



## ZIMBABWE

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# ACT

To amend the Constitution of Zimbabwe.

ENACTED by the Parliament and the President of Zimbabwe.

### 1 Short title

This Act may be cited as the Constitution of Zimbabwe Amendment (No. 2) Act, 2021.

### 2 Interpretation

In this Act—

“the Constitution” means the Constitution of Zimbabwe set forth in the Schedule to the Constitution of Zimbabwe Amendment (No. 20) Act, 2013.

### 3 Amendment of section 91 of Constitution

Section 91 (“Qualifications for election as President and Vice-President”) of the Constitution is amended—

- (a) in subsection (1) by the deletion of “or Vice-President” and the substitution of “or appointment as Vice-President”;
- (b) in subsection (2) by the deletion of “or Vice-President” and the substitution of “or appointment as Vice-President”.

### 4 Amendment of section 92 of Constitution

Section 92 (“Election of President and Vice-Presidents”) of the Constitution is amended—

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- (a) by the deletion of the heading and the substitution of “Election of President”;
- (b) in subsection (1) by the deletion of “and two Vice-Presidents”;
- (c) by the repeal of subsections (2) and (3);
- (d) in subsection (4) by the deletion of “and Vice-Presidents”;
- (e) in subsection (5) by the deletion of “and Vice-Presidents”.

## **5 Amendment of section 93 of Constitution**

Section 93 (“Challenge to presidential election”) of the Constitution is amended—

- (a) in subsection (1) by the deletion of “or Vice-President”;
- (b) by the repeal of subsection (2);
- (c) by the repeal of subsection (5).

## **6 Amendment of section 94 of Constitution**

Section 94 (“Assumption of office by President and Vice-Presidents”) of the Constitution is amended—

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

“(1) A person elected as President assumes office when he or she takes before the Chief Justice or the next most senior judge available, the oath of President in the form set out in the Third Schedule, which oath the President must take—

- (a) on the ninth day after he or she is declared to be elected;  
or
  - (b) in the event of a challenge to the validity of his or her election, within forty-eight hours after the Constitutional Court has declared him or her to be the winner.”;
- (b) by the insertion of the following subsection after subsection (2)—

“(2a) As soon as the President assumes office, he or she shall appoint not more than two persons to be Vice-Presidents, who shall be persons qualified for election as President in terms of section 91(1), and who shall take, before the Chief Justice or the next most senior judge available, the oath of a Vice-President in the form set out in the Third Schedule.”.

## **7 Amendment of section 95 of Constitution**

Section 95 (“Term of office by President and Vice-Presidents”) of the Constitution is amended—

- (a) in subsection (1) by the deletion of “or Vice-President”;
- (b) in subsection (2)—
  - (i) by the deletion of “or Vice-President”;
  - (ii) by the deletion of “their terms of office” and the substitution of “his or her term of office”;
- (c) by the insertion of the following subsections after subsection (2)—

“(3) The term of office of Vice-President commences on the day he or she is appointed by the President and sworn in as such in terms of section 94(2a).

(4) A Vice-President vacates his or her office upon resignation or removal from office by the President.”.

## 8 Amendment of section 97 of Constitution

Section 97 (“Removal of President or Vice-President from office”) of the Constitution is amended—

- (a) by the deletion of the heading and the substitution of “Removal of President from office”;
- (b) in subsection (1)—
  - (i) by the deletion of “or a Vice-President”;
  - (ii) by the insertion after paragraph (d) of the following paragraph—

“or
  - (e) no longer being qualified to hold office as President in terms of section 91(1)(c), or becoming a citizen (other than an honorary citizen) of another country during his or her tenure of office;”;
- (c) in subsection (2) by the deletion of “or Vice-President as the case may be”;
- (d) in subsection (3)—
  - (i) in paragraph (a) by the deletion of “or Vice-President”;
  - (ii) in paragraph (b) by the deletion of “or Vice-President as the case may be.”;
  - (iii) in the resuming words by the deletion of “or Vice-President”.

## 9 New section substituted for section 101 of Constitution

Section 101 of the Constitution is repealed and the following is substituted—

“101 Succession in event of death, resignation or incapacity of President or Vice-President

(1) Subject to subsections (2) and (3), if the person elected President in any election dies, resigns or is removed from office—

- (a) the Vice-President or, where there are two Vice-Presidents, the Vice-President who was last nominated to act in terms of section 100, acts as President until a new President assumes office in terms of subsection (2); and
- (b) the vacancy in the office of President must be filled by a nominee of the political party which the President represented when he or she stood for election.

(2) A political party which is entitled to nominate a person in terms of subsection (1)(b) must notify the Speaker of the nominee’s name within ninety days after the vacancy occurred in the office of President, and thereupon the nominee assumes office as President after taking the oath of President in terms of section 94, which oath the nominee must take within forty-eight hours after the Speaker was notified of his or her name.

(3) In the event of the death, resignation or removal from office of a person who is elected President in an election and who did not represent a political party when he or she stood for election, the Vice-President or, if there are two Vice-Presidents, the Vice-President who was last nominated to act in terms of section 100, assumes office as President.”.

**10 New section substituted for section 104 of Constitution**

Section 104 (“Appointment of Ministers and Deputy Ministers”)(3) of the Constitution is amended by the deletion of “up to five” and the substitution of “up to seven”.

**11 Amendment of section 124 of Constitution**

Section 124 (“Composition of National Assembly”) of the Constitution is amended in subsection (1)—

- (a) in paragraph (b) by the substitution of “first two Parliaments” by “first four Parliaments”;
- (b) by the insertion of the following paragraph after paragraph (b)—
  - “(c) a further additional ten youth members, that is, persons aged from twenty-one to thirty-five years of age, one from each of the provinces into which Zimbabwe is divided, elected under a party-list system of proportional representation—
    - (i) which is based on the votes cast for candidates representing political parties in a general election for constituency members in the provinces; and
    - (ii) in which male and female candidates are listed alternately:  
Provided that political parties must ensure that—
      - (a) ten of the sixty women members are under the age of thirty-five;
      - (b) women with disabilities are represented on their party lists; and
      - (c) young women with disabilities are represented on their party lists in terms of an Act of Parliament.”.

**12 Amendment of section 180 of Constitution**

Section 180 (“Appointment of judges”) of the Constitution is amended—

- (a) by the repeal of subsection (4) and the substitution of the following—

“(4) Subject to subsection (4a), whenever it is necessary to appoint a judge, other than the Chief Justice, Deputy Chief Justice, Judge President or a sitting judge of the Supreme Court, High Court, Labour Court or Administrative Court to be a judge of the next higher court, the Judicial Service Commission must—

  - (a) advertise the position; and
  - (b) invite the President and the public to make nominations; and
  - (c) conduct public interviews of prospective candidates; and
  - (d) prepare a list of three qualified persons as nominees for the office; and
  - (e) submit the list to the President, whereupon, subject to subsection (5), the President must appoint one of the nominees to the office concerned.”;
- (b) by the insertion of the following subsection after subsection (4)—

“(4a) Notwithstanding subsection (4) the President, acting on the recommendation of the Judicial Service Commission may, at any

time whenever it is necessary to do so, appoint a sitting judge of the Supreme Court, High Court, Labour Court or Administrative Court to be a judge of the next higher court.”.

### 13 New section substituted for section 186 of Constitution

Section 186 of the Constitution is repealed and the following is substituted—

“186 Tenure of office of judges

(1) The Chief Justice and the Deputy Chief Justice hold office from the date of their assumption of office until they reach the age of seventy years, when they must retire unless, before they attain that age, they elect to continue in office for an additional five years:

Provided that such election shall be subject to the submission to, and acceptance by the President, after consultation with the Judicial Service Commission, of a medical report as to their mental and physical fitness so to continue in office.

(2) Judges of the Constitutional Court are appointed for a non-renewable term of not more than fifteen years, but—

(a) they must retire earlier if they reach the age of seventy years unless, before they attain that age, they elect to continue in office for an additional five years:

Provided that such election shall be subject to the submission to, and acceptance by the President, after consultation with the Judicial Service Commission, of a medical report as to the mental and physical fitness of the judge so to continue in office;

(b) after the completion of their term, they may be appointed as judges of the Supreme Court or the High Court, at their option, if they are eligible for such appointment.

(3) Judges of the Supreme Court hold office from the date of their assumption of office until they reach the age of seventy years, when they must retire unless, before they attain that age, they elect to continue in office for an additional five years:

Provided that such election shall be subject to the submission to, and acceptance by the President, after consultation with the Judicial Service Commission, of a medical report as to the mental and physical fitness of the judge so to continue in office.

(4) Notwithstanding subsection (7) of section 328, the provisions of subsections (1), (2) and (3) of this section shall apply to the continuation in office of the Chief Justice, Deputy Chief Justice, judges of the Constitutional Court and judges of the Supreme Court.

(5) Judges of the High Court and any other judges hold office from the date of their assumption of office until they reach the age of seventy years, when they must retire.

(6) A person may be appointed as a judge of the Supreme Court, the High Court or any other court for a fixed term, but if a person is so appointed, other than in an acting capacity, he or she ceases to be a judge on reaching the age of seventy-five years (in the case of a judge of the Supreme Court) or seventy years (in the case of a judge of the High Court or any other court) even if the term of his or her appointment has not expired.

(7) Even though a judge has resigned or reached the age of retirement or, in the case of a judge of the Constitutional Court, reached the end of his or her term of office, he or she may continue to sit as a judge for the purpose of dealing with any proceedings commenced before him or her while he or she was a judge.

(8) A judge may resign from his or her office at any time by written notice to the President given through the Judicial Service Commission.

(9) The office of a judge must not be abolished during his or her tenure of office.”.

#### **14 Amendment of section 199 of Constitution**

Section 199 (“Civil Service”) of the Constitution is amended—

- (a) by the deletion of the heading and the substitution of “Public Service”;
- (b) by the repeal of subsection (1) and the substitution of—

“(1) There is a single Public Service to implement the policies of the Executive branch of the Government, to assist it in the administration of Zimbabwe and to deliver public services to the people.”;

- (c) in subsections (2) and (3) by the deletion of “Civil Service” wherever it occurs and the substitution of “Public Service”;
- (d) section 203 (“Functions of Public Service Commission”) (1) of the Constitution of Zimbabwe is amended by the repeal of paragraph (1)(a) and the substitution of—

“(a) to appoint qualified and competent persons to hold posts in the Public Service, of whom ten *per centum* shall be persons with disabilities;”.

#### **15 New Section inserted in the Constitution**

The Constitution is amended in Chapter 10 by the insertion after section 204 of the following section—

“204A Chief Secretary to Office of President and Cabinet

(1) The Chief Secretary to the Office of the President and Cabinet and his or her deputies are appointed by the President after consultation with the Public Service Commission.

(2) The Chief Secretary to the Office of the President and Cabinet is the most senior member of the Public Service, and Permanent Secretaries of ministries appointed in terms of section 205 shall report to the Chief Secretary on any matter affecting them as a class.

(3) The terms of office and conditions of service of the Chief Secretary to the Office of the President and Cabinet and his or her deputies shall be as fixed by the President.”.

#### **16 Amendment of section 259 of Constitution**

Section 259 (“Prosecutor-General and other officers”) of the Constitution is amended—

- (a) in subsection (2) by the deletion of “Civil Service” and the substitution of “Public Service”;

- (b) in subsection (3) by the deletion of “following the procedure for the appointment of a judge”;
- (c) by the repeal of subsection (7) and the substitution of the following subsections—

“(7) The Prosecutor-General may be removed from office on the following grounds—

- (a) inability to perform the functions of his or her office due to mental or physical incapacity; or
- (b) gross incompetence; or
- (c) serious misconduct.

(7a) If the President considers that the question of removing the Prosecutor-General from office ought to be investigated, the President must appoint a tribunal to inquire into the matter.

(7b) A tribunal appointed under subsection (7a) must consist of at least three members appointed by the President, of whom—

- (a) two must qualify to be or have served as Supreme Court judges; and
- (b) one must qualify to be or has served as a High Court judge or holds or has held office as a judge of a court with unlimited jurisdiction in criminal or civil matters in a country whose common law is Roman-Dutch or English, and English is an officially recognised language.

(7c) The President must designate one of the members of the tribunal to be chairperson of the tribunal.

(7d) The tribunal must inquire into the question of removing the Prosecutor-General concerned from office and, having done so, must report its findings to the President and recommend whether or not the Prosecutor-General should be removed from office.

(7e) A tribunal appointed under this section has the same rights and powers as commissioners under the Commissions of Inquiry Act [*Chapter 10:07*], or any law that replaces that Act.

(7f) If the question of removing the Prosecutor-General from office has been referred to a tribunal under this section, the Prosecutor-General is suspended from office until the President, on the recommendation of the tribunal, revokes the suspension of or removes the Prosecutor-General from office.

(7g) The Act of Parliament referred to in subsection (10) may empower the Board of the National Prosecuting Authority or a tribunal appointed under this section to require the Prosecutor-General to submit to a medical examination by a medical board established for that purpose, in order to ascertain his or her physical or mental health.”.

## **17 New section substituted for sections 268 and 269 of Constitution**

Sections 268 and 269 of the Constitution are repealed and the following sections are substituted—

“268 Provincial and metropolitan councils

(1) There is a provincial council for each province and a metropolitan council for each metropolitan province, consisting of—

- (a) a chairperson of the council, elected in terms of section 272; and
- (b) the mayors and chairpersons, by whatever title they are called, of all urban and rural local authorities in the province concerned; and
- (c) ten women elected by a system of proportional representation referred to in subsection (3).

(2) A woman is qualified to be elected to a provincial or metropolitan council in terms of subsection (1)(c) if she is qualified for election as a Member of the National Assembly.

(3) Elections to provincial and metropolitan councils must be conducted in accordance with the Electoral Law, which must ensure that the women referred to in subsection (1)(c) are elected under a partylist system of proportional representation—

- (a) which is based on the votes cast for candidates representing political parties in the province concerned in the general election for Members of the National Assembly; and
- (b) in which women with disabilities are included.

(4) The seat of a member of a provincial or metropolitan council referred to in—

- (a) paragraph (b) of subsection (1) becomes vacant if the member ceases to be a mayor or chairperson of a local authority in the province concerned;
- (b) paragraph (c) of subsection (1) becomes vacant in the circumstances set out in section 129, as if the member were a Member of Parliament.”.

## **18 New section substituted for section 271 of Constitution**

Section 271 of the Constitution is repealed and the following is substituted—

“271 Committees of provincial and metropolitan councils

For the better exercise of their functions, provincial and metropolitan councils may establish committees, but each such committee must be presided over by a member referred to in section 268(1)(c).”.

## **19 Amendment of section 272 of Constitution**

Section 272 (“Chairpersons of provincial councils”) of the Constitution is amended—

- (a) by the deletion of the heading and the substitution of “Chairpersons of provincial and metropolitan councils”;
- (b) in subsection (1) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
- (c) in subsection (2) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
- (d) in subsection (3)—
  - (i) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
  - (ii) by the deletion of “Civil Service” and the substitution of “Public Service”;



- (e) in subsections (4) and (5) by the deletion of “provincial council” wherever it occurs and the substitution of “provincial or metropolitan council”;
- (f) in subsection (6)—
  - (i) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
  - (ii) in paragraphs (a), (b) and (c) by the deletion of “the provincial council” and the substitution of “the provincial or metropolitan council”;
- (g) in subsection (7) by the deletion of “provincial councils” and the substitution of “provincial or metropolitan councils”;
- (h) in subsection (8) by the deletion of “a provincial council” and the substitution of “a provincial or metropolitan council”;
- (i) by the repeal of subsection (9).

## 20 Amendment of section 277 of the Constitution

Section 277 (“Elections to local authorities”) is amended by the insertion after subsection (3) of—

“(4) An Act of Parliament may provide for the election, by a system of proportional representation referred to in subsection (5), of at least thirty *per centum* of the total members of the local council elected on ward basis as women.

(5) Elections to local authority councils must be conducted in accordance with the Electoral Law, which must ensure that the persons referred to in subsection (4) are elected under a party list system of proportional representation which is based on the votes cast for candidates representing political parties in the local authority concerned in the general election for Members of the local authority.”.

## 21 Amendment of section 327 of Constitution

Section 327 (“International conventions, treaties and agreements”) (3) of the Constitution is amended by the repeal of subsection (3) and substituted with the following—

“(3) Save for loan agreements and guarantees referred to in section 300(3) and (4) an agreement which is not an international treaty but which—

- (a) has been concluded or executed by the President or under the President’s authority with one or more foreign organisations or entities and imposes fiscal obligations on Zimbabwe; and
- (b) imposes fiscal obligations on Zimbabwe;

does not bind Zimbabwe until it has been approved by Parliament”.

## 22 Amendment of section 332 of Constitution

Section 332 (“Definitions”) of the Constitution is amended—

- (a) by the repeal of the definition of “Civil Service”;
- (b) by the insertion of the following definition—

““Public Service” has the meaning given to it by section 199;”.

## 23 Amendment of section 341 of Constitution

Section 341 (“Resignations”)(1) of the Constitution is amended by the repeal of paragraphs (f) and (g) and the substitution of—

“(f) member of a provincial or metropolitan council, the notice must be addressed to the chairperson of the council;”.

#### 24 Amendment of Sixth Schedule to Constitution

The Sixth Schedule (“Commencement of this Constitution, Transitional Provisions and Savings”) to the Constitution is amended by the repeal of subparagraphs (d) and (e) of paragraph 11 (“Interpretation of existing enactments”)(1).

#### 25 Minor amendments to Cap. 2:13

The provisions of the Constitution specified in the first column of the Schedule are amended to the extent set out opposite thereto in the second column.

##### SCHEDULE (*Section 27*)

##### MINOR AMENDMENTS TO CONSTITUTION

<i>Provision</i>	<i>Extent of Amendment</i>
Sections 7(b), 154(5)(b), Chapter 19 (Title), 200(1), (2), (3), (4) and (5), 201 (heading and provision), 203(1)(a), (b), (c), (d), (e), (f), (g) and (h), 309(1)	By the deletion of “the Civil Service” and the substitution of “the Public Service”.
Sections 189(1)(g), 202 (heading), (1) and (2), 203 (heading), (1); 203(4), 205(1), 217(1), 222(1)	By the deletion of “Civil Service Commission” and the substitution of “Public Service Commission”.
Sections 203(2) and (3)	By the deletion of “Civil Service Commission” and “Civil Service” and the substitution of “Public Service Commission” and “Public Service” respectively.
Section 203(4)	By the deletion of “Civil Service” wherever it occurs and the substitution of “Public Service”.