

GOVERNMENT OF ZAMBIA

ACT

No. 17 of 1996

Date of Assent: 28th May, 1996

An Act to provide for the printing and publication of the amended Constitution; to provide for the savings and transitional provisions of existing offices, institutions and laws; to provide for the savings of succession of property and assets, rights, liabilities, obligations and legal proceedings; and to provide for matters connected with or incidental to the foregoing.

[28th May, 1996

ENACTED by the Parliament of Zambia.

Enactment

1. This Act may be cited as the Constitution of Zambia Act, 1996.

Short Title

2. (1) In this Act, unless the context otherwise requires—

Interpreta-

" Constitution " means the Constitution of Zambia, 1991;

tion

" existing law " means all law, whether a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever (including any Act of Parliament of the United Kingdom or Order of Her Majesty in Council), having effect as part of the law of Zambia or part thereof immediately before the commencement of this Act, and includes any Act of Parliament or statutory instrument made before such commencement and coming into force on such commencement or thereafter.

Act/No. 1 of
1991

(2) Except where the context requires, words and expressions used in this Act have the same meaning as in the Constitution.

3. Except as provided under this Act, the Constitution of Zambia Act, 1991, and the Constitution in the Schedule thereto, are amended in so far as they form Part of the laws of Zambia.

Amendment
of Constitu-
tion of
Zambia Act,
1991 and
Schedule
hereto

Commence-
ment
Act No. of
1996

4. Subject to the other provisions of this Act, the Constitution as amended under Act No. of 1996, shall come into operation on the commencement of this Act.

Printing and
publication
of the
Constitution

5. The Constitution as amended may be printed and published by the Government Printer separately from this Act, and the production of a copy of the Constitution as amended purporting to be so printed shall be *prima facie* in all courts and for all purposes whatsoever of the Constitution as its provisions,

Existing
laws

6. (1) Subject to the other provisions of this Act, and so far as they are not inconsistent with the Constitution as amended, the existing laws shall continue in force after the commencement of this Act as if they had been made in pursuance of the Constitution as amended, but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution as amended.

(2) The President may, by statutory instrument at any time within two years of the commencement of this Act, make such amendment to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Act or the Constitution as amended or otherwise for giving effect or enabling effect to be given to those provisions.

(3) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under any existing law, including any amendment to any such law made under this section, or is otherwise prescribed or provided immediately before the commencement of this Act by or under the law amended by section *three*, that prescription or provision shall, as from the commencement of this Act, have effect as if it had been made under the Constitution by Parliament or, as the case may be, the other authority or person.

(4) This section shall be without prejudice to any powers conferred by this Act or the Constitution upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

Prerogatives
and
privileges of
President

7. Where under the existing law any prerogatives or privileges are vested in the President those prerogatives or privileges shall, after the commencement of this Act, continue to vest in the President.

Continuation
of office of
President

8. The person holding the office of President immediately before the commencement of this Act shall, unless he ceases to hold office by virtue of the provisions of Article 34 or 35 of the Constitution or resigns, continue in office and shall exercise the

executive powers of the
until the person electe
under the Constitution

9. (1) Where any
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shall, so far as is cor
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accordance with the
oath of allegiance an
tion:

Provided that any
section *three* or any
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(2) Any person
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(3) Subject to the
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(4) The President
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Parliament.

(5) This section

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executive powers of the President under the Constitution as amended until the person elected at the first election to the office of President under the Constitution as amended assumes office.

9. (1) Where any office has been established by or under the law amended by section *three* and the Constitution establishes a similar or an equivalent office, any person who immediately before the commencement of this Act holds or is acting in the former office shall, so far as is consistent with the Constitution as amended, be deemed to have been appointed, elected or designated as from the commencement of this Act to hold or to act in the latter office in accordance with the Constitution as amended and to have taken the oath of allegiance and any other necessary oath under the Constitution:

Existing
offices

Provided that any person who, under the law amended under section *three* or any other existing law, would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age.

(2) Any person holding the office of Vice-President, Minister and Deputy Minister under the Constitution immediately before the commencement of this Act shall continue in office and shall exercise the powers conferred on them by the Constitution as amended.

(3) Subject to the provision of the Constitution relating to persons in public employment, any person who is a public officer and who immediately before the commencement of this Act holds any public office shall continue to be a public officer of the Government after the commencement of this Act.

(4) The President may, at any time after the commencement of this Act, require any person who continues in office by virtue of this section to take an oath of allegiance and any oath for the due execution of his office that is prescribed by or under any Act of Parliament.

(5) This section shall be without prejudice to—

(a) the provisions of section *ten*; and

(b) any powers conferred by or under the Constitution upon any person or authority of make provision for the abolition of offices or the removal of any person holding or acting in any office.

✓ The National
Assembly

10. (1) Subject to subsection (2), the National Assembly constituted under the law amended by section *three* (hereinafter referred to as "the existing National Assembly") shall be the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and the National Assembly under the Constitution as amended.

(2) The persons who immediately before the commencement of this Act are the elected or nominated members of the existing National Assembly shall continue to be the members of the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and the National Assembly under the Constitution as amended, and, in the case of elected members, shall be deemed to have been elected to the National Assembly to represent the same constituencies as the constituencies for which they were respectively elected.

(3) The persons who immediately before the commencement of this Act are the Speaker and the Deputy Speaker of the existing National Assembly shall continue to be respectively the Speaker and the Deputy Speaker of the National Assembly during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of the National Assembly under the Constitution as amended.

(4) All the functions and powers vested in Parliament by the Constitution shall be exercised, during the period beginning on the commencement of this Act and ending on the date set for the holding of elections to the office of President and National Assembly, by Parliament in accordance with the Constitution as amended.

(5) The rules and orders of the existing National Assembly as in force immediately before the commencement of this Act, shall, until it is otherwise provided for under Article 86 of the Constitution as amended, be the rules of procedure of the National Assembly but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution as amended.

(6) Any person who under this section continued to be the Speaker, the Deputy Speaker or a member of the National Assembly after the commencement of this Act shall be deemed to have taken the necessary oath under the Constitution as amended.

(7) All moneys granted, voted or appropriated by the existing National Assembly in respect of the services of the Republic for the current financial year shall be deemed to have been granted, voted or appropriated by the existing National Assembly and in accordance with the Constitution as amended.

11. (1) Subject to subsection (2), the property of every person immediately before the commencement of this Act, whether held in trust for, or for the purposes of, or for the purposes of the commencement of this Act, shall be deemed to be the property of the President as the case may be.

(2) Any property of this Act, was held in trust for, or for the purposes of, or for the purposes of the commencement of this Act, shall be deemed to be the property of the President on behalf of the President.

12. All rights, powers, duties and liabilities of any public officer on behalf of the President immediately before the commencement of this Act, shall be deemed to be the rights, powers, duties and liabilities of such public officer, or of the President of Zambia.

13. (1) All proceedings of any court or tribunal immediately before the commencement of this Act, or under the law as amended, shall be deemed to be concluded before the commencement of this Act.

(2) Any proceedings of any court or tribunal immediately before the commencement of this Act, or under the law as amended, shall be deemed to be concluded before the commencement of this Act.

14. (1) All rights, powers, duties and liabilities which immediately before the commencement of this Act, or under the law as amended, shall continue to be the rights, powers, duties and liabilities of the President of Zambia.

(2) All functions and powers of any public officer immediately before the commencement of this Act, or under the law as amended, shall, as far as they are exercisable by or on behalf of the President or the President of Zambia, be deemed to be the functions and powers of the President or the President of Zambia as are by this Act.

15. (1) The effect for the purposes of this Act of any law which immediately before the commencement of this Act, or under the law as amended, shall be deemed to be the effect for the purposes of this Act of the law as amended.

11. (1) Subject to this Act and the Constitution as amended, all property of every nature and kind whatsoever and all assets that immediately before the commencement of this Act were vested in, or held in trust for, the President or in any other person in right of or for the purposes of the Government of Zambia shall after the commencement of this Act continue to be so vested or held in trust, as the case may be.

Succession to property and assets ✓

(2) Any property which, immediately before the commencement of this Act, was liable to escheat or to be forfeited to the President for the purposes of the Government of Zambia, after the commencement of this Act, be liable to escheat or to be forfeited to the President on behalf of the Government of Zambia.

12. All rights, liabilities and obligations of the President or any public officer on behalf of the Government of Zambia before the commencement of this Act shall, on and after the commencement of this Act, be rights, liabilities and obligations of the President or such public officer, as the case may be, on behalf of the Government of Zambia.

Rights, liabilities and obligations ✓

13. (1) All proceedings that, immediately before the commencement of this Act, are pending before any court established by or under the law amended by section *three* may be continued and concluded before those courts established by or under the Constitution.

Legal proceedings

(2) Any proceedings that immediately before the commencement of this Act are pending before any Commissioner of the High Court appointed by or under the law amended by section *three* shall be continued and concluded before such Commissioner, notwithstanding the abolition of the office of Commissioner of the High Court.

14. (1) All rights and obligations under ^{any} conventions, treaties or agreements which were exercisable by or binding upon the Government of Zambia immediately before the commencement of this Act shall continue to be so exercisable and binding.

Transitional provisions ✓

(2) All functions which immediately before the commencement of this Act were vested in the President or in any other authority shall, as far as the same continue in existence and are capable of being exercised after the commencement of this Act, be vested in the President or the authority exercising similar functions under the Constitution as amended, as the case may be, except such functions as are by this Act or any other law vested in some other authority.

15. (1) The following provisions of this section shall have effect for the purpose of enabling any officer to whom this section applies or his personal representatives to appeal against a decision to which this section applies, that is to say a decision within the following clauses:

Appeals in respect of certain decisions affecting pensions and like benefits

- (a) a decision of the Service Commission to give such concurrence as is required by Article 124 of the Constitution as amended in relation to the refusal, withholding, reduction in amount or suspension of any benefits in respect of such an officer's service as a public officer;
- (b) a decision by any authority to remove such an officer from office if the consequence of the removal is that benefits cannot be granted in respect of the officer's service as a public officer;
- (c) a decision by any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is to reduce the amount of any benefits that may be granted in respect of the officer's service as a public officer.
- (2) Where any decision such as is referred to in subsection (1) is taken by any authority, the authority shall cause to be delivered to the officer concerned, or his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.
- (3) If application is duly made to an authority within the time stated in such a notice as is mentioned in subsection (2) for a case to be referred to an Appeals Board, the authority shall notify the President in writing of that application and the President shall appoint an Appeals Board for that purpose consisting of—
- (a) one member selected by the President;
- (b) one member selected by the association representative of public officers or a professional body, nominated in either case by the applicant; and
- (c) one member selected by the two other members jointly (or, in default of agreement between those members, by the Chief Justice) who shall be the Chairman of the Board.
- (4) Such an Appeals Board shall inquire into the facts of the case that is referred to it, and for that purpose the Board—
- (a) shall, if the applicant so requests in writing, hear the applicant either in person or by legal representative of his choice, according to the terms of the request;
- (b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case; and

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(c) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When such an appeals board has completed its consideration of the case, then—

(a) if the decision that is the subject of the reference to the board is a decision such as is mentioned in paragraph (a) of subsection (1), the board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice;

(b) if the decision that is the subject of the reference to the board is a decision such as is mentioned in paragraph (b) or (c) of subsection (1), the board shall not have power to advise the authority responsible for making the decision to affirm, reverse or notify the decision but the board may advise the authority responsible for granting the benefits in question—

(i) where the officer has been removed from office, to grant all or part of the benefits for which the officer concerned would have been eligible under any law if he had retired voluntarily at the date of dismissal; or

(ii) where some other disciplinary action has been taken in relation to the officer, that on the grant of any benefits under any law in respect of the officer's service such benefits shall be increased in such manner, as the board may specify in order to offset all or any part of the reduction in the amount of such benefits that, in the opinion of the board, would or might otherwise be a consequence of the action;

and that authority shall act in accordance with that advice the provisions of that law shall have effect accordingly.

(6) In this section—

"pension benefits" has the meaning assigned to it in clause (5) of Article 124 of the Constitution as amended;

"Service Commission" has the meaning assigned to it in Clause (2) of Article 123 of the Constitution as amended.

(7) This section applies to any officer who on the 24th October, 1964, was on pensionable conditions of service and—

- (a) was designated under the Overseas Service Aid Scheme; or
- (b) was immediately before the 24th October, 1964, a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or
- (c) whose conditions of service included an entitlement to free overseas passages from Zambia for the purposes of leave of absence upon the completion of a tour of duty; or
- (d) was not a citizen of Zambia.

Compulsory
retirement of
non-citizens

16. Notwithstanding anything to the contrary contained in this Act or the Constitution the President may, with a view to securing the appointment of citizens of Zambia to public offices direct retirement from public office of any person who is not a citizen of Zambia:

Provided that no person shall be retired under the provisions of this section unless notice in writing is given to him specifying the date of retirement which shall not be earlier than six months from the date on which such notice is received by him.