred to in subsection (6)(a).

(8) Where a court has ordered to be forfeited to the State any land or premises in terms of subsection (7), any transaction involving the land or premises that—

- (a) is commenced at any time between the date when the person was charged for an offence against subsection (5) and date when he or she was convicted of it (or, if the person appeals against the conviction or sentence or both, the date when the appeal is finally dismissed, or abandoned); and
- (b) has the effect of alienating to any other person the title or interest of the convicted person in that land or premises;

shall be void:

Provided that the transaction shall not be void if the person charged for an offence against subsection (5) is acquitted.

(9) A court sentencing a person to imprisonment under subsection (4) or (5) shall not order the suspension of any part of the sentence if the effect of such order is that the convicted person will serve a sentence of less than ten years (in the case of a conviction for an offence in terms of subsection (4)) or five years .(in the case of a conviction for an offence in terms of subsection (5))

(10) If a person convicted in terms of subsection (4) or (5) satisfies the court that there are special circumstances in the particular case, which circumstances shall be recorded by the court, why the penalty provided under subsection (4) or (5) should not be imposed, the

convicted person shall be liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

(11) A person charged with an offence in terms of subsection (4)(a) or (b) may be found guilty of contravening section 141 (“Negligently causing serious damage to property”) of the Criminal Law Code if such are the facts proved.”.

89A Power to arrest persons

(1) Without derogation from the Criminal Procedure and Evidence Act [*Chapter 9:07*], it shall be lawful for—

- (a) any person to arrest without warrant anyone who is found committing any offence in terms of section 89(2), (3) or (4)(a), (b) or (c);
- (b) any person authorised by a telecommunication licensee to exercise powers of arrest in terms of this paragraph to arrest anyone who is reasonably suspected of having committed an offence in terms of section 89(2), (3) or (4)(a) or (b);

and immediately to convey the person arrested to a police officer in order that he or she may be dealt with according to law.

(2) Any person empowered in terms of subsection (1) to arrest any other person may request the assistance of any bystander in effecting such arrest and such bystander is hereby authorized to render such assistance.

(3) Any person who, acting reasonably and in good faith and without culpable ignorance or negligence, arrests any other person in the purported exercise of the powers conferred in terms of this section shall not be liable for damages for unlawful arrest.

89B Transportation of telecommunication infrastructure material

(1) In this section and section 89C—

“customs clearance documentation”, in relation to telecommunication infrastructure material, means any documentation endorsed by the Zimbabwe Revenue Authority for the purpose of permitting the importation into or transit through Zimbabwe of the telecommunication material in question;

“ownership”, in relation to a vehicle, includes the possession of a vehicle by a purchaser pending the transfer of its ownership to the purchaser, and “own” and “owner” shall be construed accordingly;

“producing on demand”, in relation to the production by an owner of a vehicle of a special police clearance certificate or customs clearance documentation in the circumstances described in subsection (2)(c), means procuring for the driver of the vehicle the required certificate or documentation to enable the driver to produce it on demand;

“regulating authority”, in relation to any area of Zimbabwe, means the police officer who, in terms of section 4 of the Public Order and Security Act [*Chapter 11:17*] (No. 1 of 2002), is the regulating authority for that area;

“special police clearance certificate” means a police clearance certificate issued in respect of the transportation of telecommunication infrastructure material in terms of subsection (6);

“things liable to seizure or forfeiture” means any telecommunication infrastructure material that is the subject-matter of an offence under subsection (2) or section 89(4) or (5), and any vehicle used to transport the same that is the subject-matter of an offence under subsection (2) or (by the application of subsection (3)) section 89(5);

“vehicle” means—

- (a) a motor vehicle as defined in the Road Traffic Act [*Chapter 13:11*]; or
- (b) a trailer as defined in the Road Traffic Act [*Chapter 13:11*], whether or not attached to and drawn by a motor vehicle; or
- (c) a pushcart or scotchcart.

(2) Any person who—

- (a) being the driver or person in control of a vehicle owned by him or her, transports or has in his or her possession in or upon such vehicle any telecommunication infrastructure material; or
- (b) being the driver or person in control of a vehicle, transports or has in his or her possession in or upon such vehicle any telecommunication infrastructure material without the knowledge of the owner of the vehicle:

Provided that the driver or person referred to in this paragraph shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she transported or had in his or her possession in or upon such vehicle any telecommunication infrastructure material with the knowledge of the owner of the vehicle; or

- (c) being the owner of a vehicle, authorises the driver or person in control of the vehicle to transport or have has in his or her possession in or upon such vehicle any telecommunication infrastructure material;

without producing on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or, as the case may be, the customs clearance documentation relating thereto, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Where a person is unable to produce on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or the customs clearance documentation referred to in subsection (2), such person shall, in addition to being charged with the offence referred to in subsection (2), be charged with the offence referred to in section 89(5) and liable to the mandatory penalty therefor, unless he or she can show lawful cause (the proof whereof shall lie on him or her), for having in his or her possession, or under his or her immediate control, any telecommunication infrastructure material:

Provided that where telecommunication infrastructure material is authorised by the owner of a vehicle to be carried in the circumstances described in subsection (2)(c), the owner shall, for the purposes of this subsection, be deemed to be in possession of, or have under his or her immediate control, the telecommunication infrastructure material in question.

(4) A person required to obtain a special police clearance certificate in terms of subsection (2) shall request the certificate from the regulating authority responsible for the area within which the vehicle is ordinarily kept at night.

(5) At the request of a person required to obtain a special police clearance certificate in terms of subsection (2), the regulating authority shall, upon being satisfied that—

- (a) the vehicle is ordinarily kept at night within the area for which the regulating authority is responsible; and
- (b) the person has lawful cause for transporting in a vehicle any telecommunication infrastructure material;

issue to the person a special police clearance certificate in accordance with subsection (6).

(6) A special police clearance certificate shall—

- (a) identify the holder of the certificate, the vehicle or vehicles in respect of which it is issued, the nature and quantity (by weight, length or both) of the telecommunication infrastructure material to be transported, and the regulating authority that issued the certificate; and
- (b) specify the lawful cause for which the telecommunication infrastructure material is to be transported in or upon the vehicle or vehicles referred to in the certificate; and
- (c) specify the period for which it shall be valid; and
- (d) be valid for not more than forty-eight hours:

Provide that if the telecommunication infrastructure material is to be transported by or with the knowledge of a cellular telecommunication licensee, a radio station licensee, a telecommunication licensee or a private telecommunication licensee, the regulating authority may issue a special police clearance certificate having a period of validity of up to thirty days; and

- (e) be signed by or on behalf of the regulating authority.

(7) No fee shall be charged for the issuance of a special police clearance certificate except the prescribed fee for a duplicate special police clearance certificate or the replacement of a lost or destroyed police clearance certificate.

89C Seizure and forfeiture of unlawfully transported telecommunication infrastructure material and vehicles used in connection therewith

(1) Where a person is charged with contravening—

- (a) section 89 (4) or 89(5), any telecommunication infrastructure material that is the subject-matter of the offence shall be liable to seizure under this section and forfeiture under this section; or
- (b) section 89B(2) alone, any telecommunication infrastructure material that is the subject-matter of the offence shall be liable to seizure under this section pending the prosecution of the offence; or
- (c) sections 89B(2) and 89(5) concurrently, any telecommunication infrastructure material that is the subject-matter of the offences and any vehicle used to transport the same shall be liable to seizure and forfeiture under this section.

(2) Where a person is charged with contravening sections 89B(2) and section 89(5) concurrently, and the vehicle used in connection with such offences was availed to him or her by another person who owns the vehicle, the vehicle shall still be liable to seizure and forfeiture under this section unless the owner proves that he or she was unaware that the vehicle would be so used.

(3) An inspector or police officer may seize any things liable to seizure or forfeiture which he or she has reasonable grounds for believing are the subject-matter of any offence under section 89(4), 89(5) or 89B(2), or of any concurrent offences under sections 89B(2) and 89(5).

(4) All things liable to seizure or forfeiture which have been seized in terms of subsection (3) shall—

- (a) be taken forthwith and delivered to a place of security under the control of an inspector or police officer; and
- (b) be held until the criminal proceedings which are instituted in relation to those things—
 - (i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian inspector or police officer shall forthwith restore any such thing the accused or the owner thereof, as may be appropriate; or
 - (ii) have resulted in the conviction of the accused, in which event the convicting court shall, where the accused is convicted of contravening —
 - A. section 89B(2) alone, order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or
 - B. an offence under section 89(4) or 89(5), or section 89B(2) and section 89(5) concurrently, order any such thing to be forfeited to the State.”.

4 Amendment of Cap 12:06 (No. 3 of 2001)

The Broadcasting Services Act [*Chapter 12:06*] (No. 3 of 2001) is amended by the insertion after Part VIIIA of the following Part —

“PART VIIIB

PROTECTION OF BROADCASTING INFRASTRUCTURE

39F Interpretation in Part VIIIB

In this Part—

“infrastructural broadcasting apparatus, equipment or appliance” means any material component essential for the maintenance of a broadcasting infrastructure, and includes (but is not limited to)—

- (a) any apparatus constructed or adapted for use in transmitting or receiving broadcasting services or any part of such apparatus, equipment or appliance, but does not (for the avoidance of doubt) include any receiver;

- (b) any line, cable or wire conductor that is essential for the maintenance of broadcasting services operated by a broadcasting licensee;

“receiver” means an apparatus—

- (a) in respect of which no licence is required in terms of the Postal and Telecommunications Act [*Chapter 12:05*]; and
- (b) which is capable of being used for the reception of a broadcasting service.

39G Wilful damage to, interference with or theft of infrastructural broadcasting apparatus, equipment or appliances

- (1) Any person who without lawful excuse, the proof whereof shall lie on him or her—
 - (a) wilfully disturbs, obstructs or impedes in any way the free use or working of any infrastructural broadcasting apparatus, equipment or appliance belonging to or used by a broadcasting licensee; or
 - (b) without the consent of the licensee concerned, affixes or attaches any wire conductor or any other thing to any line belonging to or used by a broadcasting licensee; or
 - (c) interferes with or hinders the construction, alteration, restoration, maintenance or examination of any infrastructural broadcasting apparatus, equipment or appliance by a broadcasting licensee;

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

- (2) Any person who—
 - (a) without lawful cause, the proof whereof shall lie on him or her, tampers with any infrastructural broadcasting apparatus, equipment or appliance, with the result that any broadcasting service is interrupted or cut off; or
 - (b) without lawful cause, the proof whereof shall lie on him or her destroys, injures or removes any infrastructural broadcasting apparatus, equipment or appliance belonging to or used by a broadcasting licensee; or
 - (c) receives or takes possession of any infrastructural broadcasting apparatus, equipment or appliance—
 - (i) knowing that it has been stolen; or
 - (ii) realising that there is a real risk or possibility that it has been stolen;

shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (8), be liable to imprisonment for a period of not less than ten years.

(3) Any person, other than a broadcasting licensee, who, otherwise than for lawful cause (the proof whereof shall lie on him or her), has on his or her person, or in his or her possession, or under his or her immediate control, or upon any land or upon or in any premises, any infrastructural broadcasting apparatus, equipment or appliance that is not being used in connection with any broadcasting service lawfully provided to him or her, shall be guilty of an offence and, if there are no special circumstances peculiar to the case as

provided for in subsection (8), to imprisonment for a period of not less than five years or more than ten years.

- (4) If a person is charged with contravening subsection (2) in circumstances where—
- (a) the infrastructural broadcasting apparatus, equipment or appliance in question was found on any land or on or in any premises to or in which the accused person has any title or interest whatsoever (including shares in a company that owns such land or premises); and
 - (b) the accused person knowingly used or permitted the use of the land or premises in question for the purpose of hiding or storing the infrastructural broadcasting apparatus, equipment or appliance in question; and
 - (c) the accused person—
 - (i) had stolen the infrastructural broadcasting apparatus, equipment or appliance in question; or
 - (ii) knew that the infrastructural broadcasting apparatus, equipment or appliance in question had been stolen; or
 - (iii) realised that there was a real risk or possibility that the infrastructural broadcasting apparatus, equipment or appliance in question had been stolen;

the accused person shall not be charged concurrently or alternatively with contravening subsection (2)(c), but a prosecutor may, for the purposes of subsection (5), adduce evidence showing that the offence was committed in the circumstances referred to in paragraphs (a), (b) and (c).

(5) If a court convicts a person for contravening subsection (3) and finds that the offence was committed in the circumstances referred to in subsection (4)(a), (b) and (c), then, in addition to imposing the penalty provided for that offence under subsection (3), the court shall order to be forfeited to the State any title to or interest in the land or premises belonging to that person which is referred to in subsection (4)(a).

(6) Where a court has ordered to be forfeited to the State any land or premises in the circumstances described in subsection (5), any transaction involving the land or premises that—

- (a) is commenced at any time between the date when the person was charged for an offence against subsection (3) and date when he or she was convicted of it (or, if the person appeals against the conviction or sentence or both, the date when the appeal is finally dismissed, or abandoned); and
- (b) has the effect of alienating to any other person the title or interest of the convicted person in that land or premises;

shall be void:

Provided that the transaction shall not be void if the person charged for an offence against subsection (3) is acquitted.

(7) A court sentencing a person to imprisonment under subsection (2) or (3) shall not order the suspension of any part of the sentence if the effect of such order is that the convicted person will serve a sentence of less than ten years (in the case of a conviction for

an offence in terms of subsection (2)) or five years .(in the case of a conviction for an offence in terms of subsection (3))

(8) If a person convicted in terms of subsection (2) or (3) satisfies the court that there are special circumstances in the particular case, which circumstances shall be recorded by the court, why the penalty provided under subsection (2) or (3) should not be imposed, the convicted person shall be liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

(9) A person charged with an offence in terms of subsection (2)(a) or (b) may be found guilty of contravening section 141 (“Negligently causing serious damage to property”) of the Criminal Law Code if such are the facts proved.

39H Power to arrest persons

(1) Without derogation from the Criminal Procedure and Evidence Act [*Chapter 9:07*], it shall be lawful for—

- (a) any person to arrest without warrant anyone who is found committing any offence in terms of section 39G(1) or (2)(a) or (b);
- (b) any person authorised by a broadcasting licensee to exercise powers of arrest in terms of this paragraph to arrest anyone who is reasonably suspected of having committed an offence in terms of section 39G(1) or (2)(a) or (b);

and immediately to convey the person arrested to a police officer in order that he or she may be dealt with according to law.

(2) Any person empowered in terms of subsection (1) to arrest any other person may request the assistance of any bystander in effecting such arrest and such bystander is hereby authorized to render such assistance.

(3) Any person who, acting reasonably and in good faith and without culpable ignorance or negligence, arrests any other person in the purported exercise of the powers conferred in terms of this section shall not be liable for damages for unlawful arrest.

39I Transportation of infrastructural broadcasting apparatus, equipment or appliances

(1) In this section and section 39J—

“customs clearance documentation”, in relation to infrastructural broadcasting apparatus, equipment or appliances, means any documentation endorsed by the Zimbabwe Revenue Authority for the purpose of permitting the importation into or transit through Zimbabwe of the broadcasting apparatus, equipment or appliances in question;

“ownership”, in relation to a vehicle, includes the possession of a vehicle by a purchaser pending the transfer of its ownership to the purchaser, and “own” and “owner” shall be construed accordingly;

“producing on demand”, in relation to the production by an owner of a vehicle of a special police clearance certificate or customs clearance documentation in the circumstances described in subsection (2)(c), means procuring for the

driver of the vehicle the required certificate or documentation to enable the driver to produce it on demand;

“regulating authority”, in relation to any area of Zimbabwe, means the police officer who, in terms of section 4 of the Public Order and Security Act [*Chapter 11:17*] (No. 1 of 2002), is the regulating authority for that area;

“special police clearance certificate” means a police clearance certificate issued in respect of the transportation of broadcasting apparatus, equipment or appliances in terms of subsection (6);

“things liable to seizure or forfeiture” means any infrastructural broadcasting apparatus, equipment or appliances that is the subject-matter of an offence under section 39G(3) or subsection (2), and any vehicle used to transport the same that is the subject-matter of an offence under subsection (2) or (by the application of subsection (3)) section 39G(3);

“vehicle” means—

- (a) a motor vehicle as defined in the Road Traffic Act [*Chapter 13:11*]; or
- (b) a trailer as defined in the Road Traffic Act [*Chapter 13:11*], whether or not attached to and drawn by a motor vehicle; or
- (c) a pushcart or scotchcart.

(2) Any person who—

- (a) being the driver or person in control of a vehicle owned by him or her, transports or has in his or her possession in or upon such vehicle any infrastructural broadcasting apparatus, equipment or appliances; or
- (b) being the driver or person in control of a vehicle, transports or has in his or her possession in or upon such vehicle any infrastructural broadcasting apparatus, equipment or appliances without the knowledge of the owner of the vehicle:

Provided that the driver or person referred to in this paragraph shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she transported or had in his or her possession in or upon such vehicle any infrastructural broadcasting apparatus, equipment or appliances with the knowledge of the owner of the vehicle;

- (c) being the owner of a vehicle, authorises the driver or person in control of the vehicle to transport or have has in his or her possession in or upon such vehicle any infrastructural broadcasting apparatus, equipment or appliances;

without producing on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or, as the case may be, the customs clearance documentation relating thereto, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Where a person is unable to produce on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or the customs clearance documentation referred to in subsection (2), such person shall, in addition to being charged with the offence referred to in subsection (2), be charged with the offence referred to in

section 39G(3) and liable to the mandatory penalty therefor, unless he or she can show lawful cause (the proof whereof shall lie on him or her), for having in his or her possession, or under his or her immediate control, any infrastructural broadcasting apparatus, equipment or appliances:

. Provided that where infrastructural broadcasting apparatus, equipment or appliance is authorised by the owner of a vehicle to be carried in the circumstances described in subsection (2)(c), the owner shall, for the purposes of this subsection, be deemed to be in possession of, or have under his or her immediate control, the apparatus, equipment or appliances in question.

(4) A person required to obtain a special police clearance certificate in terms of subsection (2) shall request the certificate from the regulating authority responsible for the area within which the vehicle is ordinarily kept at night.

(5) At the request of a person required to obtain a special police clearance certificate in terms of subsection (2), the regulating authority shall, upon being satisfied that—

- (a) the vehicle is ordinarily kept at night within the area for which the regulating authority is responsible; and
 - (b) the person has lawful cause for transporting in a vehicle any infrastructural broadcasting apparatus, equipment or appliance, issue to the person a special police clearance certificate in accordance with subsection (6).
- (6) A special police clearance certificate shall—
- (a) identify the holder of the certificate, the vehicle or vehicles in respect of which it is issued, the nature and quantity (by weight, length or both) of the infrastructural broadcasting apparatus, equipment or appliance to be transported, and the regulating authority that issued the certificate; and
 - (b) specify the lawful cause for which the infrastructural broadcasting apparatus, equipment or appliance is to be transported in or upon the vehicle or vehicles referred to in the certificate; and
 - (c) specify the period for which it shall be valid; and
 - (d) be valid for not more than forty-eight hours:

Provide that if the infrastructural broadcasting apparatus, equipment or appliance is to be transported by or with the knowledge of a broadcasting licensee, the regulating authority may issue a special police clearance certificate having a period of validity of up to thirty days; and

- (e) be signed by or on behalf of the regulating authority.

(7) No fee shall be charged for the issuance of a special police clearance certificate except the prescribed fee for a duplicate special police clearance certificate or the replacement of a lost or destroyed police clearance certificate.

39J Forfeiture of unlawfully transported infrastructural broadcasting apparatus, equipment or appliances and vehicle used in connection therewith

- (1) Where a person is charged with contravening—

- (a) section 39G(2) or 39G(3), any infrastructural broadcasting apparatus, equipment or appliance that is the subject-matter of the offence shall be liable to seizure and forfeiture under this section; or
- (b) section 39I(2) alone, any infrastructural broadcasting apparatus, equipment or appliance that is the subject-matter of the offence shall be liable to seizure pending the outcome of the prosecution of the offence; or
- (c) sections 39I(2) and 39G(3) concurrently, any infrastructural broadcasting apparatus, equipment or appliance that is the subject-matter of the offences and any vehicle used to transport the same shall be liable to seizure and forfeiture under this section.

(2) Where a person is charged with contravening sections 39I(2) and section 39G(3) concurrently, and the vehicle used in connection with such offences was availed to him or her by another person who owns the vehicle, the vehicle shall still be liable to seizure and forfeiture under this section unless the owner proves to the satisfaction of an inspector, police officer or court that he or she was unaware that the vehicle would be so used.

(3) An inspector or police officer may seize any things liable to seizure or forfeiture which he or she has reasonable grounds for believing are the subject-matter of any offence under section 39G(2) or 39G(3), or of any concurrent offences under sections 39I(2) and 39G(3).

(4) All things liable to seizure or forfeiture which have been seized in terms of subsection (3) shall—

- (a) be taken forthwith and delivered to a place of security under the control of an inspector or police officer; and
- (b) be held until the criminal proceedings which are instituted in relation to those things—
 - (i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian inspector or police officer shall forthwith restore any such thing the accused or the owner thereof, as may be appropriate; or
 - (ii) have resulted in the conviction of the accused, in which event the convicting court shall, where the accused is convicted of contravening—
 - A. section 39I(2) alone, order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or
 - B. section 39G(2) or 39G(3), or sections 39I(2) and 39G(3) concurrently, order any such thing to be forfeited to the State.”.

5 Amendment of Cap. 13:09

The Railways Act [*Chapter 13:09*] is amended—

- (a) in section 38 (“Certain offences and punishment therefor”)—
 - (i) in subsections (1) and (2) by the deletion of “subsection (5)” and the substitution of “subsection (5d)”;
 - (ii) by the repeal of subsections (3), (4) and (5) and the substitution of—

“(3) Any person who receives or takes possession of stolen equipment used for the provision of a railway service, including (but not limited to) any locomotive, rolling-stock, railway track, sleeper, telephone or telegraph line, or power cable, or any part or component of any of the foregoing—

- (a) knowing that it has been stolen; or
- (b) realising that there is a real risk or possibility that it has been stolen;

shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (5d), be liable to imprisonment for a period of not less than ten years.

(4) Any person who—

- (a) otherwise than for lawful cause (the proof whereof shall lie on him or her), has on his or her person, or in his or her possession, or under his or her immediate control, or upon any land or upon or in any premises, any equipment used for the provision of a railway service, including (but not limited to) any locomotive, rolling-stock, railway track, sleeper, telephone or telegraph line, or power cable, or any part or component of any of the foregoing that is not being used in connection with any service lawfully provided to him or her by the Railways; or
- (b) carries or causes to be carried on a passenger train any paraffin, diesel, petrol or explosives or other hazardous substance; or
- (c) digs, excavates, drills, tunnels under or otherwise tampers with the ground within forty-five meters on either side of the middle of a railway track to the actual or potential detriment of the safety of railway traffic;

shall be guilty of an offence and, if there are no special circumstances peculiar to the case as provided for in subsection (5d), liable to imprisonment for a period of not less than five years or more than ten years.

(5) If a person is charged with contravening subsection (4)(a) in circumstances where—

- (a) the equipment in question was found on any land or in any premises to or in which the accused person has any title or interest whatsoever (including shares in a company that owns such land or premises); and
- (b) the accused person knowingly used or permitted the use of the land or premises in question for the purpose of hiding or storing the equipment in question; and
- (c) the accused person—
 - (i) had stolen the equipment in question; or
 - (ii) knew that the equipment in question had been stolen; or
 - (iii) realised that there was a real risk or possibility that the equipment in question had been stolen;

the accused person shall not be charged concurrently or alternatively with contravening subsection (3), but a prosecutor may, for the purposes of

subsection (5a), adduce evidence showing that the offence was committed in the circumstances referred to in paragraphs (a), (b) and (c).

(5a) If a court convicts a person for contravening subsection (4)(a) and finds that the offence was committed in the circumstances referred to in subsection (5)(a), (b) and (c), then, in addition to imposing the penalty provided for that offence under subsection (4)(a), the court shall order to be forfeited to the State any title to or interest in the land or premises belonging to that person which is referred to in subsection (5)(a).

(5b) Where a court has ordered to be forfeited to the State any land or premises in the circumstances described in subsection (5a), any transaction involving the land or premises that—

- (a) is commenced at any time between the date when the person was charged for an offence against subsection (4)(a) and date when he or she was convicted of it (or, if the person appeals against the conviction or sentence or both, the date when the appeal is finally dismissed, or abandoned); and
- (b) has the effect of alienating to any other person the title or interest of the convicted person in that land or premises;

shall be void:

Provided that the transaction shall not be void if the person charged for an offence against subsection (4)(a) is acquitted.

(5c) A court sentencing a person to imprisonment under subsection (1), (2), (3) or (4) shall not order the suspension of any part of the sentence if the effect of such order is that the convicted person will serve a sentence of less than five years (in the case of a conviction for an offence in terms of subsection (1) or (4)) or ten years (in the case of a conviction for an offence in terms of subsection (2) or (3)).

(5d) If a person referred to in subsection (1), (2), (3) or (4) satisfies the court that there are special circumstances peculiar to the case, which circumstances shall be recorded by the court, why the penalty provided under subsection (1), (2), (3) or (4) should not be imposed, the convicted person shall be liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.”;

- (b) in Part VI (“Offences and Penalties”) by the insertion after section 39 of the following section—

“39A Transportation of equipment used for provision of railway services

- (1) In this section and section 39B—

“customs clearance documentation”, in relation to equipment used for the provision of a railway service, means any documentation endorsed by the Zimbabwe Revenue Authority for the purpose of permitting the importation into or transit through Zimbabwe of the equipment in question;

“equipment used for the provision of a railway service” means any material component essential for the maintenance of a railway infrastructure, and includes (but is not limited to) any locomotive, rolling-stock, railway track, sleeper, telephone or telegraph line, or power cable, or any part or component of any of the foregoing;

“ownership”, in relation to a vehicle, includes the possession of a vehicle by a purchaser pending the transfer of its ownership to the purchaser, and “own” and “owner” shall be construed accordingly;

“producing on demand”, in relation to the production by an owner of a vehicle of a special police clearance certificate or customs clearance documentation in the circumstances described in subsection (2)(c), means procuring for the driver of the vehicle the required certificate or documentation to enable the driver to produce it on demand;

“regulating authority”, in relation to any area of Zimbabwe, means the police officer who, in terms of section 4 of the Public Order and Security Act [*Chapter 11:17*] (No. 1 of 2002), is the regulating authority for that area;

“special police clearance certificate” means a police clearance certificate issued in respect of the transportation of equipment used for the provision of a railway service in terms of subsection (6);

“things liable to seizure or forfeiture” means any equipment used for the provision of a railway service that is the subject-matter of an offence under section 38(4)(a) or subsection (2), and any vehicle used to transport the same that is the subject-matter of an offence under subsection (2) or (by the application of subsection (3)) section 38(4)(a);

“vehicle” means—

- (a) a motor vehicle as defined in the Road Traffic Act [*Chapter 13:11*]; or
- (b) a trailer as defined in the Road Traffic Act [*Chapter 13:11*], whether or not attached to and drawn by a motor vehicle; or
- (c) a pushcart or scotchcart.

(2) Any person who—

- (a) being the driver or person in control of a vehicle owned by him or her, transports or has in his or her possession in or upon such vehicle any equipment used for the provision of a railway service; or
- (b) being the driver or person in control of a vehicle, transports or has in his or her possession in or upon such vehicle any equipment used for the provision of a railway service without the knowledge of the owner of the vehicle:

Provided that the driver or person referred to in this paragraph shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she transported or had in his or her possession in or upon such vehicle any equipment used for the provision of a railway service with the knowledge of the owner of the vehicle;

- (c) being the owner of a vehicle, authorises the driver or person in control of the vehicle to transport or have has in his or her possession in or upon such vehicle any equipment used for the provision of a railway service;

without producing on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or, as the case may be, the customs clearance documentation relating thereto, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Where a person is unable to produce on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or the customs clearance documentation referred to in subsection (2), such person shall, in addition to being charged with the offence referred to in subsection (2), be charged with the offence referred to in section 38(4)(a) and liable to the mandatory penalty therefor, unless he or she can show lawful cause (the proof whereof shall lie on him or her), for having in his or her possession, or under his or her immediate control, any equipment used for the provision of a railway service.

(4) A person required to obtain a special police clearance certificate in terms of subsection (2) shall request the certificate from the regulating authority responsible for the area within which the vehicle is ordinarily kept at night.

(5) At the request of a person required to obtain a special police clearance certificate in terms of subsection (2), the regulating authority shall, upon being satisfied that—

- (a) the vehicle is ordinarily kept at night within the area for which the regulating authority is responsible; and
- (b) the person has lawful cause for transporting in a vehicle any equipment used for the provision of a railway service;

issue to the person a special police clearance certificate in accordance with subsection (6).

(6) A special police clearance certificate shall—

- (a) identify the holder of the certificate, the vehicle or vehicles in respect of which it is issued, the nature and quantity (by weight, length or both) of the equipment used for the provision of a railway service that is to be transported, and the regulating authority that issued the certificate; and
- (b) specify the lawful cause for which the equipment used for the provision of a railway service is to be transported in or upon the vehicle or vehicles referred to in the certificate; and
- (c) specify the period for which it shall be valid; and
- (d) be valid for not more than forty-eight hours:

Provide that of the equipment used for the provision of a railway service is to be transported by or with the knowledge of the Railways, the regulating authority may issue a special police clearance certificate having a period of validity of up to thirty days;

and

(e) be signed by or on behalf of the regulating authority.

(7) No fee shall be charged for the issuance of a special police clearance certificate except the prescribed fee for a duplicate special police clearance certificate or the replacement of a lost or destroyed police clearance certificate.

39B Forfeiture of unlawfully transported equipment used for the provision of a railway service and vehicle used in connection therewith

(1) Where a person is charged with contravening—

- (a) section 38(3) or 38(4)(a), any equipment used for the provision of a railway service that is the subject-matter of the offence shall be liable to seizure pending the outcome of the prosecution of the offence; or
- (b) section 39A(2) alone, any equipment used for the provision of a railway service that is the subject-matter of the offence shall be liable to seizure and forfeiture under this section pending the prosecution of the offence; or
- (c) sections 39A(2) and 38(4)(a) concurrently, any equipment used for the provision of a railway service that is the subject-matter of the offences and any vehicle used to transport the same shall be liable to seizure and forfeiture under this section.

(2) Where a person is charged with contravening sections 39A(2) and 38(4)(a) concurrently, and the vehicle used in connection with such offences was availed to him or her by another person who owns the vehicle, the vehicle shall still be liable to seizure and forfeiture under this section unless the owner proves to the satisfaction of an inspector, police officer or court that he or she was unaware that the vehicle would be so used.

(3) An inspector or police officer may seize any things liable to seizure or forfeiture which he or she has reasonable grounds for believing are the subject-matter of any offence under section 38(3) or 38(4)(a), or of any concurrent offences under sections 39A(2) and section 38(4)(a).

(4) All things liable to seizure or forfeiture which have been seized in terms of subsection (3) shall—

- (a) be taken forthwith and delivered to a place of security under the control of an inspector or police officer; and
- (b) be held until the criminal proceedings which are instituted in relation to those things—
 - (i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian inspector or police officer shall forthwith restore any such thing to the accused or the owner thereof, as may be appropriate; or
 - (ii) have resulted in the conviction of the accused, in which event the convicting court shall, where the accused is convicted of contravening—
 - A. section 39A(2) alone, order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or

- B. section 38(3) or 38(4)(a), or sections 39A(2) and section 38(4)(a) concurrently, order any such thing to be forfeited to the State.”.

6 Amendment of Cap. 13:19 (No. 4 of 2002)

The Electricity Act [*Chapter 13:19*] (No. 4 of 2002) is amended—

(a) in section 60A (“Offences in relation to electric current and apparatus”) —

(i) by the insertion before subsection (1) of the following subsection—

“(a1) In this section and section 60B—

“material used in connection with the generation, transmission, distribution or supply of electricity” means any material component essential for the maintenance of an electricity generation, transmission, distribution or supply infrastructure, and includes (but is not limited to)—

- (a) a transmission line or any cable or wire conductor used or commonly used in connection with the transmission or distribution of electricity; or
- (b) any apparatus, equipment or appliance that is essential for the maintenance of an electricity generation, transmission, distribution or supply infrastructure operated by a licensee.”;

(ii) by the insertion after subsection (3) of the following subsections—

“(3a) Any person who, without lawful excuse, the proof whereof shall lie on him or her, receives or takes possession of any material used in connection with the generation, transmission, distribution or supply of electricity —

- (a) knowing that it has been stolen; or
- (b) realising that there is a real risk or possibility that it has been stolen;

shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (4), be liable to imprisonment for a period of not less than ten years.

(3b) Any person, other than a generation licensee, transmission and bulk supply licensee, distribution licensee or retail supply licensee, who, otherwise than for lawful cause (the proof whereof shall lie on him or her), has on his or her person, or in his or her possession, or under his or her immediate control, or upon any land or upon or in any premises, any material used in connection with the generation, transmission, distribution or supply of electricity that is not being used in connection with any electricity service lawfully provided to him or her, shall be guilty of an offence and, if there are no special circumstances peculiar to the case as provided for in subsection (4), to imprisonment for a period of not less than five years or more than ten years.

(3c) If a person is charged with contravening subsection (3b) in circumstances where—

- (a) the material used in connection with the generation, transmission, distribution or supply of electricity was found on any land or in

any premises to or in which the accused person has any title or interest whatsoever (including shares in a company that owns such land or premises); and

- (b) the accused person knowingly used or permitted the use of the land or premises in question for the purpose of hiding or storing the material; and
- (c) the accused person—
 - (i) had stolen the material used in connection with the generation, transmission, distribution or supply of electricity; or
 - (ii) knew that the material used in connection with the generation, transmission, distribution or supply of electricity had been stolen; or
 - (iii) realised that there was a real risk or possibility that the material used in connection with the generation, transmission, distribution or supply of electricity had been stolen.

the accused person shall not be charged concurrently or alternatively with contravening subsection (3a), but a prosecutor may, for the purposes of subsection (3d), adduce evidence showing that the offence was committed in the circumstances referred to in paragraphs (a), (b) and (c).

(3d) If a court convicts a person for contravening subsection (3b) and finds that the offence was committed in the circumstances referred to in subsection (3c)(a), (b) and (c), then, in addition to imposing the penalty provided for that offence under subsection (3b), the court shall order to be forfeited to the State any title to or interest in the land or premises belonging to that person which is referred to in subsection (3c)(a).

(3e) Where a court has ordered to be forfeited to the State any land or premises in the circumstances described in subsection (3d), any transaction involving the land or premises that—

- (a) is commenced at any time between the date when the person was charged for an offence against subsection (3b) and date when he or she was convicted of it (or, if the person appeals against the conviction or sentence or both, the date when the appeal is finally dismissed, or abandoned); and
- (b) has the effect of alienating to any other person the title or interest of the convicted person in that land or premises;

shall be void:

Provided that the transaction shall not be void if the person charged for an offence against subsection (3b) is acquitted.”;

- (iii) in subsection (4) by the deletion of “subsection (2) or (3)” and the substitution of “subsection (2), (3), (3a) or (3b)”;

- (b) by the insertion of the following sections after section 60A—

“60B Power to arrest persons

(1) Without derogation from the Criminal Procedure and Evidence Act [*Chapter 9:07*], it shall be lawful for—

- (a) any person to arrest without warrant anyone who is found committing any offence in terms of section 60A(1), (2), (3) or (3a);
- (b) any person authorized by a generation licensee, transmission and bulk supply licensee, distribution licensee or retail supply licensee to exercise powers of arrest in terms of this paragraph to arrest anyone who is reasonably suspected of having committed an offence in terms of section 60A(1), (2), (3) or (3a);

and immediately to convey the person arrested to a police officer in order that he or she may be dealt with according to law.

(2) Any person empowered in terms of subsection (1) to arrest any other person may request the assistance of any bystander in effecting such arrest and such bystander is hereby authorized to render such assistance.

(3) Any person who, acting reasonably and in good faith and without culpable ignorance or negligence, arrests any other person in the purported exercise of the powers conferred in terms of this section shall not be liable for damages for unlawful arrest.

60C Transportation of material used in connection with the generation, transmission, distribution or supply of electricity

(1) In this section and section 60D—

“customs clearance documentation”, in relation to material used in connection with the generation, transmission, distribution or supply of electricity, means any documentation endorsed by the Zimbabwe Revenue Authority for the purpose of permitting the importation into or transit through Zimbabwe of the material in question;

“ownership”, in relation to a vehicle, includes the possession of a vehicle by a its purchaser pending the transfer of its ownership to the purchaser, and “own” and “owner” shall be construed accordingly;

“producing on demand”, in relation to the production by an owner of a vehicle of a special police clearance certificate or customs clearance documentation in the circumstances described in subsection (2)(c), means procuring for the driver of the vehicle the required certificate or documentation to enable the driver to produce it on demand;

“regulating authority”, in relation to any area of Zimbabwe, means the police officer who, in terms of section 4 of the Public Order and Security Act [*Chapter 11:17*] (No. 1 of 2002), is the regulating authority for that area;

“special police clearance certificate” means a police clearance certificate issued in respect of the transportation of material used in connection with the generation, transmission, distribution or supply of electricity in terms of subsection (6);

“things liable to seizure or forfeiture” means any material used in connection with the generation, transmission, distribution or supply of electricity that is the subject-matter of an offence under section 60A(3b) or subsection (2), and any vehicle used to transport the same that is the subject-matter of an offence under subsection (2) or (by the application of subsection (3)) section 60A(3b);

“vehicle” means—

- (a) a motor vehicle as defined in the Road Traffic Act [*Chapter 13:11*]; or
- (b) a trailer as defined in the Road Traffic Act [*Chapter 13:11*], whether or not attached to and drawn by a motor vehicle; or
- (c) a pushcart or scotchcart.

(2) Any person who—

- (a) being the driver or person in control of a vehicle owned by him or her, transports or has in his or her possession in or upon such vehicle any material used in connection with the generation, transmission, distribution or supply of electricity; or
- (b) being the driver or person in control of a vehicle, transports or has in his or her possession in or upon such vehicle any material used in connection with the generation, transmission, distribution or supply of electricity without the knowledge of the owner of the vehicle:

Provided that the driver or person referred to in this paragraph shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she transported or had in his or her possession in or upon such vehicle any material used in connection with the generation, transmission, distribution or supply of electricity with the knowledge of the owner of the vehicle;

- (c) being the owner of a vehicle, authorises the driver or person in control of the vehicle to transport or have has in his or her possession in or upon such vehicle any material used in connection with the generation, transmission, distribution or supply of electricity;

without producing on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or, as the case may be, the customs clearance documentation relating thereto, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Where a person is unable to produce on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or the customs clearance documentation referred to in subsection (2), such person shall, in addition to being charged with the offence referred to in subsection (2), be charged with the offence referred to in section 60A(3b) and liable to the mandatory penalty therefor, unless he or she can show lawful cause (the proof whereof shall lie on him or her), for having in his or her possession, or under his or her immediate control, any

material used in connection with the generation, transmission, distribution or supply of electricity.

(4) A person required to obtain a special police clearance certificate in terms of subsection (2) shall request the certificate from the regulating authority responsible for the area within which the vehicle is ordinarily kept at night.

(5) At the request of a person required to obtain a special police clearance certificate in terms of subsection (2), the regulating authority shall, upon being satisfied that—

- (a) the vehicle is ordinarily kept at night within the area for which the regulating authority is responsible; and
- (b) the person has lawful cause for transporting in a vehicle any material used in connection with the generation, transmission, distribution or supply of electricity, issue to the person a special police clearance certificate in accordance with subsection (6).

(6) A special police clearance certificate shall—

- (a) identify the holder of the certificate, the vehicle or vehicles in respect of which it is issued, the nature and quantity (by weight, length or both) of the material used in connection with the generation, transmission, distribution or supply of electricity to be transported, and the regulating authority that issued the certificate; and
- (b) specify the lawful cause for which the material used in connection with the generation, transmission, distribution or supply of electricity is to be transported in or upon the vehicle or vehicles referred to in the certificate; and
- (c) specify the period for which it shall be valid; and
- (d) be valid for not more than forty-eight hours:

Provided that of the material used in connection with the generation, transmission, distribution or supply of electricity is to be transported by or with the knowledge of a generation licensee, transmission and bulk supply licensee, distribution licensee or retail supply licensee, the regulating authority may issue a special police clearance certificate having a period of validity of up to thirty days;

and

- (e) be signed by or on behalf of the regulating authority.

(7) No fee shall be charged for the issuance of a special police clearance certificate except the prescribed fee for a duplicate special police clearance certificate or the replacement of a lost or destroyed police clearance certificate.”.

60D Forfeiture of unlawfully transported material used in connection with the generation, transmission, distribution or supply of electricity and vehicle used in connection therewith

- (1) Where a person is charged with contravening—

- (a) section 60A(3) or 60A(3a), any material used in connection with the generation, transmission, distribution or supply of electricity that is the subject-matter of the offence shall be liable to seizure and forfeiture under this section; or
 - (b) section 60C(2) alone, any material used in connection with the generation, transmission, distribution or supply of electricity that is the subject-matter of the offence shall be liable to seizure pending the outcome of the prosecution of the offence; or
 - (c) sections 60C(2) and section 60A(3b) concurrently, any material used in connection with the generation, transmission, distribution or supply of electricity that is the subject-matter of the offences and any vehicle used to transport the same shall be liable to seizure and forfeiture under this section.
- (2) Where a person is charged with contravening sections 60C(2) and 60A(3b) concurrently, and the vehicle used in connection with such offences was availed to him or her by another person who owns the vehicle, the vehicle shall still be liable to seizure and forfeiture under this section unless the owner proves that he or she was unaware that the vehicle would be so used.
- (3) An inspector or police officer may seize any things liable to seizure or forfeiture which he or she has reasonable grounds for believing are the subject-matter of any offence under section 60A(3) or 60A(3a), or of any concurrent offences under sections 60C(2) or 60A(3b).
- (4) All things liable to seizure or forfeiture which have been seized in terms of subsection (3) shall—
- (a) be taken forthwith and delivered to a place of security under the control of an inspector or police officer; and
 - (b) be held until the criminal proceedings which are instituted in relation to those things—
 - (i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian inspector or police officer shall forthwith restore any such thing the accused or the owner thereof, as may be appropriate; or
 - (ii) have resulted in the conviction of the accused, in which event the convicting court shall, where the accused is convicted of contravening—
 - A. section 60C(2) alone, order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or
 - B. section 60A(3) or 60A(3a), or sections 60C(2) and section 60A(3b) concurrently, order any such thing to be forfeited to the State.”.

7 Amendment of Cap 20:24 (No. 31 of 1998)

The Water Act [*Chapter 20:24*] (No. 31 of 1998) is amended by the insertion after Part IX of the following Part —

“PART IXA

PROTECTION OF WATER INFRASTRUCTURE AND FARM IRRIGATION WORKS

111A Interpretation in Part IXA

In this Part—

“dual use water component” means any water infrastructure component or farm irrigation works component that may, independently of any public water works, local authority water works or farm irrigation works, be used for the abstraction, discharge or distribution of water for primary purposes in or about the area of the garden or grounds or both of a dwelling-house or for cleansing purposes in a place of business;

“farm” means any area of alienated land, or of land held by a person under a permit or lease issued in terms of Agricultural Land Settlement Act [*Chapter 20:01*], which is not within—

- (a) parks and wild life land or forest land; or
- (b) a municipal area, town area or local government area as defined in the Urban Councils Act [*Chapter 29:15*];
- (c) a town ward of a rural district council or an area that has been declared a specified area in terms of the Rural District Councils Act [*Chapter 29:13*]; or
- (d) the area of any township as defined in the Land Survey Act [*Chapter 20:12*]; or
- (e) State land the layout of which has been approved in terms of—
 - (i) section 127 of the Town and Country Planning Act [*Chapter 213 of 1974*]; or
 - (ii) section 43 of the Regional, Town and Country Planning Act [*Chapter 20:12*];

“local authority water works” means water works operated by or on behalf of a municipal council, town council or rural district council for the provision of water for agricultural purposes, electrical purposes, institutional purposes, local authority purposes, mining purposes, primary purposes, railway purposes, road purposes, township purposes or miscellaneous purposes, for the benefit of the residents of the area under the jurisdiction of the local authority concerned;

“farm irrigation works” means any works on a farm by means of which water may be artificially applied to land for agricultural purposes;

“farm irrigation works component” means any pump, filter, valve, pipe, pipeline, tube, water meter, sprinkler or other equipment or device for abstracting, discharging or distributing water or otherwise necessary for the operation of any farm irrigation works;

“public water works” means water works operated by or on behalf of State, the National Water Authority or the Zambezi River Authority for the provision of water for agricultural purposes, electrical purposes, institutional purposes, local authority purposes, mining purposes, primary purposes, railway purposes, road purposes,

township purposes or miscellaneous purposes, for the benefit of the public or any section thereof;

“receipt”, in relation to the purchase or acquisition of any water infrastructure component, farm irrigation works component or dual use water component, means a receipt issued in the name of the possessor of the component indicating the nature of the component, the date of purchase or acquisition of the component, and the name and address or contact details of the person who sold or disposed of the component to the possessor;

“water infrastructure component” means any material component essential for the maintenance of—

- (a) a public water works; or
- (b) a local authority water works.

111B Wilful damage to, interference with or theft of water infrastructure and farm irrigation works components

(1) Any person who—

- (a) without lawful cause, the proof whereof shall lie on him or her, tampers with any water infrastructure component, with the result that the supply of water for any purpose is interrupted or cut off; or
- (b) without lawful cause, the proof whereof shall lie on him or her, destroys, injures or removes any water infrastructure component or farm irrigation works component; or
- (c) receives or takes possession of any water infrastructure component or farm irrigation works component—
 - (i) knowing that it has been stolen; or
 - (ii) realising that there is a real risk or possibility that it has been stolen;

shall be guilty of an offence, and if there are no special circumstances peculiar to the case as provided for in subsection (6), be liable to imprisonment for a period of not less than ten years.

(2) Any person (not being a licensed dealer in water infrastructure components, farm irrigation works components or dual use water components in lawful possession of such components) who, otherwise than for lawful cause (the proof whereof shall lie on him or her), has on his or her person, or in his or her possession, or under his or her immediate control, or upon any land or upon or in any premises, any—

- (a) water infrastructure component or farm irrigation works component that is not being used in connection with the lawful operation of any public water works, local authority water works or farm irrigation works; or
- (b) dual use water components in excess of those necessary for the abstraction, discharge or distribution of water for primary purposes in or upon the land or premises, that is to say, for primary purposes in the area of the garden or grounds or both of a dwelling-house or for cleansing purposes in a place of business;

shall be guilty of an offence and, if there are no special circumstances peculiar to the case as provided for in subsection (6), liable to imprisonment for a period of not less than five years or more than ten years:

In this subsection, “lawful cause” includes, but is not limited to, possession of the component in question by virtue of its having been lawfully purchased or acquired by the possessor, provided that the purchase or acquisition is evidenced by a receipt or can otherwise be verified.

- (3) If a person is charged with contravening subsection (2) in circumstances where—
- (a) the water infrastructure component, farm irrigation works component or dual use water component in question was found on any land or in any premises to or in which the accused person has any title or interest whatsoever (including shares in a company that owns such land or premises); and
 - (b) the accused person knowingly used or permitted the use of the land or premises in question for the purpose of hiding or storing the components in question; and
 - (c) the accused person—
 - (i) had stolen the components in question; or
 - (ii) knew that the components in question had been stolen; or
 - (iii) realised that there was a real risk or possibility that the components in question had been stolen;

the accused person shall not be charged concurrently or alternatively with contravening subsection (1)(c), but a prosecutor may, for the purposes of subsection (5), adduce evidence showing that the offence was committed in the circumstances referred to in paragraphs (a), (b) and (c).

(4) If a court convicts a person for contravening subsection (2) and finds that the offence was committed in the circumstances referred to in subsection (3)(a), (b) and (c), then, in addition to imposing the penalty provided for that offence under subsection (2), the court shall order to be forfeited to the State any title to or interest in the land or premises belonging to that person which is referred to in subsection (3)(a).

(5) Where a court has ordered to be forfeited to the State any land or premises in terms of subsection (4), any transaction involving the land or premises that—

- (a) is commenced at any time between the date when the person was charged for contravening subsection (2) and date when he or she was convicted of it (or, if the person appeals against the conviction or sentence or both, the date when the appeal is finally dismissed, or abandoned); and
- (b) has the effect of alienating to any other person the title or interest of the convicted person in that land or premises;

shall be void:

Provided that the transaction shall not be void if the person charged for contravening subsection (2) is acquitted.

(6) A court sentencing a person to imprisonment under subsection (1) or (2) shall not order the suspension of any part of the sentence if the effect of such order is that the

convicted person will serve a sentence of less than ten years (in the case of a conviction for an offence in terms of subsection (1)) or five years .(in the case of a conviction for an offence in terms of subsection (2))

(7) If a person convicted in terms of subsection (2) or (3) satisfies the court that there are special circumstances in the particular case, which circumstances shall be recorded by the court, why the penalty provided under subsection (1) or (2) should not be imposed, the convicted person shall be liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding five years or both.

(8) A person charged with an offence in terms of subsection (1)(a) or (b) may be found guilty of contravening section 141 (“Negligently causing serious damage to property”) of the Criminal Law Code if such are the facts proved.

111C Power to arrest persons

(1) Without derogation from the Criminal Procedure and Evidence Act [*Chapter 9:07*], it shall be lawful for—

- (a) any person to arrest without warrant anyone who is found committing any offence in terms of section 111B(1);
- (b) any person authorised by the State, the National Water Authority, the Zambezi River Authority or a local authority to exercise powers of arrest in terms of this paragraph to arrest anyone who is reasonably suspected of having contravened section 111B(1) or (2);

and immediately to convey the person arrested to a police officer in order that he or she may be dealt with according to law.

(2) Any person empowered in terms of subsection (1) to arrest any other person may request the assistance of any bystander in effecting such arrest and such bystander is hereby authorized to render such assistance.

(3) Any person who, acting reasonably and in good faith and without culpable ignorance or negligence, arrests any other person in the purported exercise of the powers conferred in terms of this section shall not be liable for damages for unlawful arrest.

111D Transportation of water infrastructure or farm irrigation works components

(1) In this section and section 111E—

“customs clearance documentation”, in relation to water infrastructure components, farm irrigation works components or dual use water components, means any documentation endorsed by the Zimbabwe Revenue Authority for the purpose of permitting the importation into or transit through Zimbabwe of the components in question;

“ownership”, in relation to a vehicle, includes the possession of a vehicle by a purchaser pending the transfer of its ownership to the purchaser, and “own” and “owner” shall be construed accordingly;

“producing on demand”, in relation to the production by an owner of a vehicle of a special police clearance certificate or customs clearance documentation in

the circumstances described in subsection (2)(c), means procuring for the driver of the vehicle the required certificate or documentation to enable the driver to produce it on demand;

“receipt” has the meaning given to that word in section 111A;

“regulating authority”, in relation to any area of Zimbabwe, means the police officer who, in terms of section 4 of the Public Order and Security Act [*Chapter 11:17*] (No. 1 of 2002), is the regulating authority for that area;

“special police clearance certificate” means a police clearance certificate issued in respect of the transportation of any water infrastructure component, farm irrigation works component or dual use water component in terms of subsection (6);

“things liable to seizure or forfeiture” means any water infrastructure component, farm irrigation works component or dual use water component that is the subject-matter of an offence under section 11B(2) or subsection (2), and any vehicle used to transport the same that is the subject-matter of an offence under subsection (2) or (by the application of subsection (3)) section 111B(2);

“vehicle” means—

- (a) a motor vehicle as defined in the Road Traffic Act [*Chapter 13:11*]; or
- (b) a trailer as defined in the Road Traffic Act [*Chapter 13:11*], whether or not attached to and drawn by a motor vehicle; or
- (c) a pushcart or scotchcart.

(2) Any person who—

- (a) being the driver or person in control of a vehicle owned by him or her, transports or has in his or her possession in or upon such vehicle any water infrastructure component, farm irrigation works component or dual use water component; or
- (b) being the driver or person in control of a vehicle, transports or has in his or her possession in or upon such vehicle any water infrastructure component, farm irrigation works component or dual use water component without the knowledge of the owner of the vehicle:

Provided that the driver or person referred to in this paragraph shall have the burden of proving, to the satisfaction of an inspector, police officer or any court, that he or she transported or had in his or her possession in or upon such vehicle any such component with the knowledge of the owner of the vehicle;

- (c) being the owner of a vehicle, authorises the driver or person in control of the vehicle to transport or have has in his or her possession in or upon such vehicle any water infrastructure component, farm irrigation works component or dual use water component;

without producing on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or, as the case may be, a receipt or the customs clearance documentation relating thereto, shall be guilty of an offence and liable to a fine

not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) Where a person is unable to produce on demand by an inspector or police officer a special police clearance certificate obtained in terms of this section or a receipt or the customs clearance documentation referred to in subsection (2), such person shall, in addition to being charged with the offence referred to in subsection (2), be charged with the offence referred to in section 111B(2) and liable to the mandatory penalty therefor, unless he or she can show lawful cause (the proof whereof shall lie on him or her), for having in his or her possession, or under his or her immediate control, any water infrastructure component, farm irrigation works component or dual use water component:

Provided that where any water infrastructure component, farm irrigation works component or dual use water component is authorised by the owner of a vehicle to be carried in the circumstances described in subsection (2)(c), the owner shall, for the purposes of this subsection, be deemed to be in possession of, or have under his or her immediate control, the material in question.

(4) A person required to obtain a special police clearance certificate in terms of subsection (2) shall request the certificate from the regulating authority responsible for the area within which the vehicle is ordinarily kept at night.

(5) At the request of a person required to obtain a special police clearance certificate in terms of subsection (2), the regulating authority shall, upon being satisfied that—

- (a) the vehicle is ordinarily kept at night within the area for which the regulating authority is responsible; and
- (b) the person has lawful cause for transporting in a vehicle any water infrastructure component, farm irrigation works component or dual use water component;

issue to the person a special police clearance certificate in accordance with subsection (6).

(6) A special police clearance certificate shall—

- (a) identify the holder of the certificate, the vehicle or vehicles in respect of which it is issued, the nature and quantity (by weight, length or both) of the water infrastructure components, farm irrigation works components or dual use water components to be transported, and the regulating authority that issued the certificate; and
- (b) specify the lawful cause for which the water infrastructure components, farm irrigation works components or dual use water components are to be transported in or upon the vehicle or vehicles referred to in the certificate; and
- (c) specify the period for which it shall be valid; and
- (d) be valid for not more than forty-eight hours:

Provide that of the water infrastructure components, farm irrigation works components or dual use water components are to be transported by or with the knowledge of the State, the National Water Authority, the Zambezi River Authority, a local authority or a licensed dealer in such components, the regulating authority may issue a special police clearance certificate having a period of validity of up to thirty days;

and

- (e) be signed by or on behalf of the regulating authority.

(7) No fee shall be charged for the issuance of a special police clearance certificate except the prescribed fee for a duplicate special police clearance certificate or the replacement of a lost or destroyed police clearance certificate.

39J Forfeiture of unlawfully transported water infrastructure or farm irrigation works components and vehicle used in connection therewith

- (1) Where a person is charged with contravening—

- (a) section 111B(1) or 111B(2), any water infrastructure component or farm irrigation works component that is the subject-matter of the offence shall be liable to seizure and forfeiture under this section; or
- (b) section 111D(2) alone, any water infrastructure component, farm irrigation works component or dual use water component that is the subject-matter of the offence shall be liable to seizure pending the prosecution of the offence; or
- (c) sections 111D(2) and 111B(2) concurrently, any water infrastructure component, farm irrigation works component or dual use water component that is the subject-matter of the offences and any vehicle used to transport the same shall be liable to seizure and forfeiture under this section.

(2) Where a person is charged with contravening sections 111D(2) and 111B(2) concurrently, and the vehicle used in connection with such offences was availed to him or her by another person who owns the vehicle, the vehicle shall still be liable to seizure and forfeiture under this section unless the owner proves that he or she was unaware that the vehicle would be so used.

(3) An inspector or police officer may seize any things liable to seizure or forfeiture which he or she has reasonable grounds for believing are the subject-matter of any offence under section 111B(1) or 111B(2), or of any concurrent offences under sections 111D(2) and 111B(2).

(4) All things liable to seizure or forfeiture which have been seized in terms of subsection (3) shall—

- (a) be taken forthwith and delivered to a place of security under the control of an inspector or police officer; and
- (b) be held until the criminal proceedings which are instituted in relation to those things—
 - (i) have been abandoned or discontinued or are concluded otherwise than with the conviction of the accused, in which event the custodian inspector or police officer shall forthwith restore any such thing to the accused or the owner thereof, as may be appropriate; or
 - (ii) have resulted in the conviction of the accused, in which event the convicting court shall, where the accused is convicted of contravening —
 - A. section 111D(2) alone, order any such thing to be restored to the accused or the owner thereof, as may be appropriate; or

B. section 111B(1) or 111B(2), or sections 111B(2) and 111D(2) concurrently, order any such thing to be forfeited to the State.”.

APPENDIX
(not part of the gazetted bill)

EXTRACTS FROM SECTION 16 OF CONSTITUTION OF ZIMBABWE

16 Protection from deprivation of property

(1) Subject to section *sixteen A*, no property of any description or interest or right therein shall be compulsorily acquired except

(7) Nothing contained in or done under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision for the acquisition of any property or any interest or right therein in any of the following cases—

(a) ...

(b) by way of penalty for breach of any law, including any law of a foreign country which, by or in terms of an Act of Parliament, is recognised or applied for any purpose in Zimbabwe, whether under civil process or after conviction of an offence, or forfeiture in consequence of a breach of the law or in pursuance of any order referred to in section 13(2)(b)ⁱ;

[Paragraph as amended by section 6 of Act 30 of 1990 – Amendment No. 11]

ⁱ Section 13(2)(b) of the Constitution is not germane for present purposes. It refers to an order punishing a person for contempt of court or contempt of Parliament.