

H.B. 14, 2019.]



**ATTORNEY-GENERAL'S OFFICE AMENDMENT BILL, 2019**

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MEMORANDUM

Section 114 of the Constitution provides for the appointment of the Attorney-General but does not provide for the appointment of his or her deputies. However, section 340(3) of the Constitution gives room for the creation of one or more deputies to any Constitutional appointee. The main purpose of this Bill is therefore to provide for the appointment of the deputies of the Attorney-General so as to enhance the effectiveness and efficiency of the Attorney-General's Office.

*Clause 1*

This clause sets out the short title of the Bill.

*Clause 2*

This clause amends the preamble by repealing it and substituting it in line with the provisions of the 2013 Constitution.

*Clause 3*

This clause inserts a new definition in the interpretation section by adding the definition of "law officer" to the Act.

*Clause 4*

This clause inserts a new section after section 2 of the Attorney-General's office Act [*Chapter 7:19*] which establishes the office of Deputy Attorneys-General.

*Clause 5*

This clause amends section 3 of the Attorney-General's office Act by deleting section 3(1)(c) which refers to the Director of Public Prosecution and repealing subsection (1)(a) and (1)(b) and make necessary substitution in order to bring the Act in line with the 2013 Constitution.

*Clause 6*

This clause amends section 4 of the principal Act by establishing the Attorney-General as the chairperson of the Board and by making reference to the provisions of the 2013 Constitution.

*Clause 7*

This clause inserts a new section, section 11A to the Act. The new section 11A emphasises the autonomy of the services and functions of the Attorney-General.

*Clause 8*

This clause inserts a new section after section 22. The new section 22A highlights the binding nature of the opinions of the Attorney-General on questions of law.

*Clause 9*

This clause basically sets out the interim provisions pertaining to law officers in the different Government Ministries.



# BILL

To amend the Attorney-General's Office Act [*Chapter 7:19*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

5    **1 Short title**

This Act may be cited as the Attorney-General's Office Amendment Bill, 2019.

**2 Amendment of the preamble**

The Attorney-General's Office Act [*Chapter 7:19*] (hereinafter called the principal Act) is amended by the deletion of the preamble and its substituted by—

10        “WHEREAS section 114 provides that—

          (1) *There is an Attorney-General appointed by the President.*

          (2) *A person who has been appointed as Attorney-General assumes office upon taking before the President, or a person authorised by the President, the oaths of loyalty and office in the forms set out in the Third Schedule.*

15        (3) *A person is qualified for appointment as Attorney-General if he or she is qualified for appointment as a judge of the High Court.*

          (4) *The functions of the Attorney-General are—*

          (a) *to act as the principal Legal adviser to the Government;*

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- (b) *to represent the Government in civil and constitutional proceedings;*
- (c) *to draft legislation on behalf of the Government;*
- (d) *to promote, protect and uphold the rule of law and to defend the public interest; and;*
- (e) *to exercise any other functions that may be assigned to the Attorney-General by an Act of Parliament;* 5

*and the Attorney General may exercise those functions in person or through subordinate officers acting under the Attorney-General's general or specific instructions.*

- (5) *The Attorney-General may—* 10
  - (a) *attend Cabinet meetings, but has no vote;*
  - (b) *sit and speak in the Senate and the National Assembly, but has no vote;*
  - (c) *with the leave of the court concerned, appear as a friend of the court in any civil proceedings to which the Government is not a party;*

AND WHEREAS it is desirable to constitute the Attorney-General's Office as a separate entity in order to enhance its independence, effectiveness and efficiency; 15

NOW, THEREFORE, be it enacted by the Parliament and the President of Zimbabwe as follows:":

### **3 Amendment of section 2**

Section 2 ("Interpretation") of the Principal Act is amended by the insertion of the following definition— 20

- ““law officer” means any civil servant (by whatever title or rank designated) employed otherwise than in the Attorney general’s office in any Ministry to give legal advice or render other legal services to that Ministry, but does not include any civil servant rendering service as a law officer who is— 25
  - (a) retained on contract by any Ministry in accordance with section 10A; or
  - (b) employed in or retained on contract by any security service or a constitutional commission.”. 30

### **4 Insertion of new section to Cap. 7:19**

The principal Act is amended by the insertion in Part I ("Preliminary") of the following section after section 2 as follows—

#### **“2A Deputy Attorneys-General**

(1) There shall be one or more Deputy Attorneys-General whose offices shall be public offices but shall not form part of the Civil Service. 35

(2) A Deputy Attorney-General shall be appointed by the President after consultation with the Judicial Service Commission.

(3) A person shall not be qualified to hold or act in the office of Deputy Attorney-General unless he or she is qualified for appointment as a judge of the High Court. 40

(4) A Deputy Attorney-General shall assist the Attorney-General in the exercise of his or her functions, and shall perform such other functions as the Attorney-General may assign to him or her.

(5) The Deputy Attorney-General or, if there is more than one such Deputy, a Deputy Attorney-General designated by the President, shall act as Attorney-General whenever the office of Attorney-General is vacant or the Attorney-General is for any reason unable to perform the functions of his or her office:

Provided that the Deputy Attorney-General acting as the Attorney-General shall not—

- (i) attend Cabinet meetings; or
- (ii) be entitled to sit or speak in Parliament.

(6) Every Deputy Attorney-General shall hold office on such terms and conditions, including terms and conditions relating to the payment of salary, allowances and pension, as the President may fix, and any amounts so payable shall be charged upon and paid out of the Consolidated Revenue Fund.

(7) The salary and allowances payable to the Attorney-General and every Deputy Attorney-General shall not be reduced during the period he or she holds office.

(8) The provisions of section 4 of the Judges salaries, allowances and pensions Act [*Chapter 7:08*] shall apply with necessary changes to the pension benefits of the Attorney-General and every Deputy Attorney-General.”.

## 5 Amendment of section 3 of Cap. 7:19

Section 3 (“Constitution of Attorney-General’s Office”) of the principal Act is amended as follows—

- (a) the repeal of subsection 1(a) and substitution of—  
“the Attorney-General appointed in terms of section 114(1) of the Constitution;”
- (b) the repeal of subsection (1)(b) and substitution of—  
“every Deputy Attorney-General”; and
- (c) the deletion in subsection (1)(c) of “including the Director of public Prosecutions referred to in section 7 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]”.

## 6 Amendment of section 4 of Cap. 7:19

Section 4 (“establishment and composition of the Attorney-General’s office Board”) of the principal Act is amended by—

- (a) the repeal of subsection (1)(a) and the substitution of the following—  
“(a) the Attorney-General appointed in terms of section 114(1) of the Constitution who shall be the chairperson of the Board;”;
- (b) the repeal of subsection (1)(b).

## 7 Insertion of a new section in Cap 7.19

The principal Act is amended by the insertion of a new section after section 11 as follows—

**“11A Engagement of persons on contract by other Ministries**

No Ministry or department of the Government shall engage the services of a person under an employment contract to render any legal services relating to the functions of the Attorney-General's office without the approval of the Attorney-General.”.

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**8 Insertion of a new section in Cap 7:19**

The principal Act is amended by the insertion of a new section after section 22 as follows—

**“22A Binding nature of Attorney-General's opinions on questions of law**

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(1) The Attorney-General's opinion or advice on a question of law is binding and definitive on all executive arms and branches of the State, unless—

- (a) otherwise determined by a court of law, or
- (b) the advice or opinion is withdrawn, amended or replaced by the Attorney-General.

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(2) No advice or opinion rendered by any law officer referred to in paragraph (a) or (b) in the definition of “law officer” in section 2, shall be binding unless it is in conformity with the advice or opinion given by the Attorney-General on the same question of law.

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(3) for the avoidance of doubt it is declared that, subsections (1) and (2) do not apply to any autonomous statutory body that retains the services of a private legal practitioner to render any opinion on a question of law and to provide any other legal services to that body.”.

**9 Transitional Provisions**

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On the date of commencement of this Act, every law officer as defined in section 2 of the Attorney-General's Office Act (as amended by this Act) is deemed to be seconded to the Ministry in which he or she had previously been employed, until he or she is reassigned by the Attorney-General.