



## ZIMBABWE

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# ACT

To amend the Manpower Planning and Development Act [*Chapter 28:02*];  
and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

### **1 Short title and date of commencement**

This Act may be cited as the Manpower Planning and Development (Amendment) Act, 2020.

### **2 Amendment of section 2 of Cap. 28:02**

The principal Act is amended in section 2 (“Interpretation”) by the insertion of the following definitions—

““governing body” means the body that has the role of overseeing the operations of a professional body;”;

“responsible person” means the person responsible for the day to day management of a professional body;”.

### **3 Amendment of section 3 of Cap 28:02**

(1) The principal Act is amended in section 3 (“Application of Act”) by the repeal of subsection (2) and the substitution of the following—

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“(2) To the extent that any other Act regulating the establishment or conduct of any institution on manpower development and training is inconsistent with this Act, the provisions of this Act shall prevail.”.

#### **4 Amendment of section 3 of Cap 28:02**

The principal Act is amended by the insertion after section 3 of the following section—

##### **“3A Objects of Act**

The objects of this Act shall be—

- (a) to promote the development and implementation of the national skills planning and development strategy;
- (b) to promote university, technical and vocational education that leads to the production of goods and services;
- (c) to promote operational independence of technical and vocational institutions and teacher’s colleges;
- (d) to promote science, technology, engineering and innovation for industrialisation and modernisation through research institutions and institutions of higher and tertiary education.”.

#### **5 Amendment of section 6 of Cap 28:02**

The principal Act is amended in section 6 (“Establishment of Government institutions, facilities, schemes, etc”) by the insertion after paragraph (d) of the following—

“(e) establish academies of sciences.”.

#### **6 New section inserted after section 6 of Cap 28:02**

The principal Act is amended by the insertion after section 6 of the following section—

##### **“6A. Mandatory posts in technical and vocational institutions and teacher’s colleges**

(1) The Tertiary Education Council, in consultation with the Minister, shall for every technical and vocational institution and teacher’s college appoint a principal.

(2) The Tertiary Education Council shall for every technical and vocational institution and teacher’s college appoint—

- (a) one or more vice-principals;
- (b) a registrar who shall be responsible for the general administration of the institution;
- (c) bursar who shall report to the Principal and act as accountant for the technical and vocational institution and teacher’s college and shall be responsible for safeguarding its funds and authorising its investments and expenditure;
- (d) librarian who shall be responsible for the administration and safeguarding of the library of the technical and vocational institution and teachers’ college;
- (e) internal auditor who shall act as the auditor to the technical and vocational institution and teacher’s college and shall

be responsible for monitoring the financial administration and procedures of the technical and vocational institution or teacher's college;

(f) the academic staff and non-teaching staff.

(3) Members of the technical and vocational institutions and teacher's colleges are public officers but do not form part of the Civil Service.

#### 6B. Students Representative Council

(1) Higher and tertiary education institutions shall have a students' representative council elected by the students enrolled at that particular institution.

(2) The establishment, composition, manner of election, term of office, functions privileges of members of this Council and any other matters incidental thereto must be determined by the institutional statute.”.

### 7 Amendment of section 14 of Cap 28:02

Section 14 of the principal Act is repealed and the following is substituted—

“14 Grants and loans to institutions, persons, etc.

(1) Subject to this section, the Board, after consultation with the Minister and Minister responsible for finance, may make a grant or loan to or in respect of any teacher's college, technical or vocational institution, university or university college, or to any other person or institution, for any one or more of the following purposes—

- (a) tuition for students enrolled at the college, institution or university concerned;
- (b) accommodation for students enrolled at the college, institution or university concerned;
- (c) salaries or remuneration of staff employed at the college, institution or University concerned;
- (d) any amenities fund established in terms of section sixteen;
- (e) any work in furtherance of university, technical or vocational education or training;
- (f) any work in furtherance of the promotion of science, technology and innovation for industrialisation.

(2) A grant or loan referred to in subsection (1)—

- (a) shall be in such amount and made subject to such terms and conditions as the Board, after consultation with the Minister and Minister responsible for finance, may fix:

Provided that the Board shall ensure that, so far as possible, the same amounts are paid in respect of students attending equivalent courses at Government and non-Government colleges, universities or institutions;

and

- (b) may be paid wholly from moneys appropriated for the purpose by Act of Parliament or from the Fund, or partly from such moneys and partly from the Fund, as the Board, may determine; and
- (c) may be disbursed to the responsible authority of the college, institution or university concerned or to such other person as the Board may determine in each individual case.

(3) Where a grant or loan has been paid to or in respect of any college, institution or university in terms of this section and the registration of the college, institution or university is cancelled or the college, institution or university closes down before the expiry of the period in respect of which the grant or loan was made, the Board may recover from the responsible authority or person who operated the college, institution or university such part of the total amount of the grant or loan as represents to such total amount the same proportion as the unexpired part of the period in respect of which the grant or loan was made bears to the whole of that period.

(4) Where—

- (a) any college, institution or university to which or person to whom a grant or loan has been paid in terms of this section fails to comply with any term or condition fixed by the Board in terms of subsection (2); or
- (b) a grant or loan was paid to any college, institution, university or person in terms of this section on the basis of any false or incorrect information;

the Board may recover the amount of the grant or loan from the college, university, institution or person concerned.

(5) Notwithstanding paragraph (b) of section 15 of the Prescription Act [*Chapter 8:11*], the period of prescription of a debt arising out of a loan made in terms of this section shall be thirty years.”.

## **8 Amendment of section 16 of Cap 28:02**

Section 16 (“Amenities funds”) of the principal Act is repealed and the following is substituted—

### **“16 Tertiary amenities funds**

(1) The Tertiary Education Service Council shall establish a fund to be known as an amenities fund, subject to such terms and conditions as it may prescribe, for every government teachers college, technical or vocational institution, for the purpose of furthering cultural or recreational activities or facilities for students attending the college or institution.

(2) The Tertiary Education Service Council, in consultation with the Minister, may—

- (a) fix fees payable by or in respect of students attending a Government teacher’s college or technical or vocational institution to any amenities fund established in terms of subsection (1) for the college or institution, and may at any time vary any such fees; and

- (b) grant such rebates, refunds or remissions, whether in whole or in part, of any fees payable in terms of paragraph (a) as it may determine from time to time; and
- (c) permit donations, grants and moneys raised for the benefit of the college or institution concerned to be paid into an amenities fund established in terms of subsection (1).

(3) Notwithstanding anything to the contrary in the Audit Office Act [*Chapter 22:18*], any fees, donations, grants and other moneys paid in terms of paragraph (a) or (c) of subsection (2) to any amenities fund, and any grant or loan made in terms of section fourteen to any such fund, shall be paid into that amenities fund.”.

## **9 New section inserted after section 16 of Cap 28:02**

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

### **“16A Innovation and industrialisation funds**

(1) Every university, research institution, teacher’s college or technical or vocational institution shall on its own or in partnership with another establish a fund to be known as an Innovation and Industrialisation Fund.

(2) The Innovation and industrialisation funds shall consist of—

- (a) a portion of income earned from services rendered by the university, research institution, teacher’s college or technical or vocational institution industrial hubs;
- (b) grants or donations made to it; and
- (c) moneys received from any other source; and
- (d) moneys advanced by the Minister from moneys appropriated for the purpose by Act of Parliament.

(3) Each university, research institution, teacher’s college or technical or vocational institution may employ the Fund for any of the following purposes—

- (a) to support the development of start-up commercial enterprises and, or technological solutions within its purview;
- (b) to promote synergies or partnerships in engineering, technology and innovation between the particular university, research institution, teacher’s college or technical or vocational institution and industry and the community.

(4) For the purpose of the administration of the Innovation and Industrial Fund sections 50, 51 and 56 shall apply with the necessary variations.”.

## **10 Amendment of section 31 of Cap 28:02**

The principal Act is amended in section 31 (“Guidance of professional bodies in respect of national manpower requirements”) by the insertion after subsection (3) of the following—

“(4) Where the Minister notices that a profession has no statutory regulatory authority, the Minister shall recommend to a relevant Minister to initiate legislative measures to ensure that such profession is regulated.

(5) Where the Minister considers that a professional body lacks the requisite resources to develop the relevant competencies within its membership the Minister, in consultation with a Minister administering the enactment under which a professional body is constituted and Minister responsible for finance, may, subject to availability of resources, make a grant to such professional body.

(6) A grant or loan referred to in subsection (1) shall be in such amount and made subject to such terms and conditions as the Minister, after consultation with the Minister responsible for finance, may fix.

(7) Where—

- (a) any professional body to which or person to whom a grant or loan has been paid in terms of this section fails to comply with any term or condition fixed by the Minister in terms of subsection (2); or
- (b) a grant or loan was paid to any professional body or person in terms of this section on the basis of any false or incorrect information;

the Minister may recover the amount of the grant from the professional body concerned.

(8) For the avoidance of any doubt, the amount referred to in subsection (7) shall constitute a debt recoverable by the Minister against such professional body or person.

(9) Where the Minister taking cognisance of the recommendation by the Council is satisfied that any professional body is acting in a manner detrimental to the manpower requirements of Zimbabwe he or she may, in consultation with the Minister administering the enactment under which the professional body is constituted, dismiss members of the governing body of the professional body concerned.”.

## **11 Amendment of section 47 of Cap 28:02**

The principal Act is amended in section 47 (“Zimbabwe Manpower Development Fund”) by—

- (a) the repeal of subsection (2) and the substitution of the following—

“(2) Subject to this Act, the object for which the Fund is established shall be—

- (a) to develop skilled manpower and professions; and
- (b) to support and promote the creation of—
  - (i) new knowledge;
  - (ii) research;
  - (iii) innovation;
  - (iv) science;
  - (v) technological and engineering solutions; and
  - (vi) business enterprises;

(b) the repeal of subsections (4) and (5) and the substitution of the following—

“(4) The Fund shall be administered by the Board, subject to this Act.”.

## 12 Amendment of section 48 of Cap 28:02

The principal Act is amended in section 48 (“Application of Fund”)—

(a) by the repeal of subsection (2) and the substitution of the following—

“(2) In order to give effect to the object of the Fund described in section 47(2), the Board may, do any or all of the following—

- (a) employ such persons as may be necessary for the purposes of this Act;
- (b) administer the Fund and monitor the use of grants made to the Fund to ensure adherence to the purposes for which the fund is disbursed;
- (c) meet the expenses of promoting and mobilising support for research, innovation and technological or engineering solutions and business enterprise;
- (d) pay any other costs, charges or expenses of whatever kind involved in the establishment and maintenance of any scheme or purpose connected with teacher education, technical and vocational education and training, or skills development;
- (e) pay any reasonable and necessary expenses arising from the maintenance of the Fund, including loans and advances made therefrom;
- (f) pay any other cost, charge or expense which, in terms of this Act is to be made from the Fund;
- (g) invest and deal with the moneys of the Fund not immediately required upon such security and in any such manner as it may determine;
- (h) invest in the development and uptake of emerging technologies in institutions of higher and tertiary education;
- (i) mobilise resources for research and development, innovation and commercialisation of research results;
- (j) support the incubation of start-ups resulting from research activities;
- (k) on its own initiative or at the request of the Minister, to investigate and make recommendations to the Minister on any matter affecting the development of national skills and training;
- (l) establishing community workspace and innovation centres that provide talented persons with an enabling environment to carry out research and innovation;
- (m) purchase, construct, take on lease or in exchange, hire or otherwise acquire, maintain, alter or repair, manage, work and control any movable or immovable property;

- (n) sell, exchange, let, mortgage, dispose of, turn to account, develop, manage or otherwise deal with any property or rights acquired by the Board or any part thereof for such consideration as the Board thinks fit;
- (o) insure with any person against any losses, damage, risks or liabilities which the Board may incur;
- (p) pay bursaries, loans or advances to apprentices and other approved trainees for training purposes;
- (q) pay the wages and allowances of apprentices and other approved trainees;
- (r) pay the costs and out-of-pocket expenses incurred by apprentices and other approved trainees in connection with courses and examinations in terms of this Act;
- (s) award prizes for success by apprentices and other approved trainees in any courses and examinations in terms of this Act;
- (t) provide for the remuneration and allowances of members of the National Manpower Advisory Council.
- (u) make grants and rebates to such registered employers, teachers colleges and technical or vocational institutions for the promotion of such manpower development programmes, as the Board may specify.

(3) Any expenditure incurred by the Board on a purpose referred to in subsection (2) shall be met from the Fund.”.

### 13 New sections inserted after section 48 of Cap 28:02

The principal Act is amended by the insertion after section 48 of the following sections—

#### “48A Minister may issue policy directives

The Minister may issue policy directions with regard to the functions of the Board in its administration of the Fund.

#### 48B Zimbabwe Manpower Development Board

(1) There is hereby established a board to be known as the Zimbabwe Manpower Development Board.

(2) The Board referred to in subsection (1) shall consist of—

- (a) the Chief Executive who shall be an *ex officio* member; and
- (b) one member appointed by the Minister from a list of three nominations from each of the following bodies—
  - (i) the Zimbabwe Institution of Engineers established in terms of the Zimbabwe Institution of Engineers (Private) Act [Chapter 27:16];
  - (ii) the Law Society of Zimbabwe established in terms of the Legal Practitioners Act [Chapter 27:07];
  - (iii) Public Accountants and Auditors Board established in terms of the Public Accountants and Auditors Act [Chapter 27:12];



- (iv) organisations representing industry and commerce;
- (v) an organisation representing the churches;
- (vi) the National Council of the Disabled Persons;
- (c) two more persons from persons with knowledge and experience in any other business-related fields;
- (d) one former Vice Chancellor of a University or former Principal of a Tertiary institution.

(3) The Minister shall appoint, among members referred to in subsection (2)—

- (a) one member as chairperson of the Board;
- (b) one member as vice-chairperson of the Board and the vice-chairperson shall exercise the functions of the chairperson during any period that the chairperson is unable to exercise his or her functions as chairperson:

Provided that the vice-chairperson shall be of a different gender from the chairperson.

(4) In appointing members in terms of this section the Minister must comply with sections 17 and 18 of the Constitution.

(5) If any person referred to in subsection (2) fails to submit a nomination within a reasonable period after being called by the Minister to do so, the Minister may appoint as members in terms of the paragraph concerned any person whom the Minister considers will adequately represent the interests of the body concerned.

(6) Members of the Board shall, subject to good performance, hold office for a five-year term renewable for only one further term.

(7) The Minister shall publish the names of persons appointed to the Board by notice in the *Gazette*.

(8) Sections 21, 22, 23, 24, 25, 27, 28, 29 and 30 shall apply *mutatis mutandis* with respect to the Board.

(9) The Board may, subject to the Public Entities Corporate Governance Act [*Chapter 10:31*], require the Chief Executive to vacate his or her office if the Chief Executive—

- (a) has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
- (b) has failed to comply with any condition of his or her office; or
- (c) is mentally or physically incapable of efficiently performing his or her duties as a member.”.

#### **14 Amendment of section 50 of Cap 28:02**

The principal Act is amended in section 50 (“Accounts, audit of fund and financial statements”) by—

- (a) the deletion in subsection (1) of “Minister” and substitution of “Board”;
- (b) the insertion after subsection (2) of the following—

“(3) As soon as possible after the end of each financial year, the Board shall cause a statement of accounts to be prepared for the Fund

in respect of that financial year or in respect of such other period as the Minister may direct, and shall cause the statement to be submitted to the Minister.”.

### **15 New section inserted after section 50 of Cap 28:02**

The principal Act is amended by the insertion after section 50 of the following section—

#### **“50A Internal auditor**

The Board shall appoint an internal auditor who shall perform the duties assigned to him or her by the Board.”.

### **16 Amendment of section 52 of Cap 28:02**

Section 52 (“Holding of Fund”) of the principal Act is amended by—

- (a) the deletion in subsection (1) of “Minister” and the substitution of “Board”.
- (b) the repeal of subsection (2) and the substitution of the following—

“(2) Any part of the Fund not immediately required for the purposes of the Fund may be invested in such manner as the Board considers appropriate:

Provided that, where any moneys are invested for periods in excess of twenty-four months, the Board shall obtain the approval of the Minister and the Minister responsible for Finance.”;

- (c) the insertion of the following subsections after subsection (2)—

“(3) The Board shall keep a schedule at its offices showing particulars of the Fund’s current investments in sufficient detail, and the Board shall ensure that the schedule is available for inspection at all reasonable times by the public.

(4) At least once a year the Board shall review the size of the Fund and the manner in which the money held in the Fund is invested, taking into account the Fund’s current and potential liabilities, and in the light of that review, the Board shall make any necessary adjustments in the holding of the Fund.”.

### **17 Amendment of section 56 of Cap 28:02**

Section 56 (“Appointment and remuneration of Chief Executive”) of the principal Act is amended by—

- (a) the deletion in subsection (1) of “Minister” and the substitution of “Board”;
- (b) the insertion after subsection 3 of the following—

“(4) the contract of employment of the Chief Executive shall be subject to good performance.”.

### **18 Amendment of section 57 of Cap 28:02**

Section 57 (“Functions of Chief Executive and other employees”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “Minister” and the substitution of “Board”;
- (b) in subsection (2) by the deletion of “Minister” and the substitution of “Board”.

**19 Amendment of section 56 of Cap 28:02**

Section 56 (“Appointment and remuneration of Chief Executive of Fund”) of the principal Act is amended by the deletion of “Minister” wherever it appears and the substitution of “Board”.

**20 Amendment of section 57 of Cap 28:02**

Section 57 (“Functions of the Chief Executive and other employees”) of the principal Act is amended by the deletion of “Minister” wherever it appears and the substitution of “Board”.

**21 New Part inserted after section 59 of Cap 28:02**

The principal Act is amended by the insertion after section 59 of the following Part—

“PART VIIA

TERTIARY EDUCATION SERVICE

*Subpart 1*

ESTABLISHMENT, FUNCTIONS AND POWERS

**59A Establishment of Tertiary Education Council**

(1) In this Part—

“council” means the Tertiary Education Service Council;

“Secretary” means the Head of the Tertiary Education Service Secretariat”

(2) There is hereby established a Tertiary Education Service, which shall be responsible for the administration of tertiary education in Zimbabwe.

(3) The operations of the Tertiary Education Service shall, subject to this Act, be controlled and managed by a board to be known as the Tertiary Education Council.

(4) The Tertiary Education Service shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

(5) The Council shall consist of—

(a) the Secretary who shall be an *ex officio* member; and

(b) not less than five and not more than nine members appointed, subject to subsection (3), by the Minister in consultation with the President.

(6) Members referred to in subsection (2)(b) shall be appointed for their knowledge of and experience in academia, business-related fields, engineering, human resource management and law.

(7) Amongst the members appointed in terms of subsection (2), the Minister shall appoint—

(a) one member as chairperson;

(b) one member as vice-chairperson and the vice-chairperson shall exercise the functions and powers and perform the duties

of the chairperson during any period that the chairperson is unable to exercise his or her functions or the office of the chairperson is vacant:

Provided that the vice-chairperson shall be of a different gender from the chairperson.

(8) In appointing members in terms of this section the Minister must comply with sections 17 and 18 of the Constitution.

(9) Members of the Council shall, subject to good performance, hold office for a five-year term which may be renewable for only one further term.

(10) The Minister shall publish the names of persons appointed to the Council by notice in the *Gazette*.

(11) The Council may require the Secretary to vacate his or her office if the Secretary—

- (a) has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
- (b) has failed to comply with any condition of his or her office fixed in terms of section 59E; or
- (c) is mentally or physically incapable of efficiently performing his or her duties as a member.

(12) Sections 21, 22, 23, 24, 25, 27 and 28 shall apply, with necessary changes to the Council.

#### 59B Functions of Tertiary Education Service Council

(1) Subject to this Act and any other enactment, the functions of the Council or its delegated authorities, shall be—

- (a) to appoint persons to technical or vocational institution and teacher's colleges to, whether as permanent members or on contract or otherwise, to assign and promote them to offices, posts and grades and to fix their conditions of service; and
- (b) to inquire into and deal with complaints made by members;
- (c) to exercise disciplinary powers in relation to members;
- (d) to formulate, develop and implement measures and policies designed to—
  - (i) co-ordinate and integrate the functioning and operations of members of technical or vocational institution and teacher's colleges; and
  - (ii) ensure the provision and promote the enhancement of efficient professional services by members of technical and vocational institution and teacher's colleges;and
- (e) to encourage dialogue between the Government, and the institutions of technical or vocational institution and teacher's colleges and to implement Government policy on any matter relating to the tertiary education; and
- (f) to hear appeals referred to it in terms of this Act; and

- (g) to exercise any other functions that may be imposed or conferred upon the council in terms of this Act or any other enactment.

(2) The Council shall exercise its functions under this Act in a manner that ensures the well-being and good administration of tertiary institutions and its maintenance in a high state of efficiency.

(3) Except as is otherwise provided in this Act, the Council shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Act.

(4) In the interests of ensuring the greatest degree of delegation of decision-making functions consistent with good administration, the Council, in consultation with the Minister, shall—

- (a) ensure that the functions vested in it by or under this Act are delegated wherever practicable to management of technical or vocational institutions and teacher's colleges; and
- (b) take such steps as are necessary to encourage the greatest possible delegation of decision-making functions within all technical or vocational institution and teacher's colleges.

(5) A delegation of a function by the Council in terms of subsection (1)(a)—

- (a) may be made absolutely or subject to conditions; and
- (b) may be amended or revoked at any time; and
- (c) shall not preclude the Council from exercising the function so delegated.

(6) A person to whom the Council has delegated a function in terms of subsection (1)(a) may, with the consent of the Council, further delegate the function, either absolutely or subject to conditions, to any other member of the Tertiary Education Service who is under his or her control or authority.

(7) Where the Council has delegated a function in terms of subsection (4) to any person, any conditions or limitations applicable to the exercise of that function by the Council shall apply to the exercise of the function by the person to whom it has been delegated.

(8) Where a person has been or is about to be appointed to or promoted within the Tertiary Education Service pursuant to a power delegated by the Council in terms of subsection (1)(a), and the Council considers that—

- (a) the person does not have the qualifications or ability necessary to carry out the duties of the position he or she occupies or will occupy, as the case may be; or
- (b) his or her appointment or promotion has contravened or would contravene, as the case may be, any condition under which the power was delegated;

the Council shall without delay revoke the appointment or promotion or direct that the appointment or promotion shall not be made, as the case may be, and may take such other action in the matter as the Board think necessary:

Provided that—

- (i) before taking any action in terms of this subsection, the Council shall give the person whose appointment or promotion is in issue and the person who appointed or promoted him or her or proposed to appoint or promote him or her, an adequate opportunity to make representations in the matter;
- (ii) where a person has been appointed or promoted and the Council is satisfied that the appointment or promotion was not effected as a result of any fraud or wilful misrepresentation on his or her part, the Council shall not revoke the appointment or promotion.

(9) This section shall not be construed as limiting any power which the Council or any other person may have under any other law to delegate functions to another person.

### *Subpart II*

#### MEMBERSHIP OF TERTIARY EDUCATION SERVICE

#### 59D Constitution of Tertiary Education Service

The Tertiary Education service shall consist of the following persons—

- (a) members of the Tertiary Education Council; and
- (b) every person who occupies a post in the technical and vocational institutions and teacher's colleges; and
- (c) every person, who is employed to assist any person referred to in paragraph (a).

#### 59E Tertiary Education Service Secretariat

(1) The Council shall appoint an individual as Secretary of the Tertiary Education Service Secretariat and such other members of staff as may be necessary for the proper functioning of the Tertiary Education Service.

(2) The Secretary shall, subject to the general control of the Council, be the Head of the Secretariat responsible for—

- (a) managing the affairs of the Tertiary Education Service and implementing the decisions of the Council;
- (b) providing technical advice to the Council;
- (c) formulating the strategy and co-ordinating work programmes for the Tertiary Education Service;
- (d) formulating administrative rules, guidelines and procedures to facilitate the achievement of the targets set up by the Council;
- (e) exercising any other functions that may be imposed or conferred upon him or her in terms of this Act or any other enactment;
- (f) supervising members of the Tertiary Education Service.

#### 59F Appointments, promotions and dismissals

(1) The appointment, assignment and promotion of persons to offices, posts and grades within the Tertiary Education Service shall be effected by the Council.

(2) When considering persons for appointment to or promotion within the Tertiary Education Service, the Council or institution concerned shall—

- (a) have regard to the merit principle, that is, the principle that preference should be given to the person who is deserving of appointment to the office, post or grade concerned; and
- (b) ensure that there is no discrimination on the ground of race, tribe, place of origin, political opinion, colour, creed, gender or physical disability.

(4) The discipline, suspension and dismissal of persons from the Tertiary Education Service shall be effected by the Council.

#### 59H Conditions of service of members of Tertiary Education Service

(1) The conditions of service applicable to members of the Tertiary Education service, including their remuneration, allowances, pension benefits, leave of absence, hours of work, discipline and discharge, shall be fixed by the Council, in consultation with the Minister:

Provided that, to the extent that such conditions may result in an increase in expenditure chargeable on the Consolidated Revenue Fund, the concurrence of the Minister responsible for finance shall be obtained.

(2) Conditions of service may be fixed in terms of subsection (1) by means of service regulations, notices, circulars or in any other manner that the Council considers will best bring the conditions to the attention of members of the Tertiary Education service who are affected by them:

Provided that, in the event of any conflict between service regulations and the contents of any such notice or circular, the service regulations shall prevail to the extent of the conflict.

(3) Subject to Schedule 6 to the Constitution, the Council may, in terms of subsection (1) alter the conditions of service of existing members of the Tertiary Education service:

Provided that no member's fixed salary or salary scale shall be reduced except when the member has been found guilty of misconduct or has consented to the reduction.

(4) Conditions of service fixed in terms of subsection (1) may provide that, before a member of the Tertiary Education service is permitted to undergo a course of training or study, he or she shall enter into an agreement with the Council whereby the member undertakes that—

- (a) he or she will serve the Tertiary Education Service for a period specified in the agreement following the completion of all or any part of such course; and
- (b) should he or she be discharged from or leave the Tertiary Education Service at any time during the course or before



the expiry of the period specified in paragraph (a), he or she will repay to the State such amount as may be provided for in the agreement; and any amount referred to in paragraph (b) shall be a debt due by him or her to the State and may be sued for or otherwise recovered from him or her by the Minister.

(5) Without derogation from the generality of subsection (1), conditions of service fixed in terms of that subsection may provide for the dismissal or discharge of a member of the Tertiary Education service—

- (a) owing to—
  - (i) the abolition of his or her office or post; or
  - (ii) a reduction in or an adjustment of the organisation of any part of the Tertiary Education service; or
- (b) if the removal will help to improve efficiency or economy in the Tertiary Education service, or in the Ministry or the department of the Tertiary Education service in which he or she is serving.

(6) Conditions of service fixed in terms of subsection (1) may provide that, in addition to any other penalty that may be imposed upon them, members of the Tertiary Education service who have been found guilty of misconduct or who have been convicted of an offence may be ordered to pay compensation to the State, a statutory body, a local authority or any other person or fund in an amount not exceeding the amount of any damage to or loss of property arising out of or occasioned by the misconduct or offence.

(7) Upon the making of an order referred to in subsection (6), the amount specified therein shall become a debt due by the member concerned to the State or to the statutory body, local authority, person or fund in whose favour the order was made, and may be sued for or otherwise recovered from the member concerned by the Minister or by that statutory body, local authority, person or fund, as the case may be.

#### 59I Consultations re conditions of service of members of Tertiary Education service

(1) The Council shall endeavour to engage in regular consultations and negotiations with technical, vocational and teacher's colleges advisory boards and recognised associations and organisations in regard to the conditions of service of members of the tertiary education service who are represented by the recognised associations or organisations concerned.

(2) Notwithstanding subsection (1), conditions of service fixed or determined under this Act shall not be invalid solely on the ground that they were not agreed to by all the parties to any consultation in terms of subsection (1).

#### 59J Persons under contract

(1) The Council may engage persons under contract, on such conditions as may be prescribed.

(2) Upon the termination of a contract entered into in terms of subsection (1), the person under contract shall cease to be a member of the



Tertiary Education Service, unless the contract is renewed or the member is appointed to the Tertiary Education Service in some other capacity.

#### 59K Recognised associations and organisations

(1) The Minister, after consultation with the Council, may, by written notice to the association or organisation concerned, declare any association or organisation representing all or any members of the Tertiary Education Service to be a recognised association or a recognised organisation, as the case may be, for the purposes of this Act.

(2) The Minister, after consultation with the Council, may at any time, by written notice to the recognised association or organisation concerned, revoke any declaration made in terms of subsection (1).

(3) Without derogation from subsection (1)—

- (a) the Minister and the Council may consult with a recognised association or organisation on such matters affecting the efficiency, well-being or good administration of the Tertiary Education Service or the interests of members of the recognised association or organisation as the Minister and the Council think appropriate; and
- (b) a recognised association or organisation may make representations to the Minister and the Council concerning the conditions of service of the members of the Tertiary Education service represented by the association or organisation, and the Minister and the Council shall pay due regard to any such representations when exercising any function in terms of this Act.

(4) Any member of the Tertiary Education Service who is eligible to do so may join a recognised association or organisation and, subject to this Act, participate in its lawful activities.

(5) A member of the Tertiary Education Service who fails or refuses to join a recognised association or organisation shall not, on account of such failure, be debarred from or prejudiced in respect of any appointment, promotion or advancement within the Tertiary Education Service.

#### 59L Investigation and adjudication of misconduct cases

(1) Any case involving misconduct or suspected misconduct on the part of a member of the Tertiary Education Service employed by a Government technical, vocational and teacher's college shall be investigated, adjudicated upon and punished by the Council, or by such person or authority as may be prescribed in service regulations.

(2) Any case involving misconduct or suspected misconduct on the part of a member of the Tertiary Education Service shall be investigated, adjudicated upon and punished by the appropriate person or authority prescribed in service regulations.

(3) The procedure to be followed in the investigation and adjudication of misconduct cases referred to in subsection (1) or (2), and the punishments that may be imposed upon members of the Tertiary Education Service found guilty of misconduct, shall be as prescribed in service regulations.

**59M Funds of Tertiary Education Service**

(1) The funds of the Tertiary Education Service shall consist of—

- (a) moneys appropriated by Act of Parliament for salaries and allowances payable to and in respect of members of the Tertiary Education Service and the recurrent administrative expenses of the Tertiary Education Service; and
- (b) any other moneys that may be payable to the Tertiary Education Service from moneys appropriated for the purpose by Act of Parliament; and
- (c) any donations, grants, bequests made to the Tertiary Education Service and accepted by the Council with the approval of the Minister; and
- (d) any other moneys that may vest in or accrue to the Tertiary Education Service, whether in terms of this Act or otherwise.

(2) The Council shall apply the funds referred to in subsection (1) to the fulfilment of its functions.

**59N Reports of Council**

(1) The Council—

- (a) shall report to the Minister as occasion requires and shall, within three months after the 31st December in that year, submit to the Minister an annual report dealing generally with all the proceedings and activities of the Council during that financial year; and
- (b) may at any time submit to the Minister a special report on any matter upon which the Minister requests the Council to report.

(2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the reports are received by him or her—

- (a) the annual report submitted to him or her in terms of subsection (1)(a); and
- (b) any special report submitted to him or her in terms of subsection (1)(b) which the Council requests be laid before Parliament.

**59O Minister may give policy directions to Council**

(1) The Minister may give general directions of policy to the Board and the Council shall take all necessary steps to comply with them.

(2) If the Council has failed to carry out any duty imposed upon it by this Act or any other law, the Minister may direct the Council to take such action as he or she considers necessary to rectify the matter within such time as he or she may specify: Provided that before doing so the Minister shall give the Council an opportunity to make such representations as it may wish to make in the matter.

(3) If the Council fails to take action in accordance with a direction in terms of subsection (2) within the time specified by the Minister, the Minister may take appropriate action on behalf of the Council to rectify the matter.”.

**22 New section inserted after section 71 of Cap 28:02**

The principal Act is amended by the insertion after section 71 of the following section—

“72 Transitional provisions in respect of transfer of employees

(1) In this section—

“transferred member” means a member who has been transferred from the Civil Service to the Tertiary Education Service by virtue of the operation of section 59D.

(2) Any person who immediately before the fixed date was employed by the State as a member of the Civil Service and who has been employed in technical and vocational or teacher’s colleges shall continue in such employment; and

(3) Any regulation, notice, circular or other document which, immediately before the fixed date, regulated the conditions of service of any class of transferred members in terms of the Public Service Act [*Chapter 16:04*] shall continue, on and after that date, to regulate the conditions of service of—

- (a) those transferred members; and
- (b) any persons who join the service after the fixed date and who are in the same class as those transferred members;

until the Council replaces the regulation, notice, circular or other document concerned or otherwise alters the conditions of service concerned in terms of this Act.

(4) If on the fixed date—

- (a) there were disciplinary proceedings in terms of the Public Service Act [*Chapter 16:04*] pending against a person who, but for this subsection, would be a transferred member, such proceedings shall continue after the fixed date in all respects as if such person is a member of the Civil Service and, if the proceedings result in the dismissal of that person, that person shall not be transferred to the Tertiary Service Council;
- (b) any promotion or advancement was being processed in terms of the Public Service Act [*Chapter 16:04*] in relation to any transferred member, such promotion or advancement shall be processed and completed after the fixed date in all respects as if such transferred member is a member of the Civil Service and, if the promotion or advancement proceedings result in the promotion or advancement of that transferred member, that member shall be transferred to the Tertiary service at the equivalent grade or post;
- (c) any civil proceedings were instituted and are pending against any transferred member in his or her official capacity, such proceedings shall continue and be completed after the fixed date in all respects as if such transferred member is a member of the Civil Service.”.

