

LOCAL GOVERNMENT LAWS AMENDMENT BILL, 2016

MEMORANDUM

The purpose of this Bill is to amend the Rural District Councils Act [*Chapter 29:13*] and the Urban Councils Act [*Chapter 29:15*] so as to align certain provisions of those Act with section 278(2) and (3) of the Constitution, which provides as follows:

“(2) An Act of Parliament must provide for the establishment of an independent tribunal to exercise the function of removing from office mayors, chairpersons and councillors, but any such removal must only be on the grounds of—

- (a) inability to perform the functions of their office due to mental or physical incapacity;
- (b) gross incompetence;
- (c) gross misconduct;
- (d) conviction of an offence involving dishonesty, corruption or abuse of office; or
- (e) wilful violation of the law, including a local authority by-law.

(3) A mayor, chairperson or councillor of a local authority does not vacate his or her seat except in accordance with this section.”

BILL

To amend the Rural District Councils Act [*Chapter 29:13*], and the Urban Councils Act [*Chapter 29:15*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Local Government Laws Amendment Bill, 2016.

PART II

AMENDMENTS TO RURAL DISTRICT COUNCILS ACT [*CHAPTER 29:13*]

3 New sections substituted for section 157 of Cap. 29:13

Section 157 of the Rural District Councils Act [*Chapter 29:13*] (hereinafter in this Part called the “principal Act”) is repealed and substituted by the following sections—

“157 Suspension and removal of councillors from office

(1) In accordance with section 278 of the Constitution, the chairperson or councillor of a council shall only be removed from office on the grounds of—

- (a) inability to perform the functions of their office due to mental or physical incapacity; or
- (b) gross incompetence; or
- (c) gross misconduct; or
- (d) conviction of an offence involving dishonesty, corruption or abuse of office; or
- (e) wilful violation of the law, including a local authority by-law.

(2) Subject to this section, if the Minister has reasonable grounds for suspecting that a chairperson or councillor—

- (a) is unable to perform the functions of his or her office due to mental or physical incapacity; or
- (b) is guilty of any misconduct referenced in subsection (1)(b), (c), (d) or (e);

the Minister shall, by written notice to the chairperson or councillor and the council concerned—

- (c) suspend the chairperson or councillor from exercising all or any of his or her functions in terms of this Act; and
- (d) specify the reasons for the suspension and the nature of the allegations against the chairperson or councillor; and
- (e) afford an opportunity to the chairperson or councillor to respond to the allegation within seven days of receiving the notice.

(3) Any allowance that is payable to chairpersons or councillors in terms of this Act shall continue to be paid to a chairperson or councillor who has been suspended in terms of subsection (2) for so long as he or she is suspended, unless the misconduct in question involves—

- (a) dishonesty in connection with the funds or other property of the council; or
- (b) serious negligence resulting in the loss of any funds or property of the council; or
- (c) for gross mismanagement of the funds, property or affairs of the council;

whether or not the chairperson's or councillor's responsibility for such dishonesty is shared with other councillors or with any employees of the council.

(4) Not earlier than fourteen days after the Minister has suspended a chairperson or councillor in terms of subsection (1), and in any event within forty-five days, the Minister shall, if no response is made to a notice in terms of subsection (2)(e), or if that response is not satisfactory to the Minister, cause a thorough investigation to be conducted, where necessary, with all reasonable dispatch to determine whether sufficient evidence exists for the issue of the removal of the chairperson or councillor on any of the grounds specified in subsection (1) to be referred to an independent tribunal.

(5) This section applies, with such changes as may be necessary, to any allegation of inability on the part a chairperson or councillor unable to perform the functions of his or her office due to mental or physical incapacity.

157A Independent tribunals: appointment and procedure

(1) An independent tribunal referred to in section 278(2) of the Constitution shall be constituted whenever the issue of the removal of a chairperson or councillor on any of the grounds specified in section 157(1) needs to be referred to it.

(2) An independent tribunal shall consist of—

- (a) a chairperson appointed by the Minister from a list of at least three and not more than nine registered legal practitioners with at least five years' experience in private or public practice, who shall be nominated by the Judicial Service Commission (if the original list consists of fewer than nine nominees, the

Minister may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed nine); and

- (b) subject to subsection (3), two other members appointed by the Judicial Service Commission from a list of at least three and not more than nine persons nominated by the Minister, who shall be persons experienced in local government administration, whether as former councillors or as administrators (if the original list consists of fewer than nine nominees, the Judicial Service Commission may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed nine).

(3) If the case to be determined by the tribunal involves financial impropriety, one of the members of the tribunal must be a person registered under the Public Accountants and Auditors Act [*Chapter 27:12*], in which event the Minister shall submit to the Judicial Service Commission one list of at least three and not more than six persons qualified as provided in subsection (2)(b), and another list of at least three and not more than six persons nominated by the Minister, who shall be persons registered under the Public Accountants and Auditors Act [*Chapter 27:12*]:

Provided that if either of the original lists consists of fewer than six nominees, the Judicial Service Commission may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed six.

(4) In accepting nominations for appointment to the tribunal in terms of subsections (2) and (3), the Minister or the Judicial Service Commission, as the case may be, shall notify each other of the names of at least two alternates for the office of chairperson of the tribunal (drawn from the list of nominees for that post) and at least two alternates for either of the two other offices (drawn from the list of nominees supplied for those posts) who shall assume the chairpersonship or membership of the tribunal in case any such office becomes vacant in the course of the tribunal's proceedings.

(5) In nominating or appointing members or alternates to a tribunal the Minister or the Judicial Service Commission, as the case may be, must be mindful of the requirement that the tribunal should consist of members of both sexes.

- (6) A person shall not be eligible for appointment to an independent tribunal if—
 - (a) he or she is not a citizen of Zimbabwe ordinarily resident in Zimbabwe; or
 - (b) he or she has, in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) he or she has, within the period of five years immediately preceding the date of his or her proposed appointment, been sentenced in any country to a term of imprisonment of six months or more, imposed without the option of fine, and has not received a free pardon.

(7) Members of the tribunal shall be paid such sitting and other allowances from the funds of the local authority of the chairperson or councillor whose removal from office they

are considering, at such rate as shall be fixed by the Minister prescribed in a statutory instrument:

Provided that the local authority concerned is entitled (in terms of paragraph 6 of the Fourth Schedule of the Urban Councils Act [*Chapter 29:15*]) to seek from the tribunal an order of reimbursement of all or part of the costs it incurred under this subsection if the chairperson or councillor is removed from office.

(8) The head of the Ministry shall provide such secretarial and support services as may be required by a tribunal.

(9) A member of a tribunal may resign his or her office at any time by giving the chairperson, or the Minister in the case of a chairperson, at least fourteen days' notice of his or her intention to resign, whereupon the next available person on the appropriate list of alternates shall assume office in his or her stead.

(10) The Minister may, after consulting the Judicial Service Commission, remove a member from a tribunal on the grounds of—

- (a) inability to discharge the functions of his or her office, whether arising from infirmity of mind or body or any other cause; or
- (b) negligent or improper conduct in connection with the discharge of his or her duties as a member of the tribunal.

(11) On the death of, or the vacation of office by, a member of the tribunal, the next available person on the appropriate list of alternates shall assume office in his or her stead.

(12) Subject to paragraph 4(5)(c)(i) of the Fourth Schedule to the Urban Councils Act, the office of a member of a tribunal shall terminate on the day that a determination is made whether to remove a chairperson or councillor from office.

(13) In the course of its hearings—

- (a) the tribunal shall be bound by the rules of natural justice, and otherwise by the rules set forth in the Fourth Schedule to the Urban Councils Act; and
- (b) any contempt of the tribunal by any person before the tribunal shall constitute the crime of contempt of court in terms of section 181 of the Criminal Law Code.

(14) The determination of the tribunal shall be final, subject to the right of an aggrieved person to bring any proceedings or decisions of the tribunal on review before the High Court in accordance with section 27 of the High Court Act [*Chapter 7:06*].”.

PART III

AMENDMENTS TO URBAN COUNCILS ACT [CHAPTER 29:15]

3 New sections substituted for section 114 of Cap. 29:15

Section 114 of the Urban Councils Act [*Chapter 29:15*] (hereinafter in this Part called the “principal Act”) is repealed and substituted by the following sections—

“114 Suspension and removal of councillors from office

(1) In accordance with section 278 of the Constitution, the mayor, chairperson or councillor of a council shall only be removed from office on the grounds of—

- (a) inability to perform the functions of their office due to mental or physical incapacity; or
- (b) gross incompetence; or
- (c) gross misconduct; or
- (d) conviction of an offence involving dishonesty, corruption or abuse of office; or
- (e) wilful violation of the law, including a local authority by-law.

(2) Subject to this section, if the Minister has reasonable grounds for suspecting that a mayor, chairperson or councillor—

- (a) is unable to perform the functions of his or her office due to mental or physical incapacity; or
- (b) is guilty of any misconduct referenced in subsection (1)(b), (c), (d) or (e);

the Minister shall, by written notice to the mayor, chairperson or councillor and the council concerned—

- (c) suspend the mayor, chairperson or councillor from exercising all or any of his or her functions in terms of this Act; and
- (d) specify the reasons for the suspension and the nature of the allegations against the mayor, chairperson or councillor; and
- (e) afford an opportunity to the mayor, chairperson or councillor to respond to the allegation within seven days of receiving the notice.

(3) Any allowance that is payable to mayors, chairpersons or councillors in terms of this Act shall continue to be paid to a mayor, chairperson or councillor who has been suspended in terms of subsection (1) for so long as he or she is suspended, unless the misconduct in question involves—

- (a) dishonesty in connection with the funds or other property of the council; or
- (b) serious negligence resulting in the loss of any funds or property of the council; or
- (c) gross mismanagement of the funds, property or affairs of the council;

whether or not the mayor's, chairperson's or councillor's responsibility for such dishonesty is shared with other councillors or with any employees of the council.

(4) Not earlier than fourteen days after the Minister has suspended a mayor, chairperson or councillor in terms of subsection (1), and in any event within forty-five days, the Minister shall, if no response is made to a notice in terms of subsection (2)(e), or if that response is not satisfactory to the Minister, cause a thorough investigation where necessary to be conducted with all reasonable dispatch to determine whether sufficient evidence exists for the issue of the removal of the mayor, chairperson or councillor on any of the grounds specified in subsection (1) to be referred to an independent tribunal.

(5) This section applies, with such changes as may be necessary, to any allegation of inability on the part a mayor, chairperson or councillor unable to perform the functions of his or her office due to mental or physical incapacity.

114A Independent tribunals: appointment and procedure

(1) An independent tribunal referred to in section 278(2) of the Constitution shall be constituted whenever the issue of the removal of a mayor, chairperson or councillor on any of the grounds specified in section 114(1) needs to be referred to it.

(2) An independent tribunal shall consist of—

- (a) a chairperson appointed by the Minister from a list of at least three and not more than nine registered legal practitioners with at least five years' experience in private or public practice, who shall be nominated by the Judicial Service Commission (if the original list consists of fewer than nine nominees, the Minister may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed nine); and
- (b) subject to subsection (3), two other members appointed by the Judicial Service Commission from a list of at least three and not more than nine persons nominated by the Minister, who shall be persons experienced in local government administration, whether as former councillors or as administrators (if the original list consists of fewer than nine nominees, the Judicial Service Commission may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed nine).

(3) If the case to be determined by the tribunal involves financial impropriety, one of the members of the tribunal must be a person registered under the Public Accountants and Auditors Act [*Chapter 27:12*], in which event the Minister shall submit to the Judicial Service Commission one list of at least three and not more than six persons qualified as provided in subsection (2)(b), and another list of at least three and not more than six persons nominated by the Minister, who shall be persons registered under the Public Accountants and Auditors Act [*Chapter 27:12*]:

Provided that if either of the original lists consists of fewer than six nominees, the Judicial Service Commission may request an additional nominee or list of nominees so that the total number of nominees including those in the original list do not exceed six.

(4) In accepting nominations for appointment to the tribunal in terms of subsections (2) and (3), the Minister or the Judicial Service Commission, as the case may be, shall notify each other of the names of at least two alternates for the office of chairperson of the tribunal (drawn from the list of nominees for that post) and at least two alternates for either of the two other offices (drawn from the list of nominees supplied for those posts) who shall assume the chairpersonship or membership of the tribunal in case any such office becomes vacant in the course of the tribunal's proceedings.

(5) In nominating or appointing members or alternates to a tribunal the Minister or the Judicial Service Commission, as the case may be, must be mindful of the requirement that the tribunal should consist of members of both sexes.

(6) A person shall not be eligible for appointment to an independent tribunal if—

- (a) he or she is not a citizen of Zimbabwe ordinarily resident in Zimbabwe; or
- (b) he or she has, in terms of a law in force in any country—

- (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
- (ii) he or she has, within the period of five years immediately preceding the date of his or her proposed appointment, been sentenced in any country to a term of imprisonment of six months or more, imposed without the option of fine, and has not received a free pardon.

(7) Members of the tribunal shall be paid such sitting and other allowances from the funds of the relevant local authority, at such rate as shall be prescribed by the Minister generally, and in so doing so the Minister may prescribe different rates for different classes of local authorities in a statutory instrument:

Provided that the relevant local authority concerned is entitled (in terms of paragraph 6 of the Fourth Schedule) to seek from the tribunal an order of reimbursement of all or part of the costs it incurred under this subsection if the mayor, chairperson or councillor is removed from office.

(8) The head of the Ministry shall provide such secretarial and support services as may be required by a tribunal.

(9) A member of a tribunal may resign his or her office at any time by giving the chairperson, or the Minister in the case of a chairperson, at least fourteen days' notice of his or her intention to resign, whereupon the next available person on the appropriate list of alternates shall assume office in his or her stead.

(10) The Minister may, after consulting the Judicial Service Commission, remove a member from a tribunal on the grounds of—

- (a) inability to discharge the functions of his or her office, whether arising from infirmity of mind or body or any other cause; or
- (b) negligent or improper conduct in connection with the discharge of his or her duties as a member of the tribunal.

(11) On the death of, or the vacation of office by, a member of the tribunal, the next available person on the appropriate list of alternates shall assume office in his or her stead.

(12) Subject to paragraph 4(5)(c)(i) of the Fourth Schedule, the office of a member of a tribunal shall terminate on the day that a determination is made whether to remove a mayor, chairperson or councillor from office.

(13) In the course of its hearings—

- (a) the tribunal shall be bound by the rules of natural justice, and otherwise by the rules set forth in the Fourth Schedule; and
- (b) any contempt of the tribunal by any person before the tribunal shall constitute the crime of contempt of court in terms of section 181 of the Criminal Law Code.

(14) The determination of the tribunal shall be final, subject to the right of an aggrieved person to bring any proceedings or decisions of the tribunal on review before the High Court in accordance with section 27 of the High Court Act [*Chapter 7:06*].”

(15) The Minister may in consultation with the Minister responsible for justice, amend the Fourth Schedule by statutory instrument:

Provided that no such statutory instrument shall come into force until a draft thereof is laid before Parliament and if no resolution nullifying the same is made by either House within the first seven sitting days after the draft is laid before the House concerned.

4 New Schedule inserted in Cap 29:15.

The principal Act is amended by the insertion after the Third Schedule of the following Schedule—

“FOURTH SCHEDULE (Section 114a(13)(A))

RULES OF INDEPENDENT TRIBUNALS

Procedure before and immediately following allegation of misconduct

1.(1) If, on completion of the investigation referred to in section 114(4) (or section 157(4) in the case of the Rural District Councils Act), it is found that an allegation of misconduct should be preferred against the mayor, chairperson or councillor (hereinafter called “the respondent”), the independent tribunal shall, within thirty days after the completion of the investigation—

- (a) inform the respondent, in writing, of the nature of the allegation against him or her, and call upon him or her to submit a written reply to the allegation within fourteen days;
- (b) where possible, furnish to the respondent copies of any material documentary evidence, if any, relating to the allegation of misconduct, or afford the respondent an opportunity of having sight of any such evidence.

(2) The independent tribunal shall, within seven days of receiving the respondent’s reply or, if no such reply has been received within the period allowed for reply in terms of section 114(2)(e) of the Urban Councils Act [*Chapter 29:15*] or section 157(2)(e) of the Rural District Councils Act [*Chapter 29:13*], determine whether the respondent has a case to answer, and if so, it shall, within that period notify the respondent in writing accordingly.

Sittings and powers of independent tribunal

2.(1) For the purpose of this Schedule the chairperson of the independent tribunal shall convene a sitting of the tribunal whenever he or she considers it to be necessary at such time and place as he or she determines.

- (2) The quorum at any sitting of the tribunal shall be all three members:

Provided that the tribunal may, in addition to sitting with all members physically present, hold or continue a sitting by the use of any means of communication by which all the members at the meeting can hear and be heard at the same time (hereinafter referred to as an “electronic sitting”).

(2) A member who participates in an electronic sitting is taken for all purposes to have been present at the sitting.

(3) The chairperson of the tribunal may establish procedures for electronic sittings (including recording the minutes of such sittings).

(4) The chairperson may conduct open or closed sittings of the tribunal, and shall be entitled, at any open sitting, to exclude any particular person or persons for the preservation of order, for the due conduct of the inquiry or for any other reason

(5) The tribunal shall, through the chairperson, have the powers contained in the Commissions of Inquiry Act [*Chapter 10:07*], to subpoena witnesses and administer oaths, and to compel witnesses thus summoned to take an oath or affirmation and to remain in attendance at the hearing until excused by the tribunal.

Hearings before independent tribunal

3.(1) Where the independent tribunal determines that a respondent has a case to answer and so notifies the respondent in accordance with paragraph 1(3), it shall in the same notification give not less than seven days' notice to the respondent of the time, date and place of the hearing of the allegation of misconduct against him or her.

(2) The hearing shall be conducted without the need to observe the rules of procedure and evidence ordinarily applicable in criminal or civil proceedings, provided, however, that the respondent concerned is afforded the opportunity to respond to every allegation of misconduct and that substantial justice is done.

(3) Findings of fact by the tribunal shall be made by a majority of the members of the tribunal on the basis of a balance of probabilities.

(4) Findings of law or of mixed law and facts shall be reserved for the chairperson alone.

(5) At the hearing the respondent and the independent tribunal may, if either so wishes, be advised and, in the case of the respondent, represented by a legal practitioner.

(7) The independent tribunal may proceed to consider the allegation of misconduct in the absence of the respondent concerned if the respondent fails to attend the hearing without reasonable cause after having been duly notified.

(8) The chairperson of the independent tribunal shall keep or cause to be kept an accurate record of the substance of the evidence led at the hearing.

Determination of allegation of misconduct

4.(1) At the conclusion of a hearing the independent tribunal shall proceed to determine whether or not the respondent is guilty of misconduct as alleged.

(2) Where the independent tribunal determines that the respondent is not guilty of misconduct, the independent tribunal shall without delay notify the respondent, the Minister and the council concerned in writing accordingly

(3) Where the independent tribunal determines that a respondent is guilty of misconduct—

(a) the respondent is deemed to be removed from office on the date of that determination and his or her seat becomes vacant on that date; and

(b) the independent tribunal shall without delay notify the respondent, the Minister and the council concerned in writing accordingly.

(4) It shall be competent for the independent tribunal to find a respondent guilty of an act of misconduct other than the act which the respondent was originally alleged to have committed if the facts disclose such other act.

(5) Where the independent tribunal has not made a finding that the respondent is guilty of such other act as is referred to in subparagraph (4) but believes that there is a reasonable suspicion that the respondent may be guilty of such act—

- (a) the independent tribunal shall refer the matter back for further investigation by the Minister in terms of section 114(4) (or section 157(4) in the case of the Rural District Councils Act); and
- (b) the independent tribunal shall adjourn until the completion of the investigation in terms of section 114(4) (or section 157(4) in the case of the Rural District Councils Act).

(6) If the investigation is completed and a new charge is preferred against the respondent in accordance with paragraph 1(2)—

- (a) within thirty days from the date that the independent tribunal referred the matter back to for further investigation by the Minister in terms of section 114(4) (or section 157(4) in the case of the Rural District Councils Act), the allegation of misconduct shall be dealt with by the independent tribunal that heard the original allegation, and this Schedule shall apply accordingly;
- (i) after thirty days from the date that the independent tribunal referred the matter back to for further investigation by the Minister in terms of section 114(4) (or section 157(4) in the case of the Rural District Councils Act), the allegation of misconduct shall be dealt with by a reconstituted independent tribunal, and this Schedule shall apply accordingly to the determination of that allegation.

Respondent convicted of a criminal offence

5. Where a respondent is convicted of a criminal offence which may constitute an act of misconduct, the Ministry shall endeavour to obtain a copy of the court record relating to the conviction of the respondent from the registrar or clerk of the court concerned, and paragraphs 1, 2 and 4 shall thereafter apply.

Costs

6. At the conclusion of a hearing the independent tribunal may make such order as to the costs of the proceedings as it thinks fit.

Imposition of civil penalties by independent tribunal

7.(1) Where an independent tribunal determines that a respondent is guilty of misconduct the tribunal may, together with its determination that the respondent is guilty of the misconduct, impose upon the respondent either of the following civil penalties in either of the following circumstances—

- (a) if the respondent was responsible for any deficiency in or improper payment from or loss or destruction of the moneys of any local authority, order the respondent to make such payment in respect of such deficiency, improper payment, loss or destruction, as the case may be, as may be fixed by the independent tribunal; or
- (b) if the respondent was responsible for any deficiency in or destruction of or damage to the property of any local authority, order the respondent to pay an amount equal to the cost of replacement of or repairs to the property concerned, as the case may be, or such

portion of that cost as the independent tribunal considers to be equitable in the circumstances.

(2) A civil penalty order that becomes payable by the respondent and shall constitute a debt due by the respondent to the local authority concerned, which may, at any time after it becomes due, sue for and recover the debt in a court of competent jurisdiction.

(3) The amount of a civil penalty shall be paid into and form part of the funds of the local authority concerned.

Determination of incapacity for office

8. This Schedule (other than paragraphs 4(4), (5) and (6), 5, 6 and 7) applies to the determination of an allegation of inability on the part a respondent to perform the functions of his or her office due to mental or physical incapacity, as if references in this Schedule to an allegation of misconduct are references to an allegation of incapacity.

Alternate member

9. (1) If an alternate is substituted for any member of the tribunal, the secretary of the tribunal shall furnish him or her with a written brief approved by the other members of all the evidence led or produced at the tribunal up to the date that the alternate assumes office:

Provided that the alternate has the right to require the rehearing or reconsideration of any evidence led or produced at the tribunal before the date that he or she assumed office.

(2) The proceedings of the tribunal shall not be challenged on the sole ground that its composition changed by virtue of section 157A (9) or (11) of the Rural District Councils or section 114A (9) or (11) of this Act.