

NOTE BY VERITAS

This Act was published in the Government Gazette dated 4th January 2023 by General Notice 1 of 2023. It came into force on the same day.



ZIMBABWE

ACT

To amend the Health Service Act [*Chapter 15:16*] and to provide for matters connected with or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title

This Act may be cited as the Health Service Amendment Act, 2022.

2 Amendment of section 4 of Cap. 15:16

Section 4 of the Health Service Act [*Chapter 15:16*] (hereinafter called the “principal Act”) is repealed and substituted by the following—

“4 Functions of Commission

(1) The functions of the Commission shall be—

- (a) to appoint qualified and competent persons to hold posts and grades in the Health Service;
- (b) to create grades in the Health Service and fix conditions of service for its members;
- (c) to exercise control and disciplinary powers over members of the Health Service;
- (d) to investigate grievances and to remedy the grievances of members of the Health Service concerning official acts or omissions;

- (e) to implement measures to ensure effective and efficient performance and the general well-being of the Health Service;
- (f) to ensure members of the Health Service carry out their duties efficiently and impartially;
- (g) to advise the President and the Minister on any matters relating to the Health Service;
- (h) to supervise and monitor health policy planning and public health;
- (i) to supervise, advise on and monitor the technical performance of hospital management boards and state aided hospitals;
- (j) to promote throughout the Health Service—
 - (i) the values and principles governing public administration as set out in section 194 of the Constitution; and
 - (ii) to promote throughout the Health Service the principles of public financial management as set out in section 298 of the Constitution;
- (k) to exercise any other function that is conferred or imposed on the Commission by this Act.

(2) The Health Service Commission, with the approval of the Minister, may make regulations for any of the purposes set out in subsection (1).

(3) The Health Service Commission must exercise its functions in accordance with any general written policy directives which the Minister may give it.

(4) In fixing salaries, allowances and other benefits of members of the Health Service, the Health Service Commission must act with the approval of the President given on the recommendation of the Minister responsible for Finance and after consultation with the Minister.”.

3 Amending of section 5 of Cap 15:16

Section 5 of the principal Act is repealed and substituted by the following—

“5 Membership of Commission

(1) The Commission shall consist of—

- (a) the Chairperson, who must be the chairperson of the Civil Service Commission;
- (b) a deputy chairperson appointed by the President upon the recommendation of the Minister;
- (c) a minimum of two and a maximum of five other members appointed by the President upon recommendation of the Minister.

(2) Members of the Commission referred to in subsection (1) (b) and (c) must be chosen for their knowledge and experience in health service delivery or administration, human resources, legal and financial accounting expertise.

(3) In appointing members of the Commission, the President shall pay due regard to fair representation based on gender and region.

(4) Section 320 of the Constitution shall apply with necessary changes to the Commission.

(5) The Second Schedule shall apply to the qualifications of members of the Commission, their terms and conditions of service, vacation of office, dismissal and the procedures to be followed by the Commission at its meetings.”.

4 Amendment of section 10 of Cap. 15:16

Section 10 of the principal Act is repealed and substituted by the following—

“10 Secretary and other staff of the commission

(1) The Commission shall—

- (a) appoint a Secretary; and
- (b) employ such other staff as may be necessary for the proper exercise of its function:

Provided that the Commission shall consult with the Minister and the Minister responsible for Finance on the extent to which additional public monies may be required for this purpose.

(2) In order for a person to be appointed as Secretary of the Commission, he or she shall be a qualified medical practitioner, who possesses administrative qualities and has at least seven years, whether continuous or otherwise, of practising as such.

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

(4) The Secretary shall, subject to the general control of the Commission—

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

(5) Any assignment of function to the Secretary in terms of subsection (4)(d)—

- (a) may be made generally or specifically and subject to such conditions, restrictions, reservations and exemptions as the Commission may determine;
- (b) may be revoked by the Commission at any time;
- (c) shall not preclude the Commission itself from exercising such assigned functions.”.

5 New section inserted in Cap 15:16

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

“16A Restriction of right to strike for Health Service

(1) In this section—

“critical care” or “intensive care” means medical care of any patient with a life-threatening injury or illness;

“medical emergency” means a sudden injury or serious illness that, if not treated immediately, could cause death or serious harm to the patient;

“essential service” bears the same meaning as in the Labour Act [Chapter 28:01];

“collective job action” bears the same meaning as in the Labour Act [Chapter 28:01].

(2) Notwithstanding anything in the Labour Act [Chapter 28:01]—

(a) the Health Service shall be deemed as an essential service referred to in section 65(3) of the Constitution; and

(b) no collective job action whether lawful or unlawful shall continue for an uninterrupted period of 72 hours or for more than 72 hours in any given 14-day period; and

(c) notice of any collective job action must be given in writing 48 hours prior to the commencement of such collective job action.

(3) Any individual who is a member of the governing body of any trade union or representative body of members of the Health Service which incites or organises any collective job action contrary to subsection (2)(b) or (c) shall be guilty of any offence and liable to a fine not exceeding level 4 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

(4) A member of the Health Service is under an obligation, whilst employed by the Commission—

(a) to provide the professional skill, expertise, care and service expected of him or her as a member of the profession to which he or she belongs;

(b) during any collective job action, to provide the skill, expertise, care and service to patients in a medical emergency or needing critical or intensive care.

(5) If the Health Service Commission alleges that an individual member is in breach of subsection (4)(a) or (b), the Commission shall communicate a written complaint against that member to the appropriate disciplinary authority in accordance with the Health Service Regulations, 2006, published in Statutory Instrument 117 of 2006 (or any other law that may be substituted for the same). The disciplinary authority shall—

(a) have the power to discipline that member (and report the matter to the relevant council in terms of the Health Professions Act [Chapter 27:19] where necessary); and

(b) be deemed to be seized with the complaint from the date that it received it, and conduct and complete the disciplinary hearing on the complaint within a reasonable time; and

(c) communicate to the Commission of its decision in writing.”.

6 Amendment of section 19 of Cap 15:16

Section 19 of the principal Act is amended, in subsection (1), by the insertion, after “Minister”, of “in consultation with the Commission”.

7 Amendment of section 20 of Cap. 15:16

Section 20 of the principal Act is amended, in subsection (1)(b), by the insertion, after, “staff”, of “with the approval of the Commission”.

8 Amendment of 15:16

The principal Act is additionally amended to the extent specified in the Schedule.

9 Amendment of Cap. 28:01

Section 3 of the Labour Act [*Chapter 28:01*] is amended by the repeal of subsection (2) and substituted by the following—

“(2) For the avoidance of any doubt, the conditions of employment of members of the—

- (a) Public Service shall be governed by the Public Service Act [*Chapter 16:04*];
- (b) Health Service shall be governed by the Health Service Act [*Chapter 15:16*].”.

SCHEDULE

SUBSTITUTION OF “BOARD” WITH “COMMISSION”

The Health Service Act [*Chapter 15:16*] is amended, in the provisions specified below by the deletion of “Board” and the substitution by “Commission”—

1. In the long title.
2. In section 2, in the definitions of “Board” and “Health Service Secretariat”.
3. Section 3, wherever the word “Board” appears.
4. In section 6 where the word “Board” is used with respect to the Health Service Board.
5. In section 7, wherever it appears.
6. In section 8, wherever it appears.
7. In section 11, wherever it appears.
8. In section 12 where the word “Board” is used with respect to the Health Service Board.
9. In section 13, wherever the word “Board” appears.
10. In section 14, where the word “Board” is used with respect to the Health Service Board.
11. In section 15, where the word “Board” is used with respect to the Health Service Board.
12. In section 16, wherever the word “Board” appears.
13. In section 17, where the word “Board” is used with respect to the Health Service Board.
14. In section 18, where the word “Board” is used with respect to the Health Service Board.
15. In section 19, where the word “Board” is used with respect to the Health Service Board.

16. In section 20, where the word “Board” is used with respect to the Health Service Board.
17. In section 21, wherever the word “Board” appears.
18. In section 22, where the word “Board” is used with respect to the Health Service Board.
19. In section 23, where the word “Board” is used with respect to the Health Service Board.
20. In section 24, wherever the word “Board” appears.
21. In section 26, wherever the word “Board” appears.
22. In section 27, wherever the word “Board” appears.
23. In section 28, wherever the word “Board” appears.
24. In section 33, wherever the word “Board” appears.
25. In the Second Schedule, where the word “Board” is used with respect to the Health Service Board.