

H.B. 8, 2021.]

HEALTH SERVICE AMENDMENT BILL, 2021

MEMORANDUM

This bill seeks to align the Health Service Act to the Constitution. To achieve this, the bill designates the Health Service as a Commission and provides for the functions of such Commission. The bill also discusses the parameters of collective job action by the Health Service. In particular the individual clauses of the bill are as follows:

Clause 1

Provides for the short title of the bill.

Clause 2

Provides for the functions of the Health Service Commission.

Clause 3

Provides that the membership of the Commission shall consist of a Chairperson, deputy chairperson and a minimum of two and a maximum of two other members.

Clause 4

Provides for the appointment and functions of an executive secretary and secretariat staff of the health Service Commission who shall not form, part of the Civil service.

Clause 5

Provides for the pronouncement of the Health Service as an essential service. It further provides for the restriction of collective job action for the Health Service.

Clause 6

Provides for the Minister to consult the Health Service Commission when establishing hospital management boards for each Government hospital.

Clause 7

Provides for the hospital management boards to seek approval from the Health Service Commission when they hire and fire staff.

Clause 8

Provides for the deletion of Board and substituting it with Commission wherever applicable throughout the Bill.

Clause 9

Clause 9 is a consequential amendment of the Labour Act [*Chapter 28:01*] to ensure that conditions of employment for the Health Service are a preserve of Health Service Act [*Chapter 15:16*] without the involvement of the Labour Act [*Chapter 28:01*].

BILL

To amend the Health Service Act [*Chapter 15:16*] and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

5 **1 Short title**

This Act may be cited as the Health Service Amendment Act, 2021.

2 Amendment of section 4 of Cap 15:16

Section 4 of the principal Act is repealed and substituted by the following—

 “4 **Functions of Commission**

10

 (1) The functions of the commission shall be—

 (a) to appoint qualified and competent persons to hold posts and grades in the Health Service;

 (b) to create grades in the Health Service and fix conditions of service for its members;

15

 (c) to exercise control and disciplinary powers over members of the Health Service;

H.B. 8, 2021.]

Printed by the Government Printer, Harare

- (d) to investigate grievances and to remedy the grievances of members of the Health Service concerning official acts or omissions;
- (e) to implement measures to ensure effective and efficient performance within and the general well-being of the Health Service; 5
- (f) to ensure members of the Health Service carry out their duties efficiently and impartially;
- (g) to advise the President and the Minister on any matters relating to the Health Service; 10
- (h) to promote throughout the Health Service—
- (i) the values and principles governing public administration set out in section 194 of the Constitution; and
- (ii) to promote throughout the Health Service the principles of public financial management as set out in section 298 of the Constitution; 15
- (i) to exercise any other function that is conferred or imposed on the Commission by this Act.
- (2) The Health Service Commission, with approval of the Minister, may make regulations for any of the purposes set out in subsection (1). 20
- (3) The Health Service Commission must exercise its functions in accordance with any general written policy directives which the Minister may give it.
- (4) In fixing salaries, allowances and other benefits of members of the Health Service, the Health Service Commission must act with approval of the President given on the recommendation of the Minister responsible for Finance and after consultation with the Minister.”. 25

3 Amending of section 5 of Cap 15:16

Section 5 of the principal Act is repealed and substituted by the following— 30

“5 Membership of Commission

- (1) The Commission shall consist of—
- (a) the Chairperson, who must be the chairperson of the Civil Service Commission;
- (b) a deputy chairperson appointed by the President upon recommendation from the Minister; 35
- (c) a minimum of two and a maximum of five other members appointed by the President upon recommendation from the Minister.
- (2) Members of the Commission referred to in subsection (1)(b) and (c) must be chosen for their knowledge and experience in the Health Service delivery or administration, human resources, legal and financial accounting expertise. 40
- (3) In appointing members of the Commission, the President shall pay due regard to the provisions of sections 17 and 18 of the Constitution of the Republic of Zimbabwe. 45

(4) Section 320 of the Constitution shall apply with necessary changes to the Commission.

5 (5) The Second Schedule shall apply to the qualifications of members of the Commission, their terms and conditions of service, vacation of office, dismissal and the procedures to be followed by the Commission at its meetings.”.

4 Amendment of Section 10 of Cap 15:16

Section 10 of the Principal Act is repealed and substituted by the following—

“10 Secretary and other staff of the commission

10 (1) The Commission shall—

- (a) appoint a Secretary; and
- (b) employ such other staff as may be necessary for the proper excise of its function:

15 Provided that the Commission shall consult with the Minister and the Minister responsible for Finance on the extent to which additional public monies may be required for this purpose.

(2) In order for a person to be appointed as Secretary of the Commission, he or she shall be a qualified medical practitioner, who possesses administrative qualities and has at least seven years, whether continuous or otherwise of practising and registering as such.

(3) The offices of the Secretary and other members of staff shall be public offices but not form part of the Civil Service.

(4) The Secretary shall, subject to the general control of the Commission—

- 25 (a) be responsible for carrying out decision of the commission and the day-to-day administration and management of affairs, staff and property of the Commission; and
- (b) be the custodian of the Commissions records; and
- 30 (c) attend all meetings of the Commission, but shall have no vote on any matter before the Commission; and
- (d) perform such other functions as may be assigned by the Commission.

(5) Any assignment of function to the Secretary in terms of subsection 4(d)—

- 35 (a) may be made generally or specifically and subject to such conditions, restrictions, reservations and exemptions as the commission may determine;
- (b) may be revoked by the Commission at any time
- 40 (c) shall not preclude the Commission itself from exercising such assigned functions.”.

5 Insertion of new section to Cap 15:16

The Principal Act is amended by the insertion, after section 16, of the following section—

“16A Restriction of right to strike for Health Service

Section 2 of the Principal Act is amended by the insertion of the following definitions

(1) In this section—

“critical care” or “intensive care” means medical care of any patient with a life-threatening injury or illness; 5

“medical emergency” means a sudden injury or serious illness that, if not treated immediately, could cause death or serious harm to the patient;

“essential service” bears the same meaning as in the Labour Act [Chapter 28:01]; 10

“collective job action” bears the same meaning as in the Labour Act [Chapter 28:01];

(2) Notwithstanding anything in the Labour Act [Chapter 28:01]—

(a) the Health Service shall be deemed as an essential service referred to in section 65(3) of the Constitution; and 15

(b) no collective job action whether lawful or unlawful shall continue for an uninterrupted period of 72 hours or for more than 72 hours in any given 14-day period; and

(c) notice of any collective job action must be given in writing 48 hours prior to the commencement of such collective job action. 20

(3) Any individual who is a member of the governing body of any trade union or representative body of members of the Health Service which incites or organises any job collective action contrary to subsection 2(b) or (c) shall be guilty of any an offence and liable to a fine not exceeding level 10 or to imprisonment for a period no exceeding three years or to both such fine and such imprisonment. 25

(4) A member of the Health Service is under an obligation, whilst employed by the Commission— 30

(a) to provide the professional skill, expertise, care and service expected of him or her as a member of the profession to which he or she belongs;

(b) during any collective job action, to provide the skill, expertise, care and service to patients in a medical emergency or needing critical or intensive care. 35

(5) If the Health Service Commission alleges that an individual member is in breach of subsection 4(a) or (b), the commission shall communicate a written complaint against that member to the disciplinary authority in accordance with the Health Service Regulations, 2006, published in Statutory Instrument 117 of 2006. The disciplinary authority shall— 40

(a) have the power to discipline that member (and report the matter to the relevant council in terms of the Health Professions Act [Chapter 27:19] where necessary); and 45

(b) be deemed to be seized with the complaint from the date that it received it, and conduct and complete the disciplinary hearing on the complaint within a reasonable time; and

(c) communicate to the commission of its decision in writing.”.

6 Amendment of Section 19 of Cap 15:16

Section 19 of the Principal Act is amended, in subsection (1), by the insertion, after “Minister”, of “in consultation with the Commission”.

5 **7 Amendment of Section 20 of Cap 15:16**

Section 20 of the Principal Act is amended, in subsection (1)(b), by the insertion, after, “staff”, of “with the approval of the commission”.

8 Amendment of 15:16

The Principal Act is additionally amended to the extent specified in the Schedule.

10 **9 Amendment of Cap 28:01**

Section 3 of the Labour Act [*Chapter 28:01*] is amended by the repeal of subsection 2 and substituted by the following

“(2) For the avoidance of any doubt, the conditions of employment of members of the —

- 15 (a) Public Service shall be governed by the Public Service Act [*Chapter 16:04*];
- (b) Health Service shall be governed by the Health Service Act [*Chapter 15:16*].”.

SCHEDULE

SUBSTITUTION OF “BOARD” WITH “COMMISSION”

The Health Service Act [*Chapter 15:16*] is amended, in the provisions specified below by the deletion of “Board” and the substitution by “Commission”—

1. In the Long title.
2. In section 2, in the definitions of “Board” and “Health Service Secretariat”.
3. Section 3, wherever the word “Board” appears.
4. In section 6 where the word “Board” is used with respect to the Health Service Board.
5. In section 7, wherever it appears.
6. In section 8, wherever it appears.
7. In section 11, wherever it appears.
8. In section 12 where the word “Board” is used with respect to the Health Service Board.
9. In section 13, wherever the word “Board” appears.
10. In section 14, where the word “Board” is used with respect to the Health Service Board.
11. In section 15, where the word “Board” is used with respect to the Health Service Board.
12. In section 16, wherever the word “Board” appears.
13. In section 17, where the word “Board” is used with respect to the Health Service Board.
14. In section 18, where the word “Board” is used with respect to the Health Service Board.

15. In section 19, where the word “Board” is used with respect to the Health Service Board.
16. In section 20, where the word “Board” is used with respect to the Health Service Board.
17. In section 21, wherever the word “Board” appears.
18. In section 22, where the word “Board” is used with respect to the Health Service Board.
19. In section 23, Where the word “Board” is used with respect to the Health Service Board.
20. In section 24, wherever the word “Board” appears.
21. In section 26, wherever the word “Board” appears.
22. In section 27, wherever the word “Board” appears.
23. In section 28, wherever the word “Board” appears.
24. In section 33, wherever the word “Board” appears.
25. In the Second Schedule, where the word “Board” is used with respect to the Health Service Board.