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**PROPOSED AMENDMENTS TO ELECTORAL AMENDMENT BILL
AS NOTIFIED BY MINISTER OF JUSTICE AND LEGAL AFFAIRS
TO BE CONSIDERED BY HOUSE OF ASSEMBLY
THURSDAY 12th JULY 2012**

*Extract from
House of Assembly Votes and Proceedings for 10th July 2012*

NOTICE OF AMENDMENTS

Electoral Amendments Bill, 2011 (H.B. 3 2011)

CLAUSE 3 (AMENDMENT OF SECTION 4 OF CAP. 2:13)

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS:

On page 3 of the Bill, delete from paragraph (a) between lines 25 and 27 the definition of “*constituency*” and substitute with the following:

“constituency” means one of the ward constituencies, House of Assembly constituencies or Senatorial constituencies, as the case may be, into which Zimbabwe is divided in terms of section 100J of the Constitution;”

**CLAUSE 4: NEW SECTIONS INSERTED INTO NEW PART II
 (“ZIMBABWE ELECTORAL COMMISSION”)
AND MINOR AMENDMENTS**

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS:

On page 5 of the Bill, insert before the new section 5 (“Additional functions and powers of Commission”) of the Bill as inserted by the new Part II the following new sections:

“4A Corporate status and ancillary powers of Commission

“(1) The Zimbabwe Electoral Commission shall be a body corporate capable of suing and being sued and, subject to the Constitution and this Act, of performing all acts that bodies corporate may by law perform.

(2) Without limiting subsection (1) but subject to this Act, for the better exercise of its functions the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in Part 1 of the Sixth Schedule, either absolutely or conditionally and either solely or jointly with others.

4B Immunity of Commission, Commissioners, etc.

No legal proceedings shall lie against the Commission or any of the Commissioners or the Chief Executive Officer or any member of the staff of the Commission acting under the direction of the Commission or the Chief Elections Officer in respect of anything done in good faith and without gross negligence in pursuance of this Act.”

On Page 5 of the Bill, in line 9 delete from the new section 5 (“Additional functions and powers of Commission”)(1)(b) the words “in Government at all levels”.

On page 5 of the Bill, between lines 30 and 34, delete the subsection (2), the existing subsection 5(1) becoming clause 5.

On page 8 of the Bill, insert after subsection (1) of the new section 10 (“Staff of Commission during elections”), the following subclause, the existing subclauses (2) and (3) being renumbered subclauses (3) and (4) accordingly;

“(2) The Commission shall select, screen and train all persons seconded in accordance with subsection (1) to enable the persons so seconded to discharge their functions adequately under this Act.”

On page 8 of the Bill, between lines 13 and 18, delete from subsection (3) paragraph (a) of the new section 10 (“Staff of Commission during elections”), the existing paragraphs (b), (c), (d) and (e) being relettered paragraphs (a), (b),(c) and (d) accordingly.

After the end of page 8 of the Bill, insert after subsection (3)(now subsection(4)) of the new section 10 (“Staff of Commission during elections”), the following subsection:

“(5) For the avoidance of the doubt it is declared that the Commission may, instead of seconding persons to the posts referred to in subsection (4)(a), (c) and (d), appoint its own permanent staff to perform duties as Senatorial and House of Assembly constituency officers, ward elections officers and district special voting officers.”

On page 9 of the Bill, insert before the new section 11 (Provisions to ensure independence, impartiality and professionalism of Commissioners and staff and agents of Commission”) of the Bill as inserted by the new Part II the following new section:

“10A Provisions guaranteeing independence of Commission

(1) Every Commissioner and member of staff of the Commission shall perform their functions independently.

(2) The State and any private person (including a private voluntary organisation), and any other person, body, organ, agency or institution belonging to or employed by the State or any private person a local authority or otherwise, shall not interfere with, hinder or obstruct the Commission, its Commissioners or any member of staff of the Commission, in the exercise or performance of their functions.

(3) the State and any person, body, organ, agency or institution, belonging to or employed by the state, shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.”

CLAUSE 6 (AMENDMENT OF SECTION 21 OF CAP. 2:13)

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 12 of the Bill, delete the new subsection (6) of section 21 between lines 26 and 29 and substitute:

“(6) Within a reasonable period of the time after nomination day in an election, the Commission shall provide -

- (a) free of charge, to every nominated candidate, one copy in electronic form of the constituency voters roll to be used in the election for which the candidate has been nominated; and
- (b) at the request of any nominated candidate, and on payment of the prescribed fee, one copy in printed form of the constituency voters roll to be used in the election for which the candidate has been nominated.”

AMENDMENT OF CLAUSE 9 (NEW SECTION INSERTED IN CAP. 2:13)

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 13 of the Bill, in the new section 36A (“New Registration of Voters”)(1), delete paragraph (d) between lines 35 and 37 and substitute the following

“(d) the latest day upon which claims and applications for registration shall be received, which day shall not be less than sixty days and not more than six months after the day fixed in terms of paragraph(c).”

On page 13 of the Bill, in the new section 36A (“New Registration of Voters”)(2), insert after line 42 the following proviso to paragraph (a):

“Provided that when a new voters roll is produced after the conclusion of a new registration of voters ordered by the proclamation, such roll shall, with effect from such date as the Commission shall fix by notice in the *Gazette*, be the definitive voters roll on the basis of which the continuous registration of voters in terms of section 17A shall be conducted; and”.

On page 14 of the Bill, in the new section 36A (“New registration of Voters”)(3), insert after line 10 the following proviso to paragraph (a):

“Provided that if any such person seeks (by reason of having changed his or her residence) to be transferred to another ward from the ward in which he or

she was registered as voter on a voters roll immediately before the publication of a proclamation in terms of subsection (1), he or she must (notwithstanding anything to the contrary in this Act) -

- (a) appear before the constituency registrar of the constituency within which the ward to which he or she wishes to be transferred is located; and
- (b) produce an affidavit or fill an application in the prescribed form deposing to the following facts, namely that he or she -
 - (i) was registered as voter on a voters roll for another (named) ward immediately before the publication of a proclamation ordering the new registration of voters; and
 - (ii) now qualifies to be registered in the (named) ward located within the constituency of the constituency registrar before whom the voter now appears; and
- (c) Produce together with the affidavit or application referred to in paragraph (b) his or her proof of identity and his or her proof of residence in the ward to which he or she seeks to be transferred”.

AMENDMENT OF CLAUSE 10 (NEW SECTIONS INSERTED IN CAP. 2:13)

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 16 of the Bill, in the new section 37C (“Electoral Centers”)(4)(a), delete “(“ward return”)” on line 2.

AMENDMENT OF CLAUSE 11 (AMENDMENT OF SECTION 38 OF CAP.2:13)

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 17 of the Bill, delete this clause appearing between lines 30 and 39 and substitute the following clause:

“11 Amendment of section 38 of Cap. 2:13

Section 38 (“General, presidential and local authority elections”)(1)(a) of the Principal Act is amended by the repeal of subparagraph (ii) and the substitution of the following subparagraphs -

“and

- a) a day or days, not less than forty-two and not more than sixty-three days after the nomination day or last nomination day, as the case may be, fixed in terms of subparagraph (i), on which a poll shall be taken if a poll becomes necessary in terms of section 110(2); and
- b) a day or days, not less than twenty-eight and not more than forty-two days after the polling day or last polling day, as the case may be, fixed in terms of subparagraph (ii), on which a runoff Presidential election shall be taken if such an election becomes necessary in terms of section 110(3)(f)(iii);”

**AMENDMENT OF CLAUSE 18 (AMENDMENT OF SECTION 55
OF CAP. 2:13)**

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 25 of the Bill, delete subparagraph (ii) of a paragraph (a) of this clause between lines 3 and 7, and substitute the following:

- “(ii) in paragraph (b) by the repeal of subparagraphs (ii) and (iii) and the substitution of -
- “(ii) the candidates; and
 - (iii) the number of election agents permitted in terms of subsection (2a); and
 - (iiia) police officers on duty; and “;

On page 25 of the Bill, in paragraph (d), delete the inserted subsection (7a) of section 55 and substitute the following:

- “(7a) Police officers referred to in subsection (7) -
- (a) shall have the sole functions of maintaining order and preventing contraventions of the law so that voters may freely cast their votes;
 - (b) shall not interface with the electoral processes at the polling station;
 - (c) when inside a polling station, shall exercise their duties under the direction and instruction of the presiding officer.”

**AMENDMENT OF CLAUSE 19 (NEW SECTION SUBSTITUTED FOR
SECTIONS 59 AND 60 OF CAP. 2:13)**

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 25 of the Bill, insert in the new section 59 (“Voting by illiterate or physically handicapped voters”) in subsection (1)(b) the words, “and a police officer on duty” after the words “in the presence of two other electoral officers or employees of the Commission”.

**AMENDMENT OF CLAUSE 25 (AMENDMENT OF SECTION 67A OF CAP.
2:13)**

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 28 of the Bill, delete paragraph (b) of this clause between lines 38 and 43, and substitute the following:

- “(b) by the insertion after subsection (6) of the following subsection -

“(6a) The Commission shall ensure that any recount of votes in terms of this section is completed within five days after the announcement of the last result

in the Presidential, Senatorial, House of Assembly or Local Authority election, as the case may be, and that the result of the recount is announced within twenty-four hours of completion:

Provided that the Electoral Court, on application, may for good cause extend either of the periods referred to in this subsection.”

AMENDMENT OF CLAUSE 26 (NEW PARTS SUBSTITUTED FOR PARTS XIV OF CAP. 2:13

BY THE MINISTERS OF JUSTICE AND LEGAL AFFAIRS

On page 30 of the Bill, in the new section 74 (“Issue of postal ballot papers”)(2), insert after the words “the appropriate number of smaller envelopes” on line 25 the words “referred to in subsection (1)(c) and (d)”

On page 31 of the Bill, in the new section 75 (“Voting by post”)(1), delete paragraph (b) between lines 11 and 14 and substitute the following paragraphs, the existing paragraph (c) becoming paragraph (d)

“(b) then place the marked ballot paper in the unmarked envelope referred to in section 74(1)(d), efficiently close that envelope, and then place it in the envelope marked “Ballot Paper Envelope” and effectively close that envelope; and

(c) then place the envelope marked “Ballot Paper Envelope” in the covering envelope addressed to the Chief Elections Officer; and”.

On page 31 of the Bill, in the new section 75 (“Voting by Post”), delete subsection (2) between lines 40 and 45 and substitute the following subsection:

“(2) Where more than one election is being held concurrently in a constituency and the voter marks more than one ballot paper, he or she shall -

- (a) place each of the marked ballot papers in a separate unmarked envelope referred to in section 74(1)(d); then
- (b) place each of the envelopes referred to in paragraph (a) in a separate envelope marked “Ballot Paper Envelope”, then
- (c) place each of the envelopes referred to in paragraph (b) in a single covering envelope addressed to the Chief Election Officer.”

On page 34 of the Bill, in the new section 81 (“persons entitled to special votes”), delete paragraph (a) on line 8 and substitute the following paragraph:

“(a) is or will be an electoral officer; or”

On page 37 of the Bill, in the new section 81F (“Opening of special ballot boxes”)(1)(c), delete “constituency” in line 42 and substitute “district”.

AMENDMENT OF CLAUSE 33 (NEW PART INSERTED IN CAP. 2:13)

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 46 of the Bill, in the title of the new section 133I, delete “powers of Commission after investigation of alleged violence or intimidation” on lines 1 to 2 and substitute “Committee”.

AMENDMENT OF CLAUSE 34 (NEW PART INSERTED IN CAP. 2:13)

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 61 of the Bill, in paragraph 15 (“Audit of Commission's accounts and internal auditor”), and delete subparagraph 17 and 18 accordingly:

“Internal Auditor

15(1) Section 80 of the Public Finance Management Act [Chapter 22:19] (Act No. 11 of 2009) shall apply with necessary changes to the appointed of an internal auditor to the Commission in all respects as if the Commission were a Ministry or department of a Ministry.

- (2) The functions of the Internal Auditor shall be –
- (a) to monitor the financial administration and procedures of the commission to ensure that –
 - (i) proper accounting and bookkeeping transactions and procedures are carried out; and
 - (ii) proper accounting records are maintained; and
 - (iii) adequate internal checks and controls are maintained; and
 - (iv) the assets of the commission are properly accounted for; and
 - (v) all instructions and directives issued in terms of section 6 of the Public Finance Management Act [Chapter 22:19] (Act No. 11 of 2009) are complied with;
 - (b) to assess the effectiveness of any projects undertaken by the Commission; and
 - (c) to perform any other function that may be assigned to him or her by the Chief Elections Officer.
- (3) In the performance of his or her functions, the internal auditor –
- (a) shall have free access at all reasonable times to any records, books, vouchers, documents and resources under the control of the Commission; and
 - (b) shall have direct access to the chief Elections Officer; and
 - (c) may cause search to be made in and extracts to be taken from any record, book, voucher or documents of the Commission;
 - (d) may call upon any member of the staff of the Commission to give, and shall be entitled to receive without undue delay from that member, any explanations and information the internal auditor may reasonably require to enable him or her to perform his or her functions.
- (4) If at any time it appears to the internal auditor that an offence has been committed in relation to ----

- (a) the collection, receipt, custody, control or payment of any funds of the Commission; or
- (b) the receipt, custody, control, issue, sale, transfer or delivery of any commission;

he or she shall immediately bring the matter to the notice of the Commission, the Chief Elections Officer and any one of the persons approved by the Minister to be the Commission's external auditors in terms of paragraph 15 (1).

(5) Whenever the internal auditor has completed any internal audit programme, he or she shall prepare a report on the financial administration and accounting system of the Commission, and may include in such report any instances of hindrance or obstruction he or she has encountered in the discharge of his or her duties, and shall transmit copies of such reports to the Commission, the Chief Elections Officer and any one of the persons approved by the Minister to be the Commission's external auditors in terms of paragraph 15(1)."

**AMENDMENT OF CLAUSE 42 (AMENDMENTS TO CAP. 2:13
REGARDING POLLING STATION VOTERS ROLLS)**

BY THE MINISTER OF JUSTICE AND LEGAL AFFAIRS

On page 62 of the Bill, insert after subclause 42 the following provision to that subclause:

"Provided that the date so fixed must be a date after that on which the first general elections are held after the promulgation of this Act."
