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POLICE AMENDMENT

POLICE AMENDMENT BILL, 2023

MEMORANDUM

The purpose of this Bill is to amend the Police Act [*Chapter 11:10*], to achieve the following principal objectives:

- section 221(1) of the Constitution provides that the Commissioner-General of Police is to be appointed by the President after consultation with the Minister responsible for the police;
- to align the tenure of office of the Commissioner-General of Police with section 221(2) of the constitution;
- the functions of the Commissioner-General to be aligned with section 221(4) of the Constitution;
- Police Act to be aligned with sections 243(2), 255(2) and 259(11) of the Constitution;
- section 223(1)(a) gives power to appoint qualified and competent persons to hold posts or ranks in the Police Service;
- repeal of section 32 of the Police Act which gives right of trial before a Magistrate Court;
- aligning provisions relating to appointment, promotion, discharge, retirement and conditions of service of members of Police Service with provisions of the Constitution.

In brief therefore, the Bill amends various provisions of the Act so that it complies with the Constitution.

In more detail the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause amends the definition of the Commissioner-General and replaces the term "Police Force" with the term "Police Service".

Clause 3

This Clause sets out the appointment of the Commissioner-General as provided in the Constitution of Zimbabwe.

Clause 4

This clause sets out the terms and conditions of service of the Commissioner-General as provided for in the Constitution. The Commissioner-General shall be appointed for a period of five years which may be renewed once.

Clause 5

This clause places the duty on the Commissioner-General of Police to act in accordance with any written policy directives given by the Minister responsible for the police.

Clause 6

This clause provides for the standing orders to be formulated by the Police Service Commission on the advice of the Commissioner-General of Police with the approval of the Minister.

Clause 7

This clause provides that the Commissioner-General should comply with the directions of the Prosecutor-General.

Clause 8

This clause provides that the Commissioner-General must comply with any directives given to him or her by Zimbabwe Human Rights Commission in terms of section 243(2) of the Constitution and directives given by Zimbabwe Anti-Corruption Commission in terms of section 255(2) of the Constitution.

Clause 9

This clause provides that the Police Service Commission through the Commissioner-General may appoint, suspend and discharge non-commissioned members.

Clause 10

This clause provides that the Police Service Commission may promote non-commissioned officers.

Clause 11

This clause sets out that the Police Service Commission may reappoint to the Regular Force a person who has retired in terms of this Act.

Clause 12

This clause sets out that the Police Service Commission may discharge a Regular Force member, other than an officer, on the grounds of continued ill-health or some infirmity of body or mind.

Clause 13

This clause stipulates that the Commissioner-General may discharge a Regular Force member with the consent of the Police Service Commission.

Clause 14

This clause repeals section 32 of the Act which gives right to trial before a Magistrates Court. All disciplinary trials even of commissioned officers should be conducted by a board of officers only.

Clause 15

This clause repeals section 46 of the Act since no trial will be done by a Magistrate.

Clause 16

This clause sets out that the Police Service Commission may discharge, demote and reprimand a member, other than an officer, who is convicted of any offence and sentenced to imprisonment without the option of a fine.

Clause 17

This clause provides for an appeal to the Police Service Commission.

Clause 18

This clause provides for the delegation of functions of the Police Service Commission to the Commissioner-General subject to section 321(2) of the Constitution.

Clause 19

This clause provides for the alignment of section 67 of the principal Act to section 50(9) of the Constitution.

Clause 20

This clause provides for the alignment of section 72 of the principal Act to section 223(2) of the Constitution.

BILL

An Act to amend the Police Act [*Chapter 11:10*]; and to provide for matters connected with or incidental to the foregoing.

WHEREAS sections 219, 222 and 223 of the Constitution provides that:

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“219 Police Service and its functions

(1) There is a Police Service which is responsible for—

- (a) detecting, investigating and preventing crime;*
- (b) preserving the internal security of Zimbabwe;*
- (c) protecting and securing the lives and property of the people;*
- 10 *(d) maintaining law and order; and*
- (e) upholding this Constitution and enforcing the law without fear or favour;*

(2) The Police Service must exercise its functions in co-operation with—

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- (a) any intelligence service that may be established by law;*
- (b) any body that may be established by law for the purpose of detecting, investigating or preventing particular classes of offences; and*
- (c) regional and international bodies formed to combat crime.*

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(3) *The Police Service must be non-partisan, national in character, patriotic, professional and subordinate to the civilian authority as established by this Constitution.*

(4) *An Act of Parliament must provide for the organisation, structure, management, regulation, discipline and, subject to section 223, the conditions of service of members of the Police Service.* 5

222 Establishment and composition of Police Service Commission

(1) *There is a Police Service Commission consisting of a chairperson, who must be the chairperson of the Civil Service Commission, and a minimum of two and a maximum of six other members appointed by the President.* 10

(2) *Members of the Police Service Commission must be chosen for their knowledge of or experience in the maintenance of law and order, administration, or their professional qualifications or their general suitability for appointment, and—* 15

(a) *at least half of them must be persons who are not and have not been members of the Police Service;*

(b) *at least one of them must have held a senior rank in the Police Service for one or more periods amounting to at least five years.* 20

223 Functions of Police Service Commission

(1) *The Police Service Commission has the following functions—*

(a) *to employ qualified and competent persons to hold posts or ranks in the Police Service;*

(b) *to fix and regulate conditions of service, including salaries, allowances and other benefits, of members of the Police Service;* 25

(c) *to ensure the general well-being and good administration of the Police Service and its maintenance in a high state of efficiency;* 30

(d) *to ensure that members of the Police Service comply with section 208;*

(e) *to foster harmony and understanding between the Police Service and civilians;*

(f) *to advise the President and the Minister on any matter relating to the Police Service; and* 35

(g) *to exercise any other function conferred or imposed on the Commission by this Constitution or an Act of Parliament.*

(2) *The Police Service Commission, with the approval of the Minister responsible for the Police Service, may make regulations for any of the purposes set out in subsection (1).* 40

(3) *In fixing the salaries, allowances and other benefits of members of the Police Service, the Police Service Commission must act with the approval of the President given on the recommendation of the Minister responsible for finance and after consultation with the Minister responsible for the Police Service.”.* 45

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title

This Act may be cited as the Police Amendment Act, 2023.

2 Amendment of section 2 of Cap. 11:10

5 Section 2 (“Interpretation”) of the Police Act [*Chapter 11:10*] (hereinafter called the “principal Act”) is amended by—

- (a) the repeal of “Commissioner” and substitution of—
““Commissioner-General”, means the person in command of the police service appointed in terms of section 221 of the Constitution;”;
- 10 (b) the repeal of “Police Force” and substitution of—
““Police Service” means the Police Service established in terms of section 219 of the Constitution;”.

3 Amendment of section 5 of Cap 11:10

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

- 15 “5 Appointment of the Commissioner-General
The President shall appoint the Commissioner-General after consultation with the Minister responsible for the Police Service.”.

4 Amendment of section 6 of Cap 11:10

Section 6 of the principal Act is repealed and substituted by—

- 20 “6 Terms and conditions of service of Commissioner-General
(1) The Commissioner-General shall be appointed for a period of five years which may be renewed once.
(2) The Commissioner-General may, with the consent of the President, whatever the length of his or her pensionable service or age,
25 retire before completing a period of five years in that appointment.
(3) Subject to this Act, the terms and conditions of service of the Commissioner-General shall be as fixed by the President from time to time.”.

5 Amendment of section 8 of Cap 11:10

30 Section 8 (“Powers and Functions of the Commissioner-General”) of the principal Act is amended by the insertion of the following subsections, the existing section becoming subsection (1)—

- “(2) The Minister, acting under the authority of the President, may in writing, issue policy directives to the Commissioner-General.
(3) Upon receiving policy directives from the Minister, the Commissioner-
35 General shall take all necessary steps to comply with such directives.”.

6 Amendment of section 9 of Cap 11:10

Section 9 of the principal Act is repealed and substituted by—

- “9 Standing Orders
(1) Subject to this Act, the Police Service Commission shall
40 formulate Standing Orders on the advice of the Commissioner-General and with the approval of the Minister.

(2) The Standing Orders shall be made with respect to the discipline, regulation and orderly conduct of the affairs of the Police Service.”.

7 Amendment of section 12 of Cap 11:10

Section 12 (“Compliance with directives of Attorney-General”) of the principal Act is amended— 5

- (a) by the deletion of “Attorney-General” and the substitution of “Prosecutor-General”.
- (b) by the deletion of “subsection (4a) of section 76” and the substitution of “subsection (11) of section 259”.

8 New section inserted in Cap 11:10 10

The principal Act is amended by the insertion after section 12 of the following section—

“12A. Commissioner-General to comply with directives from certain Commissions

The Commissioner-General must comply with any directive given to him or her by— 15

- (a) the Zimbabwe Human Rights Commission in terms of section 243(2) of the Constitution;
- (b) the Zimbabwe Anti-Corruption Commission in terms of section 255(2) of the Constitution.”. 20

9 Amendment of section 15 of Cap 11:10

Section 15 of the principal Act is repealed and substituted by—

“15 Appointment, discharge, etc. of non-commissioned members

Subject to this Act, the Police Service Commission may in consultation with the Commissioner-General— 25

- (a) appoint any person to any office or rank in the Police Service;
- (b) reprimand, suspend, reduce in rank or discharge any member other than an officer.”.

10 Amendment of section 16 of Cap 11:10

Section 16 (“Promotion of non-commissioned members”) of the principal Act is amended in subsection (1) by the deletion of “Commissioner-General” and the substitution of “Police Service Commission”. 30

11 Amendment of section 18 of Cap 11:10

Section 18 (“Reappointing and acting ranks”) of the principal Act is amended, in subsection (1) by the deletion of “the Commissioner, in consultation with the”. 35

12 Amendment of section 20 of Cap 11:10

Section 20 (“Discharge on medical grounds”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “the Commissioner” and the substitution of “the Police Service Commission may”;
 - (b) in subsection (2) by the deletion of “Commissioner” and the substitution of “Commission”;
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- (c) in subsection (3) by the deletion of “Commissioner” and the substitution of “Commission”.

13 Amendment of section 21 of Cap 11:10

5 Section 21 (“Discharge of redundancy”) of the principal Act is amended in subsection (1) by deletion of “Minister” and the substitution of “Police Service Commission”.

14 Repeal of 32 of Cap 11:10

Section 32 of the principal Act is repealed.

15 Repeal of 46 of Cap 11:10

10 Section 46 of the principal Act is repealed.

16 Amendment of section 48 of Cap 11:10

Section 48 (“Procedure on conviction of member for certain offences”) of the principal Act is amended by the deletion of “Commissioner-General” and substituted with “Police Service Commission”.

15 **17 Amendment of section 51 of Cap 11:10**

Section 51 (“Appeal”) of the principal Act is amended—

- (a) by the insertion of “(1)” before “A member” and the deletion of everything after “prescribed”;
- (b) by the insertion of the following subsection (2)—

20 “(2) An appeal in terms of subsection (1) shall not have the effect of suspending the determination or decision appealed against.”.

18 New section inserted in Cap 11: 10

Section 55 of the principal Act is amended by the insertion of the following section after section 55—

25 **“55A Delegation of Police Service Commission’s functions**

Subject to section 321(2) of the Constitution, the Police Service Commission may from time to time delegate to the Commissioner-General any right, function, power or duty conferred upon it by this Act or any other enactment.”.

30 **19 Amendment of section 67 of Cap 11:10**

Section 67 (“Non-liability for acts done under irregular warrant”) of the principal Act is amended by the deletion of “other than legal proceedings for unlawful arrest or detention”.

20 Amendment of section 72 of Cap 11:10

35 Section 72 (“Regulations”) of the principal Act is amended in subsection (1)—

- (a) by the deletion of “109” and the substitution of “223(2)”;
- (b) by the insertion of “Police Service Commission with the approval of” before “the Minister” and the deletion of “in consultation with the Commission and with the approval of the Commissioner”;
- 40 (c) by the deletion of “his” and substituted with “its”.

