

STATE SERVICE (PENSIONS)

H.B. 9, 2024.]

STATE SERVICE (PENSIONS) BILL, 2024

MEMORANDUM

The purpose of this Bill is to establish a State Service Pension Fund to ensure that members enjoy a decent standard of living in their retirement. The Fund will provide for payments of pensions, gratuities and other benefits in respect of retirement of persons employed by the State. The creation of the Fund is also in line with the International Labour Organization's promulgation on social security (Minimum Standards).

The main provisions of the Bill are explained below:

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the definitions of terms used in the Bill.

Clause 3 provides for the establishment object and administration of State Service Pension Fund.

Clause 4 sets out the composition of the Fund.

Clause 5 provides for the actuarial valuation of the Fund.

Clause 6 provides for the State to guarantee the payment of pension benefits should the assets of the Fund become insufficient to pay any pension benefit to a member.

Clause 7 provides for the State Pension Fund Board and **Clause 8** provides for the Functions of the Board which shall be to administer the Fund among other functions.

Clause 9 provides for the staff of the State Service Pension Fund, namely the Chief Executive Officer and other members of staff necessary for the proper exercise of the Board's functions.

Clause 10 sets out the investment powers that the Board has with regards to any surplus of income of the Fund.

Clause 11 outlines the manner in which the Minister may give policy directions to the Board.

Clause 12 provides that the Minister may fix the pension contributions that are payable each month by members, and **clause 13** provides for fixing of pension contributions payable each month by employers.

Clause 14 provides for the fixing and computation of pension benefits of members.

Clause 15 provides for the power of the Board to review pension benefits and enhance defined benefits.

Clause 16 provides for the Minister's powers to prescribe by way of Statutory Instrument the pensions, gratuities or other benefits payable to members.

Clause 17 provides for the transfer or secondment of contributors to be recognised as a pensionable service.

Clause 18 provides for the commutation of pension for a former contributor.

Clause 19 provides for a pensions officer to require proof of age, marriage or death of a pension member before disbursements of benefits to beneficiaries.

Clause 20 provides for make up of benefits where the benefits that are applicable to a member before the commencement of this Act are more than what the member may receive upon commencement of the this Act. This is to guard against any prejudice to the members with regards the application of this law.

Clause 21 provides for the Board to pay non-contributory pension benefits on behalf of Ministries responsible for the administration of the Acts under which such benefits are paid. In this regard the Board acts as an administrative conduit for the processing of such pension benefits.

Clause 22 protects pension benefits from being assigned or transferred or otherwise ceded; or from being pledged or hypothecated; or from being attached or be subject to any form of execution under a judgement or order of a court.

Clause 23 provides that the pension of a member does not form part of his or her estate where such member's estate is liquidated.

Clause 24 provides for the protection and continuance of pension where a member is imprisoned, such that pension may still be paid during imprisonment to the pensioner or to the benefit of any spouse, child or dependant.

Clause 25 provides for the suspension or reduction of a pension benefit where a member is convicted of theft or misappropriation of state property or any misconduct involving fraud or financial prejudice to the State.

Clause 26 provides that where a member has been discharged or dismissed from State employment on the ground of misconduct, the Board may authorise the deduction from any pension benefit payable to him or her of an amount equal to any direct loss which the State sustained as a result of that misconduct.

Clause 27 provides for offences and their corresponding penalties.

Clause 28 gives the Minister the powers to make regulations necessary to give effect to the Act.

Clause 29 provides for transitional provisions of staff from Pensions Department of the Public Service Commission to the service of the Board.

Clause 30 provides for transitional provisions and savings such as pension benefits payable in terms of the repealed Act.

Clause 31 provides for the deferred incorporation of certain classes of contributors as members of the State Service Pension Fund.

Clauses 32 to 38 provide for consequential amendments to the following Acts: The Presidential Pension and Retirement Benefits Act; The Parliamentary Pensions Act; The Judges Salaries, Allowances and Pensions Act, The Prisons Act, The Defence Act, The Police Act, The Public Service Act, and The Health Service Act. The consequential amendments will give effect to the principle that all pensions must be paid out of the State Service Pension Fund, and any adjustments thereof be made in consultation with the Commission and the State Service Pension Fund Board.

STATE SERVICE (PENSIONS) BILL, 2024

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and date of commencement.
2. Interpretation.

PART II

STATE SERVICE PENSION FUND

3. Establishment, objects and administration of State Service Pension Fund.
4. Composition of Fund.
5. Actuarial valuation of Fund.
6. State guarantee of payments of benefits from Fund.

PART III

BOARD OF STATE SERVICE PENSION FUND

7. State Pension Fund Board.
8. Functions of Board.
9. Staff of Board of Trustees.
10. Investment powers of Board.
11. Minister may give policy directions to Board.

PART IV

MEMBERS CONTRIBUTIONS, EMPLOYERS' PAYMENTS AND PENSION BENEFITS

12. Members' contributions.
13. Employers' contributions.
14. Pension benefits.
15. Pension review and enhancement of defined benefits.
16. Minister's regulatory powers pursuant to sections 14 and 15.
17. Transfer or secondment of contributors.
18. Commutation of pension of former contributor.
19. Proof of age, marriage and date of death.
20. Make-up of benefits

PART V

GENERAL

21. Non-contributory pension benefits.
22. Pension benefits and contributions not to be attached, pledged or ceded.
23. Insolvency of pensioner.

Section

24. Continuance of pension on imprisonment
25. Suspension or reduction of pension benefits.
26. Deductions from pension benefits.
27. Offences and penalties.
28. Regulations.
29. Transitional provision transfer of staff from Pensions Department of Commission to Board.
30. Transitional and saving provisions.
31. Deferred incorporation of certain classes of contributors as members of the State Service Pension Fund.

PART VI

CONSEQUENTIAL AMENDMENT

32. Amendment of Cap. 2:05.
33. Amendment of Cap. 2:02.
34. Amendment of Cap. 7:08.
35. Amendment of Cap. 7:11.
36. Amendment of Cap. 11:02.
37. Amendment of Cap. 11:10.
38. Amendment of Cap. 16:04.
39. Amendment of Cap. 15:16.

FIRST SCHEDULE: Financial provisions applicable to Board.

SECOND SCHEDULE: Provisions applicable to Fund Board and Committees.

THIRD SCHEDULE: Ancillary powers of Board.

BILL

To provide for payment of pensions, gratuities and other benefits to or in respect of persons employed by the State on retirement, discharge, resignation, death or other termination of service; to make consequential amendments to the Judges Salaries, Allowances and Pensions Act [Chapter 7:08], the Prisons Act [Chapter 7:11], the Defence Act [Chapter 11:02], the Police Act [Chapter 11:10], the Public Service Act [Chapter 16:04]; the Presidential Pension and Retirement Benefit Act [Chapter 2:05] and the Parliamentary Pensions Act [2:02] ;to repeal the State Service (Pension) Act [Chapter 16:06]and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

1 Short title and date of commencement

(1) This Act may be cited as the State Service (Pensions) Act [Chapter 16:07].

(2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

H.B. 9, 2024.]

2 Interpretation

(1) In this Act—

“approved service” means—

- (a) the service of a government, statutory body, local authority or institution approved by the Minister, after consultation with the Commission, for the purposes of this Act; or 5
- (b) a uniformed force; or
- (c) the service of Parliament; or
- (d) Constitutional Commissions and other Constitutional bodies;

“Board” means the Board of the State Service Pension Fund established in terms of section 7; 10

“child” means an unmarried son or daughter under the age of eighteen years, and includes—

- (a) a posthumous child, a stepchild, and a child legally adopted; and
- (b) subject to subsection (2), a child born out of wedlock; 15

“Commission” means the Public Service Commission constituted in terms of section 202 of the Constitution;

“conditions of membership” in relation to a member who is not in the employment of the State, means the terms and conditions, fixed in terms of section 12, under which he or she is required or permitted to be a member; 20

“contribute” means to pay contributions to the Fund;

“contributions” means the amounts contributed by a contributor to the Consolidated Revenue Fund in terms of this Act or any other law and includes any amounts paid by a contributor— 25

- (a) in respect of a period of service which is recognized in terms of section 4(3) or was recognised under the corresponding provision of the former pensions law as being continuous; or
- (b) as arrear contributions in respect of service with the State;

but does not include any interest paid in respect of the amounts referred to in paragraphs (a) and (b); 30

“Chief Executive Officer” means the Chief Executive Officer responsible for the management of the Fund, appointed in terms of section 9;

“Constitutional appointee” means a person appointed in terms of the Constitution; 35

“defined benefit” means the benefit fixed in terms of section 14 that is based on how many years a member has contributed to the Fund and the pensionable emoluments earned at the date when the member retires or terminates his or her service with the Public Service or an approved service;

“employers’ contribution” means a contribution by the State or any other entity required to make contributions to the Fund; 40

“ex-member” means a former employee contributor to the Fund, that is to say someone who has paid his or her last contribution as a member, or a deceased or retired member;

- “financial year” means period of twelve months ending on the 31st December;
- “fixed date” means the date fixed in terms of section 1(2) as the date of commencement of this Act;
- 5 “former pensions law”, means the law relating to pensions which was applicable to a member immediately before the fixed date;
- “Fund” means the State Service Pension Fund established by section 3;
- “interest” means interest compounded annually;
- 10 “medical board” means a board of two or more medical practitioners registered in terms of the Health Professions Act [*Chapter 27:19*] appointed by the Minister for the purposes of this Act;
- “member” means any person who before, on or after the fixed date is or becomes—
- (a) a member of the Public Service; or
 - (b) a member of a uniformed force; or
 - 15 (c) a Judge, Magistrate, President of the Administrative Court or member of the administrative staff of the Judicial Service Commission;
 - (d) a person employed by Parliament;
 - (e) a person, other than a person referred to in paragraph (a); (b); (c) or (d), who is in the employment of the State and who is required
 - 20 by his or her conditions of employment to be a member; or
 - (f) a member who is on secondment to an approved service; or
 - (g) a person who is not in the employment of the State and who is required or permitted in terms of section 12 to be a member;
- and with respect to contributions payable by members does not include an ex-member, but with respect to pension benefits payable to members includes ex-members;
- 25 “military service” means the number of years spent in active service by a member in the Zimbabwe Defence Forces;
- 30 “Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- 35 “non-contributory pensions benefits” means pension benefits payable under the veterans of the liberation struggle Act [*Chapter 17:12*]; the State Service Disability Benefits Act [*Chapter 16:05*] and the War Victims Compensation Act [*Chapter 11:16*];
- “non-defined benefit” means that part of a pension benefit that is not a defined benefit and that is payable from time to time as an enhancement of the defined benefit, dependent on the Fund’s investment performance annually or at shorter or longer intervals as may be prescribed;
- 40 “pension benefit” means any—
- (a) pension; or
 - (b) commutation of a pension; or
 - (c) gratuity or other similar allowance; or
 - 45 (d) refund of pension contributions, including any interest payable thereon;

payable from the Fund in respect of a person's service as a member or in respect of any ill-health or injury arising out of and in the course of the person's official duties as a member, and includes any such amount payable to or for the benefit of the person's spouse, child, dependent or personal representative in respect of such services, ill-health or injury; 5

"pensioner" means an ex-member who is in receipt of a pension from the Fund;

"pensionable emoluments", in relation to a member, means that part of the member's salary, allowances and other remuneration that is taken into account in the assessment of any pension benefit payable to or in respect of the member; 10

"prescribed" means prescribed by regulations made in terms of section 27;

"prescribed securities and assets" means—

(a) stocks, bonds or other like securities issued by the State, a statutory body, or a local authority, and includes, treasury bills, or similar short-term bills issued by a statutory body or local authority; and 15

(b) investments approved or prescribed by the Minister from time to time for the purposes of this definition;

"statutory body" means—

(a) any commission established by the Constitution; or

(b) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice President, a Minister or any other statutory body or by a Commission established by the Constitution; 20

"uniformed force" means the Defence Force, the Police Force, or the Prison and Correctional Service, and includes any intelligence service of the State. 25

(2) The Board, may from time to time determine—

(a) the conditions subject to which it will recognize any unmarried person under the age of eighteen years, a child of a member or pensioner born out of wedlock; and 30

(b) the circumstances in which and the conditions subject to which any benefit may be paid in terms of this Act or any applicable regulations to or in respect of a person recognized by the Board concerned as the child of a member or pensioner born out of wedlock; and may at any time amend or revoke any such determination. 35

PART II

STATE SERVICE PENSION FUND

3 Establishment, object and administration of State Service Pension Fund

(1) There is hereby established a Fund, to be known as the State Service Pension Fund, whose object is to provide money for the payment of pension benefits to members, former members and their dependants, **as and when they become due and payable.** 40

(2) The State Service Pension Fund shall be administered by the State Service Pensions Fund Board. 45

(3) The First Schedule applies to the financial provisions pertaining to the Fund.

4 Composition of Fund

(1) The Fund shall consist of—

(a) contributions by members and the State; and

(b) all sums arising from the investment of moneys in the Fund; and

5 (c) any other sums that may vest in or accrue to the Fund, whether in terms of this Act or otherwise:

which sums shall be public funds and are to be administered as such in terms of the Public Finance Management Act [*Chapter 22:19*].

10 (2) With effect from the fixed date all contributions referred to in subsection (1) (a) shall cease to form part of the Consolidated Revenue Fund and thenceforward form part of the Fund.

(3) All contributions referred to in subsection (1)(a) that since the 1st January 2019 were retained pursuant to a retention Fund constituted under section 18 of the Public Finance Management Act [*Chapter 22:19*] shall form part of the Fund.

15 5 Actuarial valuation of Fund

(1) At such intervals as the Minister may direct, and at such times within such intervals the Minister deems expedient, the Fund shall be valued by an actuary appointed by the Board with the approval of the Minister:

20 Provided that the first valuation shall be made not later than one year after the fixed date, and the period between subsequent valuations shall not exceed three years.

(2) An actuary referred to in subsection (1) shall report to the Board and to the Minister; if his or her valuation reveals any surplus or deficiency, the actuary shall state what in his or her expert opinion is the cause of the surplus or deficiency and what action, if any, he or she recommends to be taken.

25 (3) The Minister shall cause every actuary's report received by him or her in terms of subsection (2) to be laid before Parliament within twenty-eight (28) sitting days after receiving it.

(4) The cost of an actuarial valuation in terms of this section shall be borne by the Fund.

30 6 State guarantee of payment of benefits from Fund

If at any time the assets of the Fund are insufficient to pay the whole or part of any pension benefit **that is a defined pension** to any member, the benefit or part thereof, as the case may be, shall be paid without delay from the Consolidated Revenue Fund, which is hereby appropriated for this purpose.

35

PART III

BOARD OF STATE SERVICE PENSION FUND

7 State Pension Fund Board

40 (1) There is hereby established a board, to be known as the State Service Pension Fund Board, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of doing anything that a body corporate may do by law.

(2) There shall be a Chairperson of the Board who shall be appointed by the President on the President's own authority if the President is responsible for

administering this Act, or otherwise after consultation with the Minister responsible for administering this Act.

- (3) The Board shall consist of the Chairperson and—
 - (a) a representative of the Public Service Commission, nominated by the Commission and appointed by the Minister; and 5
 - (b) the permanent secretary of the Ministry responsible for Finance (and during the temporary inability for any reason of the permanent secretary to attend any meeting of the Board, his or her authorised delegate); and
 - (c) a representative of the Ministry responsible for Finance nominated by the Minister responsible for Finance and appointed by the Minister; and 10
 - (d) a representative of the Ministry responsible for administering this Act, appointed by the Minister; and
 - (e) two representatives of public service employees nominated by the body recognised by the Minister responsible for labour as the apex body for the negotiation of employment conditions for members, and appointed by the Minister; and 15
 - (f) a member appointed by the Minister from a panel of names submitted at the Minister’s invitation by those statutory bodies whose employees contribute to the Fund; and
 - (g) two members appointed by the Minister for their professional qualifications or knowledge of and experience in pensions, insurance, finance, or for their suitability otherwise for appointment as members; and 20
 - (h) the person employed by the Commission who is responsible for ensuring uniformity of conditions of service in the public service, who shall be an Ex-officio member of the Board; and 25
 - (i) a legal practitioner employed by the State, nominated by the Attorney General and appointed by the Minister.

(4) In appointing members of the State Service Pension Fund Board, the Minister shall observe the provisions of sections 17 and 18 of the Constitution.

(5) The Second Schedule shall regulate terms and conditions of service and procedures for meetings for the Board. 30

8 Functions of Board

- (1) The Board shall be responsible for—
 - (a) administering the Fund;
 - (b) administering the payment of non-contributory pension benefits in terms of section 20; 35
 - (c) protecting members’ contributions and interests;
 - (d) performing any other function that may be conferred or imposed on the Board in terms of this Act or any other enactment.

(2) For the better exercise of its functions the Board shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Third Schedule, either absolutely or conditionally and either solely or jointly with others. 40

9 Staff of Board of Trustees

- (1) The Board shall— 45

- (a) appoint a Chief Executive Officer of the State Service Pension Fund; and
- (b) employ directors and such other staff as may be necessary for the proper exercise of its functions, and engage consultants where necessary.

5 (2) In order for a person to be appointed as Chief Executive Officer of the Fund he or she must have professional qualifications or knowledge of and experience in pensions, insurance, finance, or be suitable otherwise for appointment.

(3) The offices of the Chief Executive Officer and other members of staff shall be public offices but not form part of the Public Service.

10 (4) The Chief Executive Officer shall, subject to the general control of the Board—

- (a) be responsible for carrying out the decisions of the Board and the day-to-day administration and management of the affairs, staff and property of the Board and the Fund; and
- (b) be the custodian of the Board's records; and
- 15 (c) attend all meetings of the Board but shall have no vote on any matter before the Board; and
- (d) perform such other functions as may be assigned by the Board.

(5) Any remuneration, allowances and pension benefits to which the persons referred to in subsection (1) or (2) are entitled shall be chargeable to the Fund:

20 Provided that expenditure for the purposes of this subsection and subsection (2) shall not exceed two point five *per centum* of the total monies of the Fund for the financial year in question.

25 (6) Notwithstanding subsection (1), if the Board so requests and the Public Service Commission so permits, the Commission may assign on secondment members of the Public Service Commission Secretariat to perform all or any of the functions of the members of staff referred to in that subsection.

10 Investment powers of Board

(1) Any surplus of income over expenditure at the end of the Board's financial year may be invested by the Board in prescribed assets and securities.

30 (2) In relation to investment by the Board of its surplus monies otherwise than in prescribed assets and securities, such investments shall only be done in accordance with an investment mandate approved in terms of paragraph 3 ("Annual investment mandate and budget of Fund") of the First Schedule.

35 (3) The Board shall keep a schedule at its offices showing particulars of the Fund's current investments in sufficient detail to enable members of the public to assess the Fund's financial soundness, and the Board shall ensure that the schedule is available for inspection at all reasonable times by such persons.

40 (4) The Board shall create and maintain up to date a website which, among other things, will enable members of the public to have access to the schedule referred to in subsection (3) and to the investment mandate referred to in paragraph 3 ("Annual investment mandate and budget of Fund") of the First Schedule.

11 Minister may give policy directions to Board

(1) Subject to subsection (2), the Minister may give the Board such general directions relating to the policy the Board is to observe in the exercise of its

functions as the Minister considers to be necessary in the national interest, which policy directions must—

- (a) not be inconsistent with any provision of this Act; and
- (b) be issued in good faith, apply prospectively and not retrospectively, and be of general applicability; 5
- (c) clearly delimit the scope of their application and must otherwise not be vague or ambiguous in their terms; and
- (d) clearly express the national interest at stake;
- (e) must be clear (whether expressly or by necessary implication) that they apply or are in force for a fixed or indefinite period, or that they expire on the happening of any event. 10

(2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction and the board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal. 15

(3) The Board shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(4) Where any direction has been given to it in terms of subsection (1), the Board shall ensure that the direction and any views the Board has expressed on it in terms of subsection (2) are set out in the Board’s annual report. 20

(5) To avoid doubt, it is declared that the Minister may, in consultation with the Minister responsible for Finance, from time to time, give policy directions to the Board requiring it to invest any part or proportion of the Fund in specified prescribed securities and assets.

PART IV 25

MEMBERS CONTRIBUTIONS, EMPLOYERS’ PAYMENTS AND PENSION BENEFITS

12 Members’ contributions

The Minister, in consultation with the Commission and the Minister responsible for finance and after consultation with the Board, shall fix the amount that is payable each month by way of contributions by— 30

- (a) members in the employment of the State; and
- (b) members who are not in the employment of the State:

Provided that differential rates may be fixed as between members referred to in paragraphs (a) and (b).

13 Employers’ contributions 35

(1) The Minister, in consultation with the Commission and the Minister responsible for finance and after consultation with the Board, shall fix the amount that is payable each month by way of employer’s contributions to match or exceed the contributions of members referred to in section 12 (a) and (b):

Provided that differential rates may be fixed as between employers of members referred to in section 12(a) and (b). 40

(2) In fixing the amount of employer’s contributions in terms of subsection (1), the Minister shall take into account—

- (a) the pension benefits that may become payable to or in respect of the members concerned; and
- (b) the assets and liabilities of the Fund and the Funds ability to meet any current, future and contingent claims on it; and
- 5 (c) the willingness of the State to make good any deficit between the assets and liabilities of the Fund to ensure that the proposed pension benefits are payable to or in respect of the members concerned; and
- (d) any actuarial report received by him or her in terms of section 5;

the Minister may from time to time vary the amount of any employer's payment in
10 the light of those factors.

(3) Subject to this section, at the end of each month there shall be paid into the Fund from the Consolidated Revenue Fund a sum equal to the aggregate of the members' and employers' contributions paid during that month.

(4) The amount payable in terms of subsection (3) shall be a charge on the
15 Consolidated Revenue Fund, which is hereby appropriated for the purpose.

(5) Subject to this section, at the end of each month employers of members who are not in the employment of the State shall pay the aggregate of their contributions and their employees contributions into the Fund.

14 Pension benefits

20 (1) The Minister, in consultation with the Commission and the Minister responsible for finance and after consultation with the Board, shall fix the pension benefits payable to—

- (a) members in the employment of the State; and
- (b) members who are not in the employment of the State.

25 (2) The computation of the pension benefits fixed in terms of subsection (1) may vary as between the following classes of members—

- (a) members of the uniformed services;
- (b) Permanent Secretaries and other Constitutional appointees;
- (c) employees of the State employed by virtue of the President's prerogative
30 powers;
- (d) members of the Judiciary;
- (e) ministers, deputy ministers, and members of Parliament;
- (f) the President and Vice President;
- (g) all other employees of the State and members who are not in the
35 employment of the State.

(3) Pension benefits payable under subsections (1) and (2) to or in respect of members or ex-members shall be a charge on and paid out of the Fund.

(4) To avoid doubt, it is declared that the Board is bound to fix and compute
40 any specific pension benefit in strict accordance with any Constitutional or statutory provisions that speak to the fixing and computing of the pension benefits of certain descriptions or classes of persons mentioned in subsection (1) or (2), if such provisions are in force at the time the pension benefit in question is being fixed or computed.

15 Pension review and enhancement of defined benefits

45 (1) From time to time the Board shall ascertain average increase in the pensionable emoluments payable during the year to members, whereupon the Board in

consultation with the Minister, Commission and with the concurrence of the Minister responsible for finance shall take such steps as are necessary to increase all pensions payable from the Fund by the same proportion or higher proportions as provided for in the Pensions Review Act [*Chapter 16:03*].

(2) The Board may, from time to time, taking into account the performance of its investment portfolio, and having made any required deductions for reserves and the expenses of administering the Fund, award members any enhancement of their defined benefits by way of a non-defined benefit in the form of a lump sum, or a payment by instalments over a specified period: 5

Provided that before declaring any non-defined benefit the Board shall obtain the approval of the Minister responsible for finance, who shall himself or herself, before giving such approval, consult the Commission and the Minister. 10

16 Minister’s regulatory powers pursuant to sections 14 and 15

(1) Upon compliance with section 14(1) or 15 and in conformity with the decisions made thereunder, the Minister shall prescribe the pensions, gratuities or other benefits which shall be payable to members on their retirement, discharge, resignation or other termination of office and to the widows, children or dependants of such members or former members, or to their estates, on their death whilst in the employment of the State or after the termination thereof whilst in receipt of a pension: 15

Provided that in prescribing such benefits the Minister may— 20

- (a) provide that no pension, gratuity or other benefit shall be payable to or in respect of a member until he has completed a specified period of service with the State;
- (b) provide that a pension shall be payable to a member with effect from the date he attains a prescribed age, whether or not his service with the State is thereupon terminated; 25
- (c) make no provision in respect of particular classes of members.

(2) Regulations made in terms of subsection (1)—

- (a) shall prescribe that pensionable service includes any period in respect of which contributions have been paid; and 30
 - (b) may prescribe that, subject to the payment of contributions or arrear contributions, pensionable service includes—
 - (i) time spent on attachment or secondment to any other service;
 - (ii) any period spent undergoing national service or training for an approved qualification; 35
 - (iii) any previous service with the State before he became a contributor, whether such previous service is continuous with his service as a contributor or has been interrupted;
 - (iv) any period of service or employment otherwise than in the service of the State; 40
 - (v) any military service which—
 - A. was recognised under the former pensions law as pensionable service in respect of the member concerned; or
 - B. could have been recognised under the former pensions law which was applicable or which would have been applicable 45
- to that member had he been a member immediately before the fixed date and which the Minister declares shall be regarded as pensionable service in respect of the member concerned:

5 Provided that such regulations may provide that military service referred to in subparagraph (v) or any service with the State prior to the fixed date may be included as pensionable service without any contributions having been paid in respect thereof but any such service shall not be taken into account for the purpose of calculating qualifying service for a refund of contributions.

10 (3) Any amount which a contributor has elected to pay as arrear contributions in respect of any period of service or employment which is to be regarded as pensionable service shall, unless paid in full within one month from the date the election was made, be paid in such manner as may be determined by the Minister.

15 (4) In the event of the death, discharge, resignation or retirement of a contributor who has made an election referred to in subsection (3) before the amount payable by him in terms of that subsection has been paid, the balance of the amount so payable shall be set off against any pension, gratuity, refund of contributions or other benefit due to or in respect of the contributor under this Act or against any other moneys due to him or her by the State.

20 (5) For the purposes of subsection (4), the Minister may direct that a sufficient portion of the pension due to or in respect of the contributor may be commuted in accordance with the provisions of section 18(1) (“Commutation of pension of former contributor”), notwithstanding anything to the contrary contained in this Act.

 (6) The period of pensionable service or pensionable employment shall be calculated by the month and any fraction of a month shall be disregarded.

25 (7) In the case of a member who is employed full-time in a uniformed force, if any previous service included in his pensionable service was service otherwise than in a uniformed force—

- 30 (a) for the purpose of calculating—
- (i) any pension or other benefit which is payable to or in respect of the widow or any child of such person; or
 - (ii) any pension which is payable to such person on his discharge on the grounds of ill-health; the whole of such previous service shall be reckoned as pensionable service;
- (b) for the purpose of calculating any pension which is payable to such person, other than a pension referred to in subparagraph (ii) of paragraph (a), only five-sixths of such service shall be reckoned as pensionable service.

35 **17 Transfer or secondment of contributors**

 (1) If a contributor who is employed in a uniformed force is or has been transferred to any other employment with the State as a contributor, the period of his or her service which was recognised in terms of this Act as pensionable shall be regarded as pensionable service.

40 (2) If a contributor is or has been transferred from the service of the State, otherwise than in a uniformed force, to a uniformed force—

- (a) for the purpose of calculating—
- (i) any pension or other benefit which is payable to or in respect of the widow or any child of such person; or
 - 45 (ii) any pension which is payable to such person on his discharge on the grounds of ill-health;

the whole of such previous service shall be reckoned as pensionable service;

- (b) for the purpose of calculating any pension which is payable to such person other than a pension referred to in subparagraph (ii) of paragraph (a), only five-sixths of such service shall be reckoned as pensionable service. 5

(3) If a contributor—

- (a) is transferred from the employment of the State to employment in the service of Parliament or with an approved government, body or institution; or
- (b) has been transferred from employment in the service of Parliament or with an approved government, body or institution to the employment of the State; 10

the provisions relating to the payment of a pension or other benefit in his case shall be as prescribed or as the Minister may in his case fix.

18 Commutation of pension of former contributor 15

(1) The Minister may, at the request of a contributor who is about to become a pensioner or of a pensioner who, immediately before he became entitled to his pension, was a contributor, commute—

- (a) if the pension does not exceed the prescribed amount per annum, the whole or any portion of that pension; 20
- (b) if the pension exceeds the prescribed amount per annum but does not exceed a higher prescribed amount per annum, a portion of that pension not exceeding the prescribed amount;
- (c) if the pension exceeds the higher prescribed amount per annum, a portion of that pension not exceeding one-third thereof. 25

(2) Nothing in subsection (1) shall authorise the commutation of any pension or part of a pension which is payable—

- (a) to a widow consequent on the death of a member or pensioner; or
- (b) in respect of a child.

(3) An application for the commutation of the whole or any portion of a pension shall be made on the form and in the manner prescribed. 30

(4) On receipt of an application in terms of subsection (3) the Minister shall, subject to subsection (1)—

- (a) if the application is made before, or within one month after, the date the applicant became entitled to the pension, grant the application; 35
- (b) if the application is not made within the period specified in paragraph (a), grant provisional approval of the application for commutation.

(5) Where provisional approval of an application has been granted in terms of subsection (4)(b), the applicant shall complete a declaration of health in the prescribed form and shall send the completed declaration to, and submit himself to examination by, a medical board. 40

(6) The medical board shall, after examining the applicant in terms of subsection (5), forward to the Minister a report on that applicant in the prescribed form.

(7) If in its report in terms of subsection (6) the medical board—

- 5 (a) certifies that the applicant is not suffering from nor, in its opinion, is especially liable to suffer from any disease or physical disability likely to affect adversely his normal expectation of life which it considers to be fully up to the average for persons of the age of the applicant, the Minister shall grant, subject to the provisions of subsection (1), the commutation applied for;
- (b) is unable to certify as required by paragraph (a), the Minister shall refuse to grant the commutation applied for.

10 (8) The amount of the single cash payment to be made on the commutation of a pension shall be computed by multiplying the annual rate of pension to be commuted by the prescribed commutation factor in relation to the age of the applicant calculated to the nearest half year or, where his age is midway between the half years, to the half year nearest above his age at the date the commutation is to be effected.

- (9) The commutation of a pension in terms of this section shall be effective—
- 15 (a) in the case of an applicant referred to in subsection (4)(a), on the date on which he becomes entitled to his pension;
- (b) in the case of an applicant referred to in subsection (4)(b), on the first day of the month following that on which the commutation is granted.

19 Proof of age, marriage and death

20 (1) A member shall, when so required, submit such proof as may be required to the satisfaction of a pensions officer of the date of his or her birth.

(2) No pension or other benefit provided for under this Act shall be paid to a widow or widower of a member or of a pensioner until proof of marriage to, and date of the death of the husband or wife has been furnished to the satisfaction of the pensions officer.

25

(3) No pension or other benefit provided for under this Act shall be paid in respect of a child until proof has been furnished to the satisfaction of the pensions officer that the child is indeed a child as defined in section 2.

20 Make-up of benefits

30 (1) If, on the termination of the service of a member who at the date of commencement of this Act is employed by the State, including any such member who at such date is on secondment to an approved service, the benefits payable in terms of this Act to him or her or to or in respect of his widow or any child are less than the benefits that would have been payable had the former pensions law continued to apply

35 to him, the benefits payable under this Act shall be increased by the amount of the difference.

(2) If, on the termination of the service of a member referred to in subsection (1) a pension is paid to him or to or in respect of his widow or any child in terms of the Pensions and Other Benefits Act [*Chapter 16:01*] and not in terms of this Act, the provisions of subsection (1) as the case may be, shall apply, *mutatis mutandis*,

40 in determining whether there should be any make-up of benefits in terms of the said subsection as though the pension were payable in terms of this Act and the relevant regulations:

45 Provided that the pension shall be calculated at the appropriate rate specified in section 15 or 17 as the case may be, of the Pensions and other Benefits Act [*Chapter 16:01*].

(3) Notwithstanding any other provision of this Act, if the rate of any pension payable to any person in terms of this Act, when aggregated with any other pension payable to him in terms of any other enactment, is less than the minimum pension, if any, specified for the time being in a notice in terms of section 3 of the Pensions Review Act [Chapter 16:03], as payable to pensioners, the rate of pension payable to that person in terms of these regulations shall be increased by the amount of the difference. 5

(4) In calculating the rate of any pension for the purposes of subsection (3), no account shall be taken of any temporary commutation of such pension.

PART V

GENERAL 10

21 Non-contributory pension benefits

(1) The Board shall be responsible for paying non-contributory pension benefits on behalf of the Ministries responsible for the administration of the Acts under which such benefits are paid.

(2) Non-contributory pension benefits shall not be paid from the Fund but the amounts required to pay for them shall be entrusted to the Board having been appropriated and paid from the Consolidate Revenue Fund. 15

22 Pension benefits and contributions not to be attached, pledged or ceded

(1) Subject to this Act and any other enactment and to the conditions of employment or conditions of memberships of the member concerned— 20

- (a) no pension benefit or right thereto shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated;
- (b) no pension benefit or right thereto or contribution made by a member shall be liable to attachment or be subject to any form of execution under a judgment or order of a court; and in the event of a member or beneficiary attempting to assign, transfer or otherwise cede or pledge or hypothecate a pension benefit or right thereto payment of the pension benefit may be withheld, suspended or entirely discontinued if the Minister, on the recommendation of the Board, so determines: 25 30

Provided that the Minister may direct the payment of the pension benefit or any part of it to any dependent of the member or beneficiary for such period as the Minister may direct.

(2) Before making the recommendation to the Minister for the purpose of subsection (1), the Board shall give every person whose interests are likely to be affected by the recommendation a reasonable opportunity to make the representations in the matter. 35

23 Insolvency of pensioner

If a pensioner's estate is liquidated or assigned, the pension shall not form part of the assets in the pensioner's insolvent or assigned estate.

24 Continuance of pension on imprisonment 40

(1) Where a pensioner is convicted of an offence and sentenced to death or to any term of imprisonment without the option of a fine, the Board may cause the pension or any portion of it to be paid during the pensioner's imprisonment to or for the benefit of any spouse, child or other dependent, and the selection of such a dependent shall be in the Board's discretion. 45

(2) No person shall be discontinued on the basis of imprisonment where a member was benefiting from the pension Fund at the time he or she was sentenced to prison

25 Suspension or reduction of a pension benefit

- 5 (1) If any person who is being paid or become entitled to a pension benefit—
- (a) is found by a competent court, whether in a criminal trial or civil proceedings to have been guilty of—
- 10 (i) theft or misappropriation of property of the state or of his or her employer; or
- (ii) fraud causing actual or potential financial prejudice to the State or his or her employer; which conduct would have rendered him or her liable to discharge or dismissal if it had been discovered before he or she became entitled to the pension benefit; or
- 15 (b) is found by a board appointed by the Minister for the purpose to have made improper use of any information financially prejudicing the State or his or her employer, which he or she may have obtained in the course of his or her employment;
- or
- 20 (c) is found to have made a false statement for the purpose of obtaining a pension benefit, knowing the statement to be false or not having reasonable grounds for believing it to be true;

the Minister, on the recommendation of the Board, may order that the right to any pension benefit to which that person has become entitled or of which he or she is in receipt shall be suspended or reduced:

25 Provided that the suspension contemplated in this section shall only be temporary and may only be done for the purpose of determining the financial prejudice suffered by the State or Employer, as the case may be, and such suspension shall be permanently stayed once the prejudice has been determined.

30 (2) Before making a recommendation to the Minister for the purpose of subsection (1), the Board shall give the person concerned a reasonable opportunity to make representations in the matter.

(3) If any person fails or refuses to supply the Board with any information which the Board reasonably requires to ascertain—

- 35 (a) whether or not that person, or anyone else for whom he is legally responsible, is entitled to a pension benefit; or
- (b) the amount of any pension benefit to which that person, or anyone else for whom he is legally responsible, is entitled;

the Board may withhold or suspend payment of the pension benefit until the information is supplied.

40 26 Deductions from pension benefits

(1) Where a member has been discharged or dismissed from State employment on the ground of misconduct, the Board may authorise the deduction from any pension benefit payable to him or her of an amount equal to any direct loss which the State sustained as a result of that misconduct.

45 (2) The Board may authorise the deduction from any pension benefit to which a member or person is liable to pay to the State or the Fund.

(3) To facilitate the recovery of an amount due under this section, the Board may order the commutation of all of or part of any pension payable to or in respect of the member concerned, notwithstanding anything to the contrary contained in the member's conditions of employment or conditions of membership.

(4) Before taking any action in terms of this section, the Board shall give every person whose interests are likely to be affected by it a reasonable opportunity to make representations in the matter. 5

27 Offences and penalties

Any person who—

- (a) in any statement or document required by or for the purposes of this Act, makes a statement which is false or does not have reasonable grounds for believing to be true; or 10
- (b) with intent to deceive, destroys, mutilates, alters or falsifies any document relating to the Fund or to any person's entitlement to a pension benefit;

shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment. 15

28 Regulations

(1) The Minister, after consultation with the Board, may, by regulation provide for all matters which by this Act are required or are permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed in order to carry out or give effect to this Act. 20

(2) Regulations referred to in subsection (1) may provide for—

- (a) the matters to be included in any actuarial valuation referred to in section 6;
- (b) the preparation and submission to the Minister; of financial statements, reports, statistics, accounts and other documents for the Fund; 25
- (c) the deduction by an employer from the emoluments payable to his or her employee of contributions to be paid to the Fund;
- (d) the minimum benefits that may be payable by the Fund;
- (e) subject to the Maintenance Act [*Chapter 5:08*] and the Children's Act [*Chapter 5:06*], the prohibition or control of the cession, pledging or hypothecation of benefits payable by the Fund and the protection of such benefits on insolvency or assignment or from attachment or execution under a judgment or order of a court; 30
- (f) the withholding of any benefits payable by a Fund where the member concerned— 35
 - (i) has borrowed and not fully repaid money from the Fund or from his employer and has pledged his rights to benefits from the Fund as security therefor; or
 - (ii) has been discharged because of dishonesty which has resulted in his employer suffering loss; and the person to whom such benefits or portion thereof may be paid; 40
- (g) the principles to be observed with respect to the investment of the Fund's assets; and
- (h) the appointment of experts such as Fund managers, Fund administrators and other appropriately qualified persons who may offer technical advice to the Board. 45

- (i) subject to section 16, the pensions, gratuities or other benefits payable to members on their retirement, discharge, resignations or other termination of office.

(3) Regulations referred to in this section may provide for a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

29 Transitional provision transfer of staff from pensions department of Commission to Board

(1) With effect from the fixed date every person employed by the State in the Pensions Department of the Commission immediately before that date shall be transferred to the service of the Board on terms not less favourable than those enjoyed by him or her immediately prior to his or her transfer.

(2) Until such time as conditions of service are drawn up by the Board, the terms and conditions of service applicable to employees of the Pensions Department of the Commission (that is to say the department under the Commission responsible for the administration of pensions), as the case may be, shall continue to apply to every employee transferred to the Board as if every such person were still in the service of the Commission.

30 Transitional and saving provisions

(1) In this section—

“repealed law” means the State Service (Pensions) Act [*Chapter 16:06*];

“transferred member” means a person who, immediately before the fixed date, was contributing to the Consolidated Revenue Fund under any of the Acts referred to in subsection (3) and who becomes a member on the fixed date;

“transferred pension benefit” means a pension benefit which, immediately before the fixed date, was payable or being paid from the Consolidated Revenue Fund in terms of any of the Acts referred Judges Salaries, Allowances and Pensions Act [*Chapter 7:08*], The Prisons Act [*Chapter 7:11*], the Defence Act [*Chapter 11:02*], The Police Act [*Chapter 11:10*] and The Public Service Act [*Chapter 16:04*] and which, on and after that date, is payable from the Fund

“transferred pensioner” means a person to whom a transferred pension is payable.

(2) Subject to this section, the State Service (Pensions) Act [*Chapter 16:06*] is repealed.

(3) Any term or condition of service related to pensions benefits which was fixed under the Judges Salaries, Allowances and Pensions Act [*Chapter 7:08*], the Prisons Act [*Chapter 7:11*], the Defence Act [*Chapter 11:02*], the Police Act [*Chapter 11:10*], the Public Service Act [*Chapter 16:04*], the State Service Pensions Act [*Chapter 16:06*], the Presidential Pension and Retirement Benefit Act [*Chapter 2:05*] and the Parliamentary Pensions Act [*Chapter 2:02*] which, immediately before the fixed date under the Act concerned as amended by this Act and shall continue to have effect or to be capable of acquiring legal effect until they are amended or replaced in terms of this Act.

(4) Any pension benefits which, immediately before the fixed date, was payable to any person under the repealed law and under any of the Acts specified in subsection (3) shall be payable out of the Fund.

(5) Any person who, immediately before the fixed date, was contributing under the repealed law or any of the Acts referred to in subsection (3) shall be deemed to be a member.

(6) The Aggregate amount of all contributions which, on and after the fixed date, are to be paid from the Fund shall constitute a debt due by the State to the Fund. 5

(7) There shall be paid by the State to the Fund such amount as the Minister and the Fund Board may agree, in consultation with the Commission and with the concurrence of the Minister responsible for Finance, in respect of—

- (a) employer’s contributions in respect of the employment of transferred members with the state before the fixed date; and 10
- (b) members’ contributions and employers’ contributions in respect of the employments of transferred pensioners with the state before the fixed date.

(8) The amounts referred to in subsections (6) and (7) shall be paid to the Fund in such instalments and on such terms and conditions, including terms as to interest, as may be agreed amongst the Minister and the Fund Board. 15

31 Deferred incorporation of certain classes of contributors as members of the State Service Pension Fund

(1) In this section—

“public entity” means an entity whose operations or activities are substantially controlled by the State or by a person on behalf of the State, whether through ownership of a majority of shares in the entity or otherwise, and includes— 20

- (a) a statutory body; and
- (b) a public commercial entity; and 25
- (c) an entity established under an agreement for a partnership or joint venture between the State and any other person, which entity declared in terms of subsection (2) to be a public entity; and
- (d) any subsidiary of an entity referred to in paragraph (a), (b) or (c);

(2) Any public entity whose members and employees did not, immediately before the fixed date, make contributions towards the Consolidated Revenue Fund in contemplation of receiving any pension benefit, may (regardless of whether the public entity in question operated its own pension scheme) apply through its governing body to the Board in the prescribed form and manner for its members and employees to become contributors of the Fund, for which purpose the entity must satisfy the Board that it complies with the prescribed conditions for its members and employees to become contributors of the Fund. 30 35

(3) If an applicant public entity is admitted into membership of the Fund the Minister shall, as soon as possible thereafter, publish a notice in the *Gazette* to that effect (and until such notice is published the provisions of section 22 and 23 shall not apply to the pension benefits paid to and contributions made by the members and employees of the entity in question). 40

PART VI

CONSEQUENTIAL AMENDMENTS

32 Amendment of Cap. 2:05 45

The Presidential Pension and Retirement Benefits Act [*Chapter 2:05*] is amended in section 7—

- (a) by the repeal of subsection (1) and the substitution of—

“(1) All pensions payable in terms of this Act, shall be paid out of the State Service Pension Fund established in terms of the State Service (Pensions) Act [Chapter 16:07].”.

- 5 (b) by the insertion after subsection (1) of the following subsection—

“(1a) If the conditions of service of the President or Vice President are reviewed and are likely to affect payments made to or from the State Service Pension Fund, such review shall be fixed in consultation with the State Service Pension Fund Board the Commission and the concurrence of the Minister responsible for Finance in terms of the Pensions Review Act [Chapter 16:03].”.

10

33 Amendment of Cap. 2:02

The Parliamentary Pensions Act [Chapter 2:02] is amended—

- (a) by the repeal of section 18 and the substitution of—

“(18) Any pension commutation of pension or refund of pension contribution payable in terms of this Act shall be paid out of the State Service Pension Fund established in terms of the State Service (Pension) Act [Chapter 16:07].”;

15

- (b) by the insertion of a new subsection (2), the existing section becoming subsection (1)—
- 20

“(2) If the conditions of service of Ministers and Parliamentarians are reviewed and are likely to affect payments made to or from the State Service Pension Fund, such review shall be fixed in consultation with the State Service Pension Fund Board, the Commission and with the concurrence of the Minister responsible for Finance.”.

25

34 Amendment of Cap. 7:08

The Judges Salaries, Allowances and Pensions Act [Chapter 7:08] is amended in section 4 by the repeal of subsections (1) and (2) and the substitution of—

“(1) Subject to this section, the Judicial Service Commission shall fix the terms and conditions subject to which pension benefits shall be paid to Judges.

30

(2) Any pension benefit payable in terms of this section shall be paid out of the State Service Pension Fund established in terms of the State Service (Pensions) Act [Chapter 16:07].

(2a) Before fixing any term or condition in terms of subsection (1), the Judicial Service Commission shall consult the Minister, the State Service Pension Fund Board, the Public Service Commission and obtain the concurrence of the Minister responsible for Finance.”.

35

35 Amendment of Cap. 7:11

The Prisons Act [Chapter 7:11] is amended—

- 40 (a) in section 7 by the insertion in subsection (4) of the following proviso—

“Provided that any conditions of service that are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [Chapter 16:07] shall be fixed in consultation with the State Service Pension Fund Board, the Commission, the Minister responsible for Public Service and with the concurrence of the Minister responsible for Finance.”;

45

- (b) in section 130 by the insertion after subsection (3) of the following subsection—

“(4) Before making regulations in terms of subsection (1) which are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [*Chapter 16:07*], the Minister shall consult the State Service Pension Fund Board, the Commission, the Minister responsible for Public Service and obtain the concurrence of the Minister responsible for Finance.”

5

36 Amendment of Cap. 11:02

The Defence Act [*Chapter 11:02*] is amended—

10

- (a) in section 8 by the insertion in subsection (3) of the following proviso—

“Provided that any conditions of service that are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [*Chapter 16:07*], shall be fixed in consultation with the State Service Pension Fund Board, the Commission, the Minister responsible for Public Service and the with the concurrence of the Minister responsible for Finance.”;

15

- (b) in section 11 by the insertion in subsection (5) of the following proviso—

“Provided that any conditions of service that are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [*Chapter 16:07*], shall be fixed in consultation with the State Service Pension Fund Board, the Commission, the Minister responsible for Public Service and the with the concurrence of the Minister responsible for Finance.”;

20

- (c) in section 27 by the insertion of the following subsection, the existing section becoming subsection (1)—

25

“(2) Before prescribing conditions of service which are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [*Chapter 16:07*], the Minister shall consult the State Service Pension Fund Board, the Commission, the Minister responsible for Public Service and obtain the concurrence of the Minister Finance.”

30

37 Amendment of Cap. 11:10

The Police Act [*Chapter 11:10*] is amended—

- (a) in section 6 by the insertion in subsection (4) of the following proviso—

35

“Provided that any conditions of service that are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [*Chapter 16:07*], shall be fixed in consultation with the State Service Pension Fund Board, the Commission, the Minister responsible for Public Service, and with the concurrence of the Minister responsible for Finance.”;

40

- (b) in section 23 by the insertion of the following subsection, the existing section becoming subsection (1)—

“(2) Before prescribing conditions of service under this Act that are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pension) Act [*Chapter 16:07*], the Minister shall consult the State Service Pension

45

Fund Board, the Commission, the Minister responsible for Public Service and obtain the concurrence of the Minister to responsible for Finance.”.

38 Amendment of Cap. 16:04

5 The Public Service Act [*Chapter 16:04*] is amended—

(a) in section 5 by the insertion in subsection (1) of the following proviso—

“Provided that any conditions of services that are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [*Chapter 16:07*] shall be fixed in consultation with the State Service Pension Fund Board and with the concurrence of the Minister responsible for Finance.”;

(b) by the repeal of section 22 and the substitution of—

“22 Rights of members of Public Service and other persons to remuneration and pension benefits

15 Subject to this Act and any other law, a person shall have an enforceable right against—

(a) the state, for payment of any salary, allowance or other remuneration payable to him in terms of this Act;

(b) the State Service Pension Fund Board established in terms of the State Service (Pensions) Act [*Chapter 16:07*] for payment of any pension benefit payable to him from the State Service Pension Fund established in terms of that Act”;

(c) by the repeal of sections 28, 29 and 30;

(d) in section 31, by the repeal of subsection (3) and the substitution of the following subsection—

“**(3)** Before enacting regulations in terms of subsection (1) which are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [*Chapter 16:07*], the Commission shall consult the State Service Pension Fund Board, the Minister and obtain the concurrence of the Minister responsible for Finance.”.

39 Amendment of Cap. 15:16

The Health Service Act [*Chapter 15:16*] is amended—

(a) in section 13(1) by the repeal of the proviso and the substitution of the following proviso—

“Provided that any conditions of service that are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions) Act [*Chapter 16:07*], shall be fixed in consultation with the Health Service Board, the Commission, the Minister responsible for Public Service, and with the concurrence of the Minister responsible for Finance.”;

(b) in section 26 by repeal of subsection (3) and the substitution of the following—

“**(3)** Before enacting regulations in terms of subsection (1) which are likely to affect payments made to or from the State Service Pension Fund established in terms of the State Service (Pensions)

Act [Chapter 16:07], the Health Service Board shall consult the State Service Pension Fund Board, the Minister and obtain the concurrence of the Minister responsible for Finance.”.

FIRST SCHEDULE (Section 3)

FINANCIAL PROVISIONS APPLICABLE TO BOARD 5

1. *Books of accounts and audit of Fund*

(1) The Board shall ensure that proper accounts and other records relating to them are kept in relation to all transactions of the Fund.

(2) The accounts of the Fund shall be audited by the Auditor-General, who shall have all the powers conferred upon him or her by section 5 of the Audit Office Act [Chapter 22:18] as though the assets of the Fund were public moneys. 10

2. *Annual and other reports of Board*

(1) The Board—

- (a) shall, as soon as possible after the end of the financial year, submit to the Minister, through the Board, an annual report on its activities during that year; and 15
- (b) may at any time submit to the Minister, through the Board, a special report on any matter upon which the Board considers it desirable to report.

(2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the report is received by him or her— 20

- (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)(a) which the Fund Board has requested through the Board to be laid before Parliament.

3. *Annual investment mandate and budget of Fund* 25

(1) On or before such date prior to the beginning of the financial year as the Minister and the Board may agree, the Board shall cause to be prepared, and submit to the Minister for his or her approval—

- (a) a budget showing the expenditure which the Board proposes to incur during that financial year; and 30
- (b) a written investment mandate in respect of the performance of its investment functions, and shall include—
 - (i) indications of the classes of investments in which the Fund can be invested and the selection criteria for investments within those classes; and 35
 - (ii) **what share, if any, of its investment the Board shall reserve for investment in prescribed securities and assets, whether specific prescribed securities and assets or prescribed securities and assets generally; and**
 - (iii) information on the acceptable balance between risk and return in the overall Fund portfolio; and 40
 - (iv) guidelines on ethical investment, including policies, standards and procedures for avoiding prejudice to Zimbabwe’s reputation as a responsible member of the international community; and

- (v) indications relating to the management of credit, liquidity and operational, currency, market and other financial risks; and
- (vi) indications on prohibited or restricted investments or any investment constraints or limits; and
- 5 (vii) in relation to the objects referred to in section 10, the extent to which the Board may invest moneys in domestic assets.

(2) During any financial year, the Board may prepare and submit for the Minister's approval a supplementary budget relating to expenditure which—

- (a) was not, for good reason, provided for in the annual budget; or
- 10 (b) was inadequately provided for in the annual budget due to unforeseen circumstances.

(3) A supplementary budget approved by the Minister shall be deemed to form part of the annual budget of the Board for the financial year to which it relates.

4. Records and accounts of Fund to be open for inspection

15 (1) The Board shall ensure that records are kept showing—

- (a) the number of members contributing to the Fund, the members being divided into such classes as the Board may determine with the member's approval; and
- (b) the aggregate monthly contributions paid by each class of members referred to in paragraph (a); and
- 20 (c) the aggregate monthly employer's contributions made in respect of each class of members referred to in paragraph (a); and
- (d) the number of pensioners receiving pensions from the Fund, the pensioners being divided into such classes as the Board may determine with the Minister's approval; and
- 25 (e) the aggregate monthly amounts paid by way of pensions to each class of pensioners referred to in paragraph (d); and
- (f) the number of persons who, during such period as the Board may fix with the Minister's approval, received pension benefits other than pensions, and the aggregate amount paid in respect of each class of such pension benefit.
- 30

(2) The Board shall endeavour, so far as practicable, to keep the records referred to in subsection (1), together with the audited accounts of the Fund for the immediately preceding year and its latest annual report, are kept open for inspection at all reasonable times at the Board's office by any member or pensioner or by any person representing one or more members or pensioners.

35

SECOND SCHEDULE (Section 7)

PROVISIONS APPLICABLE TO FUND BOARD AND COMMITTEES

Terms and conditions of office of members

40 1. (1) A member of the Board shall hold office for such period, not exceeding four years, as the Minister may fix at the time of his or her appointment.

(2) On the expiry of the period for which a member of the Board has been appointed, he or she shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed:

Provided that a member of the Board shall not continue to hold office in terms of this subsection for more than six months.

(3) A person who ceases to be a member of the Board shall be eligible for reappointment.

(4) Members of the Board shall hold office in such terms and conditions as the Minister may fix. 5

(5) A retiring member shall be eligible for re-appointment as a member for only one further term.

Disqualifications for appointment to Board

2. (1) The Minister shall not appoint a person as a member of the Fund Board and no person shall be qualified to hold office as a member of the Fund Board if— 10

- (a) he or she is neither a citizen of nor ordinary resident of Zimbabwe; or
- (b) he or she has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or 15
- (c) he or she has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (d) he or she has been convicted of any offence in any country and sentenced to a term of imprisonment imposed without the option of a fine, whether or not any portion of the sentence has been suspended, and he or she has not received a free pardon; or 20
- (e) he or she has been convicted of an offence involving dishonesty in any country and sentenced to a fine of any amount or to a term of imprisonment of any duration, whether or not any part of the sentence has been suspended. 25

(2) A person who is—

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies; 30

shall not be appointed as a member of a Board, nor shall he or she be qualified to hold office as a member of the Board.

(3) For the purpose of paragraph (2)(b)—

- (a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a Statutory body shall be regarded as a member of the statutory body; 35
- (b) “Statutory body” means—
 - (i) any commission established by the Constitution; or
 - (ii) anybody corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice President, a Minister or any other statutory body or by a Commission established by the Constitution. 40

Vacation of office by member of Board

3. (1) A member of the board shall vacate his or her office and his or her office shall become vacant—

- 5 (a) one month after the date he or she gives notice in writing to the Minister of his or her intention to resign his or her office or after the expiry of such other period of notice as he or she and the Minister may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine in any country; or
- 10 (c) if he or she becomes disqualified in terms of paragraph 2 to hold office; or
- (d) if he or she is required in terms of subparagraphs (2) or (3) to vacate his or her office as a member.

(2) The Minister may require a member of the Board to vacate his or her office if the member—

- 15 (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 term or condition fixed in terms of paragraph 1; or
- 20 (c) has ceased to possess any qualification by reason of which he or she was pointed;
- (d) is mentally or physically incapable of efficiently performing his or her duties as a member.

(3) The Minister, on the recommendation of the Board, may require a member of the Board to vacate his or her office if the Minister is satisfied that the member has been absent without consent of the chairperson of the Board from three consecutive meetings of the Board, of which he or she has been given at least seven days' notice, and that there was no just cause for the member's absence.

Suspension of member of Board

30 4. The Minister may suspend, with or without pay from office a member of the Board against whom criminal proceedings are instituted for an offence involving dishonesty and, whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member.

Filling of vacancies on Board

35 5. On the death of, or the vacation of office by, a member of the Board, the Minister may appoint a person to fill the vacancy:

Provided that, if as a result of the member's vacation of office the membership of the Board falls below the quorum, the Minister shall without delay appoint a person to fill the vacancy.

40 *Chairperson and vice chairperson and Secretary of Fund Board*

6. (1) The Minister shall appoint the member representing the Public Service Commission to be chairperson of the Board.

(2) Whenever the office of the chairperson of the Board becomes vacant, the Minister shall, within three months, appoint another member of the Commission to fill the vacancy.

(3) At its first meeting the Board shall elect from amongst its members a vice-chairperson, who shall hold office at the pleasure of the Board.

(4) Whenever the office of the vice-chairperson of the Board falls vacant, the Board shall as soon as possible elect one of its members to fill the vacancy.

(5) The vice-chairperson of the Board shall perform the functions of the chairperson whenever the chairperson is unable to do so. 5

(6) At its first meeting the Board shall elect from amongst its members a Secretary, who shall hold office at the pleasure of the Board.

Meetings and procedure of Board

7. (1) The Board shall hold its first meeting on such date and at such place as the Minister may fix and thereafter the Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit. 10

(2) The chairperson of the Board may himself or herself at any time and shall, at the request in writing of not fewer than 2 members, convene a special meeting of the Board, which meeting shall be convened for a date not sooner than seven days or later than thirty days after receipt of such a request. 15

(3) Subject to subparagraph (4), the chairperson of the Board or, in his or her absence, the vice chairperson, shall preside at meetings of the Board.

(4) If the chairperson and the vice-chairperson are both absent from a meeting of the Board, the members of the Board who are present may elect one of their number to preside at that meeting as a chairperson. 20

(5) A majority of members of the Board shall form a quorum at any meeting of the Board.

(6) Anything that is authorised or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present. 25

(7) At all meetings of the Board each member present shall have one vote on each question before the Board:

Provided that—

(a) in the event of an equality of votes, the chairperson or person presiding shall have a casting vote in addition to his or her deliberative vote; 30

(b) no member shall take part in the consideration or discussion of, or vote on, any question before the Board which relates to his or her vacation of office as a member.

(8) Any proposal circulated among all members of the Board and agreed to by majority of them shall be of the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board. 35

Provided that, if a member of the Board requires that any such proposal be placed before the Board, this subparagraph shall not apply to the proposal.

(9) Except as otherwise provided in this schedule, the procedure for the convening and conducting of meetings of the Board shall be as fixed from time to time by the Board. 40

Disclosure of interests by members of Board

8. (1) Before a member of the Board performs any function as a member, he or she shall disclose in writing to the Minister the full extent of— 45

- (a) every occupation, service or employment in which their spouses engage for remuneration; and
- (b) all assets held by their spouses, in excess of such value as the Minister may specify.

5 (2) As soon as possible after his or her spouse—

- (a) commences any occupation, service or employment for remuneration; or
- (b) acquires any asset in excess of such value as the Minister may have specified in terms of subparagraph (1)(b); a member of the Board shall disclose that fact in writing to the Minister.

10 *Committees of Board*

9. (1) For the better exercise of its functions, the Board may, in addition to the standing committees of the Board established under paragraph 10, establish one or more committees in which it may vest such of its functions as it considers necessary:

Provided that—

- 15
- (a) the vesting of a function shall not preclude the Board from performing such function; and
 - (b) the Board may amend or rescind any decision of the committee in the exercise of that function.

20 (2) The Board may appoint persons who are not members of the Board to be members of any of its committees.

(3) The chairpersons of the Board or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Board.

25 (5) Subject to this paragraph, sections 7(4) to (8) shall apply, with necessary changes, to committees and their members as they apply to the Board and its members.

Standing committees of Board

10. (1) The Board shall, in terms of paragraph 10, establish the following committees of the Board—

- 30
- (a) an Audit Committee in accordance with section 84 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009); and
 - (b) an Appointments Committee to make recommendations to the Board on the suitability of persons to be employed or retained by the Board, including investment managers; and
 - 35 (c) an Investments Committee to monitor the investments of the Fund:

40 Provided that the chairperson of the Investments Committee shall be the permanent secretary of the Ministry responsible for Finance nominated (and during the temporary inability for any reason of the permanent secretary to attend any meeting of the committee, his or her authorised delegate); and

- (d) a Discipline and Ethics Committee to monitor and enforce compliance with the Board's code of conduct and ethics; and
- (e) a Risk Management Committee to assess, monitor and manage specific and overall risks affecting the Fund.

(2) To avoid of doubt, the provisions of paragraph 9 applying to committees generally shall also apply to the standing committees.

Minutes of proceedings of Board and committees

11. (1) The Secretary shall cause minutes of all proceedings of and decisions taken at any meeting of the Board or of a committee of the Board to be entered in books and kept for the purpose. 5

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* proof of the proceedings of and decisions taken at that meeting. 10

Allowances of members of Board and committees

12. Members of the Board and committees of the board shall be paid out of the Fund allowances, if any, as the Minister may fix—

- (a) for members of the Board or of committees, or 15
- (b) to meet any reasonable expenses incurred by the member concerned in connection with the business of the Board or the committee, as the case may be.

THIRD SCHEDULE (Section 8)

ANCILLARY POWERS OF BOARD 20

1. To acquire premises necessary or convenient for the exercise of its functions and, for that purpose, to buy, take in exchange, hire or otherwise acquire immovable property and interests in and rights over such property.
2. To buy, take in exchange, hire or otherwise acquire movable property.
3. To maintain, alter and improve any of its property. 25
4. To mortgage or pledge any of its assets and to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets which are not required for the exercise of its functions, for such consideration as the Board may determine.
5. To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, securities and other negotiable or transferable instruments. 30
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To borrow moneys for the purposes of the Fund, and to charge any of the Fund's investments as security for any such loan.
8. To make contracts and enter into suretyships or give guarantees, and to modify or rescind such contracts or rescind such suretyships or guarantees. 35
9. To enter into, renew, cancel or abandon arrangements with any person or authority to act as the Fund's agent in any place, whether inside or outside Zimbabwe.
10. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees. 40
11. To provide such services as it considers it can properly provide, and to charge for those services such fees as it may determine from time to time.
12. Generally, to do anything that is calculated to facilitate or is incidental or conducive to the performance of its functions under this Act or any other enactment.