

Zimbabwe

## Manpower Planning and Development Act Chapter 28:02

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# Zimbabwe

## Manpower Planning and Development Act Chapter 28:02

Commenced on 1 November 1995

*[This is the version of this document from 7 May 2021.]*

*[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe]*

*[Amended by [Manpower Planning and Development Amendment Act, 2020 \(Act 12 of 2020\)](#) on 7 May 2021]*

*[Act 24/1994, 22/2001 (s. 4), 1/2001]*

AN ACT to provide for the establishment, maintenance and operation of technical or vocational institutions, universities, teachers colleges and vocational training schemes and to provide for and promote the research, planning and development of human resources; to provide for the establishment and functions of a National Manpower Advisory Council; to provide for the training of apprentices and the certification of skilled workers; to provide for the continued existence of the Zimbabwe Manpower Development Fund and for the imposition of levies to finance manpower development and for other purposes; and to provide for matters connected with or incidental to the foregoing.

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Manpower Planning and Development Act *[Chapter 28:02]*.

#### 2. Interpretation

(1) In this Act—

“**apprentice**” means any person employed in a designated trade under a registered contract of apprenticeship;

“**certificate of skilled worker qualification**” means a certificate of skilled worker qualification issued in terms of section forty-four;

“**Chief Executive**” means the Chief Executive of the Fund appointed in terms of section fifty-six;

“**committee**” means a committee of the Council established in terms of section twenty-eight;

“**Council**” means the National Manpower Advisory Council established in terms of section nineteen;

“**designated trade**” means a trade declared to be a designated trade in terms of section thirty-two;

“**employee**” means any person employed by or working for an employer, whether on a permanent, temporary or contract basis;

“**employer**” means—

- (a) any person whatsoever who employs or provides work for another person and remunerates or expressly or tacitly undertakes to remunerate him, and includes the manager, agent or representative of such first-mentioned person who is in charge or control of the work upon which such other person is employed; or
- (b) the Ministry, in respect of any apprentice indentured to the Ministry; or

- (c) any person for whom any other person carries out work, whether or not the latter receives remuneration; or
- (d) any self-employed person;

“**examination**” means—

- (a) any test conducted in terms of paragraph (c) of subsection (1) of section forty-four to determine whether or not a person is qualified to be issued with a certificate of skilled worker qualification; or
- (b) a formal examination conducted at a technical or vocational institution or a teachers college;
- (c) any other formal examination recognized by the Minister for the purposes of this Act;

“**Fund**” means the Zimbabwe Manpower Development Fund referred to in section forty-seven;

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

*[definition of “governing body” inserted by section 2 of [Act 12 of 2020](#)]*

“**hostel**” means any building used for the boarding accommodation of students attending a technical or vocational institution or teachers college;

“**human resources**” means skills or labour utilized by persons in any profession, designated trade or occupation;

“**industry**” includes any class of industrial undertaking and any section or portion of an industry and any group of industries;

“**lecturer**” includes a head of a technical or vocational institution and a principal of a teachers college;

“**levy**” means a levy imposed in terms of section fifty-three;

“**manpower plan**” means an outline of—

- (a) skills that will be required nationally or in relation to any particular profession, trade or occupation; and
- (b) strategies to be employed in providing the skills referred to in paragraph (a);

over a period specified in the plan;

“**Minister**” means the Minister of Higher Education or any other Minister to whom the President may, from time to time, assign the administration of this Act, and “**Ministry**” shall be construed accordingly;

“**premises**” includes any land or building or structure upon or below the surface of any land;

“**profession**” means an occupation or activity the practice of which—

- (a) is restricted by any enactment to persons who are registered or qualified in terms of that enactment; or
- (b) is regulated by or in terms of any enactment;

“**registered**”, in relation to—

- (a) a technical or vocational institution or a teachers college, means registered in terms of section nine;
- (b) an employer, means registered in terms of section thirty-five;
- (c) a candidate for apprenticeship, means registered in terms of section thirty-four;

(d) an apprentice or a contract of apprenticeship, means registered in terms of section thirty-seven;

“**responsible authority**”, in relation to any college or institution, means the person responsible for the establishment and management of the college or institution;

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

*[definition of “responsible person” inserted by section 2 of [Act 12 of 2020](#)]*

“**Secretary**”, subject to section sixty-two, means the Secretary of the Ministry;

“**skilled worker**” means the holder of a certificate of skilled worker qualification;

“**student**” means a person enrolled at any institution or college for the purposes of study or training;

“**teachers college**” means any institution providing teacher education;

“**teacher education**” means the education or training of teachers, but does not include any training or instruction specified in terms of subsection (2);

“**technical or vocational education**” means any form of training or instruction, whether personal by correspondence, which is given to a person over the age of sixteen years and which is intended to qualify or is capable of qualifying such a person in whole or in part for any profession, calling or trade, but does not include any training or instruction specified in terms of subsection (2);

“**technical or vocational institution**” means any institution which provides technical or vocational education;

“**trade**” includes any branch of a trade and any group of trades or branches of trades.

(2) The Minister may, by statutory instrument, specify that any training or instruction shall not be regarded as teacher education or as technical or vocational education for the purposes of this Act.

### 3. Application of Act

- (1) This Act shall not apply to—
- (a) any school to which the Education Act, *[Chapter 25:04]*, applies; or
  - (b) any institution which provides education or training that is solely religious, social or recreational.
- (2) To the extent that any other Act regulating the establishment or conduct of any institution on manpower development and training is inconsistent with this Act, the provisions of this Act shall prevail.

*[subsection (2) substituted by section 3 of [Act 12 of 2020](#)]*

#### 3A. Objects of Act

The objects of this Act shall be—

- (a) to promote the development and implementation of the national skills planning and development strategy;
- (b) to promote university, technical and vocational education that leads to the production of goods and services;
- (c) to promote operational independence of technical and vocational institutions and teacher’s colleges;

- (d) to promote science, technology, engineering and innovation for industrialisation and modernisation through research institutions and institutions of higher and tertiary education.

*[section 3A inserted by section 4 of [Act 12 of 2020](#)]*

## **Part II – Technical, vocational and university education**

### **4. Promotion of technical and vocational education**

Subject to this Act, the Minister shall exercise his powers under this Act to promote the following objectives—

- (a) the establishment and development of institutions devoted to the production of qualified professional manpower; and
- (b) the co-ordination and standardization of technical or vocational education; and
- (c) the control and standardization of professional qualifications, other than degrees awarded by a university; and
- (d) the provision of a comprehensive and constantly developing service for teacher education, technical or vocational institutions and for technical or vocational education.

### **5. Classification of technical and vocational institutions and teachers colleges**

- (1) Technical or vocational institutions and teachers colleges in Zimbabwe shall be classified as—
  - (a) either Government or non-Government technical or vocational institutions or teachers colleges, as the case may be; and
  - (b) in such other categories as the Minister may determine.
- (2) The Minister may at any time—
  - (a) amend any category into which technical or vocational institutions or teachers colleges are classified in terms of paragraph (b) of subsection (1); or
  - (b) reclassify any technical or vocational institution or teachers college that has been classified in terms of subsection (1).

### **6. Establishment of Government institutions, facilities, schemes, etc.**

The Minister may—

- (a) establish, equip and maintain such technical or vocational teachers colleges and hostels therefor as he may consider necessary or desirable for the instruction of persons in technical or vocational skills and teacher education; and
- (b) establish schemes for manpower development, including the establishment, equipment and maintenance of institutions for training and research in advanced technology; and
- (c) provide facilities for teacher education, technical or vocational education and for the training of persons to provide such education; and
- (d) provide conditions promoting research and development.
- (e) establish academies of sciences.

*[paragraph (e) added by section 5 of [Act 12 of 2020](#)]*



**6A. Mandatory posts in technical and vocational institutions and teacher's colleges**

- (1) The Tertiary Education Council, in consultation with the Minister, shall for every technical and vocational institution and teacher's college appoint a principal.
- (2) The Tertiary Education Council shall for every technical and vocational institution and teacher's college appoint—
  - (a) one or more vice-principals;
  - (b) a registrar who shall be responsible for the general administration of the institution;
  - (c) bursar who shall report to the Principal and act as accountant for the technical and vocational institution and teacher's college and shall be responsible for safeguarding its funds and authorising its investments and expenditure;
  - (d) librarian who shall be responsible for the administration and safeguarding of the library of the technical and vocational institution and teachers' college;
  - (e) internal auditor who shall act as the auditor to the technical and vocational institution and teacher's college and shall be responsible for monitoring the financial administration and procedures of the technical and vocational institution or teacher's college;
  - (f) the academic staff and non-teaching staff.
- (3) Members of the technical and vocational institutions and teacher's colleges are public officers but do not form part of the Civil Service.

*[section 6A inserted by section 6 of [Act 12 of 2020](#)]*

**6B. Students Representative Council**

- (1) Higher and tertiary education institutions shall have a students' representative council elected by the students enrolled at that particular institution.
- (2) The establishment, composition, manner of election, term of office, functions privileges of members of this Council and any other matters incidental thereto must be determined by the institutional statute.

*[section 6B inserted by section 6 of [Act 12 of 2020](#)]*

**7. Fees payable at Government institutions**

- (1) The Minister, in consultation with the Minister responsible for finance, may fix from time to time the fees payable for—
  - (a) instruction at any institution referred to in section six; or
  - (b) residence in any hostel referred to in section six; or
  - (c) the use of any facility provided in terms of section six; or
  - (d) any other thing provided or done in terms of section six.
- (2) In the exercise of his powers under subsection (1), the Minister may fix different fees for different classes of institutions, hostels, facilities, things or persons.
- (3) The Minister may grant rebates, refunds or remissions, whether in whole or in part, of the fees payable in terms of this section as he may consider necessary or desirable.

## 8. Non-Government institutions to be registered

- (1) No person shall conduct, maintain or manage any non-Government teachers college or technical or vocational institution unless the college or institution has been registered in terms of section nine.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level nine.

*[subsection as inserted by section 4 of Act [No. 22 of 2001](#)]*

## 9. Registration of non-Government institutions

- (1) An application for the registration of a non-Government teachers college or technical or vocational institution shall be made to the Secretary not later than three months before the proposed opening of the college or institution, and shall be made in such form and manner and accompanied by such fees as may be prescribed.
- (2) The Secretary shall examine every application submitted to him in terms of subsection (1) and shall notify the applicant of his decision thereon within thirty days after receiving the application.
- (3) If, after examining an application for the registration of a college or institution in terms of subsection (2), the Secretary is satisfied—
  - (a) that the premises, including any hostel, are suitable and adequate for the purposes of the college or institution, regard being had to the number, age and sex of the students who will attend the college or institution; and
  - (b) that efficient and suitable instruction will be provided at the college or institution, regard being had to the number, age and sex of the students who will attend the college or institution; and
  - (c) that the principal or head and every member of staff of the college or institution is a suitably qualified person; and
  - (d) that the funds of the responsible authority of the college or institution will be sufficient to satisfy any claim that a student may have for the repayment of fees paid by him; and
  - (e) where the responsible authority of the college or institution—
    - (i) is a natural person, that he is domiciled in Zimbabwe;
    - (ii) is a company, that the company is registered in Zimbabwe;
    - (iii) is an association of persons other than a company, that the majority of persons directing the affairs of the association are domiciled in Zimbabwe;and
  - (f) that there will be proper compliance with this Act and any standards fixed under it;he shall register the college or institution and publish notice of its registration in the *Gazette* within twenty-one days thereafter.
- (4) If the Secretary is not satisfied as to any matter referred to in subsection (3), he shall notify the applicant in writing that, for reasons which the Secretary shall specify in the notification, he has rejected his application or that he proposes to grant it only after the applicant has, within a period fixed by the Secretary, complied to the Secretary's satisfaction with such requirements regarding any matter referred to in subsection (3) as the Secretary may specify.
- (5) If an applicant fails to comply to the Secretary's satisfaction with any requirement referred to in subsection (4) within the period specified by the Secretary in terms of that subsection, or within any

extension of that period granted by the Secretary in writing, the Secretary shall notify the applicant in writing that he has rejected the application.

## 10. Cancellation of registration of non-Government institutions

- (1) If, in regard to any registered teachers college or technical or vocational institution, the Secretary is not satisfied as to any matter referred to in subsection (3) of section nine, he shall notify the responsible authority in writing that he proposes to cancel the registration of the college or institution unless, within a period specified by the Secretary, the responsible authority complies to the Secretary's satisfaction with such requirements regarding any matter referred to in that subsection as the Secretary may specify.
- (2) If the responsible authority of a teachers college or a technical or vocational institution fails to comply, to the Secretary's satisfaction, with any requirement referred to in subsection (1) within the period specified by the Secretary in terms of that subsection, or within any extension of that period granted by the Secretary in writing, the Secretary shall notify the responsible authority in writing that he has cancelled the registration of the college or institution, and shall publish notice of the cancellation in the *Gazette* within twenty-one days thereafter:

Provided that, if an appeal is noted in terms of section eleven against the cancellation, the Secretary shall not publish a notice in the *Gazette* until the cancellation is finally confirmed on appeal.

## 11. Appeals regarding registration

- (1) If any person is aggrieved by any decision of the Secretary—
  - (a) in terms of subsection (4) or (5) of section nine to reject his application for the registration of a teachers college or a technical or vocational institution; or
  - (b) in terms of subsection (2) of section ten to cancel the registration of this teachers college or technical or vocational institution;he may, within thirty days after being notified of the rejection or cancellation, by notice in writing setting out his reasons, appeal to the Minister against the Secretary's decision.
- (2) On an appeal in terms of subsection (1), the Minister may confirm the Secretary's decision or make such other decision as, in his opinion, the Secretary should have made, and shall cause the appellant to be notified of the decision and of the reasons for the decision.
- (3) Any person who is dissatisfied with any decision of the Minister in terms of subsection (2) may, within thirty days after being notified of it, appeal to the High Court.
- (4) On an appeal in terms of subsection (3), the High Court may confirm the decision of the Secretary which was the subject of the Minister's decision or may make such other decision as, in the court's opinion, the Secretary should have made in the matter.
- (5) The noting of an appeal against a decision referred to in paragraph (b) of subsection (1) or subsection (3) shall suspend the effect of the decision against which the appeal is made until the appeal is finally determined.

## 12. Prohibition of further operations after cancellation of registration

- (1) Subject to subsection (5) of section eleven, no person shall continue to conduct, maintain or manage a non-Government teachers college or technical or vocational institution after the Secretary has, in terms of subsection (2) of section ten, notified the responsible authority thereof in writing that he has cancelled the registration of the college or institution.

- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level nine.

*[subsection as inserted by section 4 of Act [No. 22 of 2001](#)]*

### **13. Refund of fees paid to institution whose registration is cancelled**

Notwithstanding any law or agreement to the contrary, where the registration of a teachers college or technical or vocational institution has been cancelled or the college or institution ceases to operate, any person who has paid a fee for education or training at the college or institution or for accommodation at any hostel or boarding facility provided by the college or institution shall be entitled to recover from the responsible authority of the college or institution such part of the fee as was paid in respect of education, training or accommodation, as the case may be, which he has not received as a result of the cancellation of registration or of the institution or college's ceasing to operate, as the case may be:

Provided that no amount shall be recoverable under this section by a person whose wrongful act or omission caused or contributed towards the cancellation of the registration or the institution or college's ceasing to operate.

### **14. Grants and loans to institutions, persons, etc.**

- (1) Subject to this section, the Board, after consultation with the Minister and Minister responsible for finance, may make a grant or loan to or in respect of any teacher's college, technical or vocational institution, university or university college, or to any other person or institution, for any one or more of the following purposes—
- (a) tuition for students enrolled at the college, institution or university concerned;
  - (b) accommodation for students enrolled at the college, institution or university concerned;
  - (c) salaries or remuneration of staff employed at the college, institution or University concerned;
  - (d) any amenities fund established in terms of section sixteen;
  - (e) any work in furtherance of university, technical or vocational education or training;
  - (f) any work in furtherance of the promotion of science, technology and innovation for industrialisation.
- (2) A grant or loan referred to in subsection (1)—
- (a) shall be in such amount and made subject to such terms and conditions as the Board, after consultation with the Minister and Minister responsible for finance, may fix:  

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

and
  - (b) may be paid wholly from moneys appropriated for the purpose by Act of Parliament or from the Fund, or partly from such moneys and partly from the Fund, as the Board, may determine; and
  - (c) may be disbursed to the responsible authority of the college, institution or university concerned or to such other person as the Board may determine in each individual case.
- (3) Where a grant or loan has been paid to or in respect of any college, institution or university in terms of this section and the registration of the college, institution or university is cancelled or the college, institution or university closes down before the expiry of the period in respect of which the grant or loan was made, the Board may recover from the responsible authority or person who

operated the college, institution or university such part of the total amount of the grant or loan as represents to such total amount the same proportion as the unexpired part of the period in respect of which the grant or loan was made bears to the whole of that period.

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

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

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

*[section 14 substituted by section 7 of Act 12 of 2020]*

## 15. Duty of employers in relation to employment of certain former students

- (1) Every employer who engages a person who, within the five years immediately preceding the engagement, was a student at a teachers college, technical or vocational institution, university or university college in Zimbabwe, shall notify the Secretary, within thirty days of the engagement, of the name and address of the person so engaged.
- (2) The Secretary may in writing direct an employer to effect such monthly deduction from the remuneration of any person referred to in subsection (1) as he thinks reasonable for the purpose of discharging that person's liability for—
  - (a) any loan made to him in terms of section fourteen; or
  - (b) the repayment of any amount which he owes to the State or the Fund under a scholarship scheme established under section sixty-three; or
  - (c) any penalty incurred by him under regulations made for a purpose referred to in paragraph (g) of subsection (2) of section sixty-nine;

and the employer shall take all reasonable steps to comply with the direction.

- (3) An employer who—
  - (a) knowingly contravenes subsection (1); or
  - (b) without just cause, fails to comply with a direction in terms of subsection (2);

shall be guilty of an offence and liable to a fine not exceeding level five.

*[subsection as inserted by section 4 of Act No. 22 of 2001]*

## 16. Tertiary amenities funds

- (1) The Tertiary Education Service Council shall establish a fund to be known as an amenities fund, subject to such terms and conditions as it may prescribe, for every government teachers college, technical or vocational institution, for the purpose of furthering cultural or recreational activities or facilities for students attending the college or institution.
- (2) The Tertiary Education Service Council, in consultation with the Minister, may—
  - (a) fix fees payable by or in respect of students attending a Government teacher's college or technical or vocational institution to any amenities fund established in terms of subsection (1) for the college or institution, and may at any time vary any such fees; and

- (b) grant such rebates, refunds or remissions, whether in whole or in part, of any fees payable in terms of paragraph (a) as it may determine from time to time; and
  - (c) permit donations, grants and moneys raised for the benefit of the college or institution concerned to be paid into an amenities fund established in terms of subsection (1).
- (3) Notwithstanding anything to the contrary in the Audit Office Act [*Chapter 22:18*], any fees, donations, grants and other moneys paid in terms of paragraph (a) or (c) of subsection (2) to any amenities fund, and any grant or loan made in terms of section fourteen to any such fund, shall be paid into that amenities fund.

*[section 16 substituted by section 8 of [Act 12 of 2020](#)]*

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

- (1) Every university, research institution, teacher's college or technical or vocational institution shall on its own or in partnership with another establish a fund to be known as an Innovation and Industrialisation Fund.
- (2) The Innovation and industrialisation funds shall consist of—
- (a) a portion of income earned from services rendered by the university, research institution, teacher's college or technical or vocational institution industrial hubs;
  - (b) grants or donations made to it; and
  - (c) moneys received from any other source; and
  - (d) moneys advanced by the Minister from moneys appropriated for the purpose by Act of Parliament.
- (3) Each university, research institution, teacher's college or technical or vocational institution may employ the Fund for any of the following purposes—
- (a) to support the development of start-up commercial enterprises and, or technological solutions within its purview;
  - (b) to promote synergies or partnerships in engineering, technology and innovation between the particular university, research institution, teacher's college or technical or vocational institution and industry and the community.
- (4) For the purpose of the administration of the Innovation and Industrial Fund [sections 50, 51 and 56](#) shall apply with the necessary variations.

*[section 16A inserted by section 9 of [Act 12 of 2020](#)]*

### **17. Maintenance of records at institutions**

The responsible authority of every registered teachers college and technical or vocational institution shall —

- (a) maintain and furnish to the Secretary, at his request, such particulars of the training given at the college or institution as the Secretary may require in writing; and
- (b) keep a register of the lecturers or instructors employed at the college or institution showing their qualifications and experience, if any; and
- (c) keep such other records and accounts relating to the college or institution as may be prescribed or as the Secretary may require in writing.

## 18. Restrictions on training in designated trades

- (1) No person shall give or offer to give any training in a designated trade at any non-Government teachers college or non-Government technical or vocational institution unless the college or institution is licensed by the Secretary for the purpose in such form and subject to such conditions as may be prescribed.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six.

*[subsection as inserted by section 4 of Act [No. 22 of 2001](#)]*

## Part III – National Manpower Advisory Council

### 19. Establishment and functions of Council

- (1) Subject to this Part, there shall be a council, to be known as the National Manpower Advisory Council, consisting of not more than twenty and not fewer than ten members appointed by the Minister in terms of section twenty.
- (2) The functions of the Council shall be—
  - (a) on its own initiative or at the request of the Minister, to investigate and make recommendations to the Minister on any matter affecting national manpower development and training; and
  - (b) to perform any other function assigned to the Council by or in terms of this Act.
- (3) Without limitation on subsection (2), the Council may advise the Minister on all or any of the following matters—
  - (a) the establishment and maintenance by the Minister of such schemes for manpower development and training as will ensure an adequate supply of trained manpower for industry and for all professions, trades and occupations in Zimbabwe;
  - (b) measures to improve national manpower development and training programmes;
  - (c) techniques for detecting in advance the possible impact on any profession or trade of technological developments;
  - (d) conditions or requirements for the establishment and conduct of teachers colleges and technical or vocational institutions;
  - (e) the standard of facilities to be provided by employers for apprenticeship and skilled worker training;
  - (f) the designation of trades for the purposes of this Act;
  - (g) standards for the certification of skilled worker qualifications and for the recognition of qualifications or levels of competence;
  - (h) the standardization of training programmes and examinations for the purposes of any trade or industry;
  - (i) the selection of persons wishing to be trained at Government teachers colleges and technical or vocational institutions;
  - (j) the imposition and collection of any levy;
  - (k) promoting and mobilizing support for manpower development and training programmes of the Government, including the organization of congresses of representatives of such institutions and agencies as the Minister may approve.

- (4) The Council shall respond promptly to any request by the Minister for advice in terms of this Act.

## 20. Appointment of members of Council

- (1) Subject to section twenty-one, members of the Council shall be appointed by the Minister from persons nominated by such—
- (a) employer and employee organizations; and
  - (b) Government departments; and
  - (c) statutory bodies, including local authorities; and
  - (d) professional organizations;
- as the Minister may invite to submit nominations.
- (2) Before appointing a person to the Council in terms of subsection (1), the Minister shall consult the President and shall act in accordance with such directions as the President may give him.

## 21. Disqualifications for appointment to Council

The Minister shall not appoint a person as a member of the Council and no person shall be qualified to hold office as a member if—

- (a) he is not a citizen of Zimbabwe; or
  - (b) he 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
  - (c) he has made an assignment to or arrangement or composition with his 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) within the period of five years immediately preceding his proposed appointment, he has been sentenced—
    - (i) in Zimbabwe, in respect of an offence; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;to a term of imprisonment of not less than six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.
- (2) A member of Parliament shall not be appointed as a member of the Council, nor shall he be qualified to hold office as a member of the council

*[Please note: numbering as in original.]*

## 22. Terms and conditions of office of members of Council

- (1) A member of the Council shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his appointment.
- (2) On the expiry of the period for which a member of the Council has been appointed, he shall continue to hold office until he has been re-appointed or his successor has been appointed:
- Provided that a member 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 Council shall be eligible for re-appointment.
- (4) Members of the Council shall hold office on such conditions as the Minister may fix.



## 23. Vacation of office by members of Council

- (1) A member of the Council shall vacate and his office shall become vacant—
  - (a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiry of such other period of notice as he and the Minister may agree; or
  - (b) on the date he begins to serve a sentence of imprisonment the term of which is not less than six months, whether or not any portion has been suspended, imposed without the option of a fine—
    - (i) in Zimbabwe, in respect of an offence; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;or
  - (c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of subsection (1) of section twenty-one, or in terms of subsection (2) of that section, to hold office as a member; or
  - (d) if he is required in terms of subsection (2) or (3) to vacate his office as a member.
- (2) The Minister may require a member of the Council to vacate his office if the member—
  - (a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or
  - (b) has failed to comply with any condition of his office fixed in terms of section twenty-two; or
  - (c) has ceased to represent any organization, department, group or body or to possess any qualification by reason of which he was appointed; or
  - (d) is mentally or physically incapable of efficiently performing his duties as a member.
- (3) The Minister, on the recommendation of the Council, may require a member of the Council to vacate his office if the Minister is satisfied that the member has been absent without the consent of the chairman of the Council from three consecutive meetings of the Council, of which he has been given at least seven days' notice, and that there was no just cause for the members absence.

## 24. Suspension of members of Council

The Minister shall suspend from office a member of the Council against whom criminal proceedings are instituted for an offence involving dishonesty and, whilst that member is so suspended, he shall not carry out any duties or be entitled to any remuneration or allowances as a member.

## 25. Filling of vacancies on Council

On the death of, or the vacation of office by, a member of the Council, the Minister may appoint a person to fill the vacancy:

Provided that, if the membership of the Council has fallen below the minimum number specified in section nineteen, the Minister shall appoint a person to fill the vacancy.

## 26. Chairman and vice-chairman of Council

- (1) At its first meeting the Council shall elect from amongst its members a chairman and a vice-chairman, who shall hold office at the pleasure of the Council.
- (2) Whenever the office of chairman or vice-chairman of the Council falls vacant, the Council shall as soon as possible elect from amongst its members a person to fill the vacancy.

- (3) The vice-chairman of the Council shall perform the functions of the chairman whenever the chairman is unable to do so.

## 27. Meetings and procedure of Council

- (1) Subject to this Part, the Council shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.
- (2) The chairman of the Council may himself at any time and shall, at the request in writing of not fewer than two members, convene a special meeting of the Council, which meeting shall be convened for a date not sooner than seven days or later than thirty days after receipt of such request.
- (3) Subject to subsection (4) the chairman of the Council or, in his absence the vice-chairman,, shall preside at meetings of the Council.
- (4) If the chairman and the vice-chairman are both absent from a meeting of the Council, the members present may elect one of their number to preside at that meeting as chairman.
- (5) A majority of members shall form a quorum at any meeting of the Council.
- (6) All acts, matters or things authorized or required to be done by the Council may be decided by a majority vote at a meeting of the Council at which a quorum is present.
- (7) At all meetings of the Council each member present shall have one vote on each question before the Council:

Provided that—

- (i) in the event of an equality of votes, the chairman or person presiding shall have a casting vote in addition to his deliberative vote;
  - (ii) no member shall take part in the consideration or discussion of, or vote on, any question before the Council which relates to his re-appointment or vacation of office as a member.
- (8) Any proposal circulated among all members of the Council and agreed to by a majority of them shall be of the same effect as a resolution passed at a duly constituted meeting of the Council and shall be incorporated in the minutes of the next succeeding meeting of the Council:  
Provided that, if a member requires that any such proposal be placed before the Council, this subsection shall not apply to the proposal.
  - (9) With the approval of the Minister, the Council may co-opt any person to the Council, but a co-opted person shall have no vote in any decision by the Council.

## 28. Committees of Council

- (1) For the better exercise of its functions, the Council, with the approval of the Minister, may establish one or more committees in which, with the consent of the Minister, it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the Council from itself exercising that function, and the Council may amend or rescind any decision of the committee in the exercise of that function.

- (2) On the establishment of a committee the Council—
  - (a) may appoint to the committee persons who are not members of the Council;
  - (b) shall appoint to the committee at least one member of the Council, who shall be the chairman of the committee.

- (3) The chairman of the Council 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 Council.
- (5) Subject to this section, subsections (4) to (8) of section twenty-seven shall apply, *mutatis mutandis*, to committees and members thereof as they apply to the Council and its members.

## 29. Minutes of proceedings of Council and committees

- (1) The Council shall cause minutes of all proceedings of and decisions taken at any meeting of the Council or of a committee of the Council to be entered in books kept for the purpose.
- (2) Any minutes referred to in subsection (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Council 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.

## 30. Remuneration and allowances of members of Council and committees

A member of the Council or of a committee of the Council shall be paid out of the Fund—

- (a) such remuneration, if any, as the Minister, after consultation with the Minister responsible for finance, may fix for members of the Council or members of committees, as the case may be, generally; and
- (b) such allowances, if any, as the Minister, after consultation with the Minister responsible for finance, may fix to meet any reasonable expenses incurred by the member in connection with the business of the Council or the committee, as the case may be.

## 31. Guidance of professional bodies in respect of national manpower requirements

- (1) Where the Council considers that the rules, regulations or criteria, by whatever name called, relating to admission to practise in any profession are too restrictive in relation to the manpower requirements of Zimbabwe, the Council may make recommendations in writing to the Minister and to any professional body concerned in regard to the alleviation of the restrictions, including recommendations for the admission to the profession of such additional class or classes of persons as the Council may consider necessary or desirable.
- (2) In making any recommendations in terms of subsection (1) the Council shall take into account the professional competence, skills and qualifications which should be required for admission to practise in the profession concerned and the competence, skill or qualifications of the class or classes of persons it proposes should be admitted to practise or, as the case may be, should be admitted to engage in any limited form of practice in the profession concerned.
- (3) Not later than two months after receiving any recommendations in terms of this section from the Council or the Minister, the professional body concerned shall submit to the Council, the Minister and the Minister responsible for the administration of the appropriate enactment, if any, a report on the matter indicating what measures it is prepared to take to give effect to the recommendations.
- (4) Where the Minister notices that a profession has no statutory regulatory authority, the Minister shall recommend to a relevant Minister to initiate legislative measures to ensure that such profession is regulated.  
*[subsection (4) added by section 10 of Act 12 of 2020]*
- (5) Where the Minister considers that a professional body lacks the requisite resources to develop the relevant competencies within its membership the Minister, in consultation with a Minister administering the enactment under which a professional body is constituted and Minister

responsible for finance, may, subject to availability of resources, make a grant to such professional body.

*[subsection (5) added by section 10 of [Act 12 of 2020](#)]*

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

*[subsection (6) added by section 10 of [Act 12 of 2020](#)]*

- (7) Where—

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

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

*[subsection (7) added by section 10 of [Act 12 of 2020](#)]*

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

*[subsection (8) added by section 10 of [Act 12 of 2020](#)]*

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

*[subsection (9) added by section 10 of [Act 12 of 2020](#)]*

## **Part IV – Apprenticeship training and skilled worker certification**

### **32. Designation of trades and prescription of conditions of apprenticeship and skilled worker certification**

- (1) The Minister, after consultation with the Council, may by statutory instrument declare any trade to be a designated trade if he considers that—
- (a) the trade requires apprenticeship or skilled worker certification in terms of this Part; or
- (b) the provisions of this Part should otherwise apply in relation to the trade, to such extent as the Minister may specify in the statutory instrument.
- (2) Where the Minister has designated a trade as one that requires apprenticeship training, he may, in the same or a subsequent statutory instrument, prescribe—
- (a) the period of apprenticeship; and
- (b) the qualifications and educational standards required for apprenticeship indenture; and
- (c) examinations to be passed by apprentices; and
- (d) the payment by employers of wages and other allowances to apprentices, and medical aid, insurance and pension contributions and similar payments in respect of apprentices; and
- (e) the maximum number of apprentices to be employed by any employer in the designated trade; and

- (f) returns and other information to be supplied by employers of apprentices; and
  - (g) any other condition or requirement of apprenticeship whatsoever which the Minister considers necessary or expedient to prescribe.
- (3) A statutory instrument in terms of this section may—
- (a) provide that any conditions of apprenticeship specified therein shall come into operation on a date earlier than the date on which the statutory instrument is published:  
Provided that the date of commencement of the conditions shall not be more than three months before the date of publication of the statutory instrument, nor earlier than the date on which the trade concerned was designated;
  - (b) modify or amend existing contracts of apprenticeship.

### 33. Employment in designated trades

- (1) Subject to subsection (2), where trade has been designated in terms of section thirty-two as one that requires apprenticeship training or skilled worker certification, no employer shall employ a person in that designated trade, and no person shall work in that designated trade, unless that person—
- (a) is the holder of a certificate of apprenticeship or a certificate of skilled worker qualification in the designated trade; or
  - (b) is indentured in terms of this Act as an apprentice in the designated trade; or
  - (c) is undergoing a form of technical training approved in terms of this Act.
- (2) Subsection (1) shall not apply in relation to—
- (a) any person working in a designated trade as part of a requirement for practical training in any field of study or training; or
  - (b) any person who was working in the trade concerned—
    - (i) immediately before it was designated in terms of section thirty-two; or
    - (ii) immediately before the 1st November, 1995.
- (3) Any person who knowingly contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six.

*[subsection as inserted by section 4 of Act No. 22 of 2001]*

### 34. Registration of persons as candidates for apprenticeship

- (1) Any person who wishes to become an apprentice in a designated trade and who is—
- (a) sixteen years of age or older; and
  - (b) subject to subsection (9) of section 9 of the Citizenship of Zimbabwe Act, *[Chapter 4:01]*, a citizen of Zimbabwe;
- may apply to the Secretary, in the prescribed form and manner, for registration as a candidate for apprenticeship.
- (2) After receipt of an application in terms of subsection (1) the Secretary shall, as soon as possible—
- (a) consider the application; and

- (b) register or, as the case may be, refuse to register the applicant as a candidate for apprenticeship subject to the requirements prescribed for apprenticeship in the designated trade concerned.
- (3) As soon as possible after taking any action or reaching any decision under paragraph (b) of subsection (2), the Secretary shall cause the applicant concerned to be notified of the action or decision and, in the case of a refusal to register an applicant, of the reasons for the refusal.
- (4) Where the Minister is satisfied that it is in the national interest to do so, he may, by notice in the *Gazette*, exempt from the application of paragraph (b) of subsection (1) such persons who are not citizens of Zimbabwe as he may specify in the notice.

### 35. Registration of employers

- (1) An employer who wishes to employ any person as an apprentice in a designated trade shall apply to the Secretary in the prescribed form and manner for registration, stating, in addition to any other information that may be prescribed or required by the Secretary, the number of apprentices he is prepared to employ during the period of twelve months following the date of his application.
- (2) After receipt of an application in terms of subsection (1) the Secretary shall—
  - (a) if he is satisfied that—
    - (i) the employer is a suitable person for registration; and
    - (ii) the training offered will be suitable for apprenticeship;register the employer; or
  - (b) if he is not satisfied in regard to any matter specified in paragraph (a), refuse to register the employer:

Provided that the Secretary may register an employer with limited training facilities who is able to assign the apprentice to another employer for supplementary training.
- (3) If the Secretary refuses to register an employer in terms of paragraph (b) of subsection (2), he shall cause the employer to be notified in writing of the refusal and of the reasons for the refusal.
- (4) The registration of an employer shall remain valid for such period as may be prescribed.
- (5) Subsection (1) shall apply, *mutatis mutandis*, to any application by an employer for the renewal of his registration.

### 36. Recruitment of apprentices by employers

- (1) A registered employer may recruit as an apprentice any person who is registered as a candidate for apprenticeship.
- (2) A person who is registered as a candidate for apprenticeship may be indentured to the Ministry but may at any time, subject to such terms and conditions as may be prescribed, be assigned to any registered employer for such practical training as the Secretary may consider appropriate.
- (3) With effect from the date on which the trade concerned was designated—
  - (a) no employer shall take any person into his employment as an apprentice in a designated trade unless that person has been registered as a candidate for apprenticeship;
  - (b) no apprentice in a designated trade shall leave the employment of one registered employer for another except with the written consent of the Secretary.
- (4) Any person who—
  - (a) contravenes subsection (1); or

- (b) induces an apprentice to leave the employment of a registered employer without the consent of the Secretary;

shall be guilty of an offence and liable to a fine not exceeding level six.

*[subsection as inserted by section 4 of Act No. 22 of 2001]*

### **37. Register of apprentices, employers and contracts of apprenticeship**

The Secretary shall keep and maintain a register in which shall be registered the particulars of—

- (a) every person recruited in terms of section thirty-six; and
- (b) every employer registered in terms of section thirty-five; and
- (c) the contract of apprenticeship between the person referred to in paragraph (a) and his registered employer;

and in which shall be noted such other matters as may be required by or in terms of this Act.

### **38. Contracts of apprenticeship**

- (1) No contract of apprenticeship in a designated trade shall be binding unless—
  - (a) it is the prescribed form; and
  - (b) it has been signed—
    - (i) by the apprentice or, if he is a minor, by the apprentice assisted by his guardian; and
    - (ii) by or on behalf of the registered employer; and
    - (iii) by the Secretary; and
  - (c) it has been registered.
- (2) Nothing in subsection (1) shall preclude a contract of apprenticeship from being treated as void or voidable if circumstances or grounds, apart from those referred to in subsection (1), exists which render it void or voidable, as the case may be.
- (3) A contract of apprenticeship in a designated trade shall be lodged for registration by the employer and the Secretary shall, upon the registration of the contract, notify the employer and the apprentice of the registration in such form and manner as may be prescribed.
- (4) A contract of apprenticeship shall not be registered in terms of subsection (3) unless it complies with paragraphs (a) and (b) of subsection (1) and with such other requirements as may be prescribed.
- (5) The Secretary may order the cancellation of the registration of a contract of apprenticeship if he has reasonable grounds to believe that the apprentice is unlikely to fulfil the obligations of the contract or any bond relating thereto, because of the likelihood of his emigrating from Zimbabwe.
- (6) If the Secretary cancels the registration of a contract of apprenticeship in terms of subsection (5), he shall cause the apprentice concerned to be notified in writing of the cancellation and of the reasons for the cancellation.

### **39. Credit for previous training or experience**

The Secretary may, when registering a contract of apprenticeship, take account of, and grant the apprentice concerned credit for, any previous training or experience which the apprentice may have undergone or acquired in the trade to which the contract relates, but such credit shall not reduce the period of apprenticeship to a period that is less than one year.

#### 40. Contract of apprenticeship not affected by lawful strike or lockout

Where an apprentice—

- (a) is locked out or lawfully goes on strike; or
- (b) because of a lawful strike or lockout affecting his employer's establishment or place of business, is unable to work for the duration of strike or lockout;

he and his employer shall not be deemed to have broken the contract of apprenticeship between them.

#### 41. Extension of period of apprenticeship

- (1) The Secretary may extend any period of apprenticeship if, in his opinion—
  - (a) there has been time lost by the apprentice for reasons, other than leave, which warrant such extension; or
  - (b) the additional time would afford the apprentice a useful opportunity to attain the requisite standard of proficiency in his trade:

Provided that, where the extension is granted on account of time lost by the apprentice, the period of the extension shall not exceed the time lost.

- (2) The Secretary shall cause the terms of any extension in terms of subsection (1) to be endorsed on the contract of apprenticeship concerned, and shall send written notification thereof to every party to the contract.

#### 42. Transfer, modification and rescission of contracts of apprenticeship

- (1) With the consent of the Secretary and subject to any conditions that the Secretary may impose, any registered employer who is unable to train an apprentice in any aspect of the designated trade in which he is indentured may transfer the apprentice and his contract of apprenticeship to another registered employer who has the requisite facilities.
- (2) A registered contract of apprenticeship may be rescinded by the Secretary—
  - (a) on the application of either party, if the Secretary is satisfied that it is proper or expedient to do so; or
  - (b) where the Secretary is satisfied that any of the terms of the contract cannot be fulfilled to the advantage of either party.
- (3) A registered contract of apprenticeship may be modified by the Secretary on the application of either party, where the Secretary is satisfied that the modification will be beneficial to or enhance the performance of the contract.
- (4) The Secretary may, in regard to any registered contract of apprenticeship, make such arrangements and take such steps, in addition to those referred to in subsection (1), (2) or (3), as he may consider necessary or advisable in the circumstances.
- (5) Any consent by the Secretary to a transfer of a contract of apprenticeship, and any rescission or modification of a contract of apprenticeship made by the Secretary, shall be endorsed on the contract by the Secretary and noted in the register kept in terms of section thirty-seven.



#### 43. Completion of contracts of apprenticeship

- (1) Not later than thirty days after the completion of any registered contract of apprenticeship, the employer shall complete and sign a certificate of completion on all available copies of the contract and lodge them with the Secretary, who shall—
  - (a) note the completion on all the three copies of the contract and in the register kept in terms of section thirty-seven; and
  - (b) return the original contract to the apprentice and a copy to the registered employer and retain the third copy on the apprentice's file; and
  - (c) issue a certificate of apprenticeship to the apprentice—
    - (i) certifying that the apprentice has completed his contract of apprenticeship; and
    - (ii) showing details of any examinations which the apprentice has taken and the results thereof.
- (2) Any employer who, without just cause, contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four.

*[subsection as inserted by section 4 of Act No. 22 of 2001]*

#### 44. Certification of skilled workers

- (1) The Secretary may, upon application, issue a certificate of skilled worker qualification to any person who—
  - (a) has completed a contract of apprenticeship in terms of this Act; or
  - (b) has completed any other form of apprenticeship or training recognized by the Secretary as being of a standard equivalent to apprenticeship in terms of this Act; or
  - (c) has, in the opinion of the Secretary, attained a standard of competence equivalent to that of skilled worker and, if so required by the Secretary, has passed a test determined by the Secretary.
- (2) An application for certification in terms of this section shall be made in such form and manner and shall be accompanied by such fee as may be prescribed.
- (3) In granting recognition to any form of apprenticeship or training in terms of paragraph (b), or to any level of competence in terms of paragraph (c), of subsection (1) the Secretary shall take into consideration any advice given by the Council in terms of section nineteen.
- (4) If the Secretary refuses to issue a certificate of skilled worker qualification to any applicant in terms of subsection (1), he shall cause the applicant to be notified in writing of the refusal and of the reasons for the refusal.
- (5) Notwithstanding any other law, any person certified as a skilled worker in any designated trade in terms of this Act shall not be required to take any examination or test relating to his aptitude or skill in that trade for the purposes of any licence or permit required to be held or obtained by persons engaged in that trade.

#### 45. Cancellation and suspension of certificates of skilled worker qualification

- (1) Subject to subsection (2), the Secretary may, by notice in the *Gazette*, cancel or suspend any certificate of skilled worker qualification issued in terms of this Act where the Secretary has reasonable grounds for believing that the competence of the holder has fallen below the standards represented by the certificate.

- (2) Before cancelling or suspending any certificate in terms of subsection (1), the Secretary shall cause a notice to be served on the holder of the certificate, informing the holder that—
  - (a) he proposes to cancel or, as the case may be, to suspend the certificate in terms of subsection (2) for reasons which he shall state; and
  - (b) the holder may within fourteen days after the service of the notice or within such longer period as the Secretary may allow, make representations to the Secretary against the proposed cancellation or suspension.
- (3) If the Secretary is not satisfied by any representations made by the holder of the certificate or if the holder does not make any representation within the time referred to in paragraph (b) of subsection (2), the Secretary may cancel or, as the case may be, suspend the certificate:

Provided that, when cancelling or suspending a certificate the Secretary may specify a course of remedial training upon the satisfactory completion of which the Secretary shall reinstate the certificate.

#### **46. Appeals against decisions of Secretary**

- (1) If any person is aggrieved by any decision of the Secretary—
  - (a) refusing—
    - (i) to register him as a candidate for apprenticeship in terms of section thirty-four, or
    - (ii) to register him as an employer in terms of section thirty-five; or
    - (iii) to certify him as a skilled worker in terms of section forty-four; or
  - (b) cancelling the registration of a contract of apprenticeship in terms of subsection (5) of section thirty-eight; or
  - (c) cancelling or suspending his certificate of skilled worker qualification in terms of section forty-five;

he may, within thirty days after being notified of the decision, by notice in writing setting out his reasons, appeal to the Minister against the decision.

- (2) On an appeal in terms of subsection (1), the Minister may confirm the Secretary's decision or make such other decision as, in his opinion, the Secretary should have made, and shall cause the appellant to be notified his decision and of the reasons for his decision.
- (3) Any person who is dissatisfied with any decision of the Minister in terms of subsection (2) may, within thirty days after being notified of it, appeal to the High Court.
- (4) On an appeal in terms of subsection (3) the High Court may confirm the decision of the Secretary which was the subject of the appeal to the Minister or may make such other decision as, in the Court's opinion the Secretary should have made in the matter.
- (5) The noting of an appeal against a decision referred to in paragraph (a), (b) or (c) of subsection (1) shall suspend the effect of the decision against which the appeal is made until the appeal is finally determined.

### **Part V – Zimbabwe Manpower Development Fund**

#### **47. Zimbabwe Manpower Development Fund**

- (1) The Zimbabwe Manpower Development Fund, established by section 23 of the Manpower Planning and Development Act, 1984 ([No. 36 of 1984](#)), shall continue in existence under this Act.

- (2) Subject to this Act, the object for which the Fund is established shall be—
- (a) to develop skilled manpower and professions; and
  - (b) to support and promote the creation of—
    - (i) new knowledge;
    - (ii) research;
    - (iii) innovation;
    - (iv) science;
    - (v) technological and engineering solutions; and
    - (vi) business enterprises;
- [subsection (2) substituted by section 11(a) of [Act 12 of 2020](#)]*
- (3) The Fund shall consist of—
- (a) any moneys which, immediately before the 1st November, 1995, formed part of or were payable to the Fund; and
  - (b) any moneys raised by any levy; and
  - (c) any moneys that may be payable to the Fund from moneys appropriated by Act of Parliament for the purposes of the Fund; and
  - (d) advances made to the Fund in terms of section forty-nine; and
  - (e) any other moneys to which the Fund may be lawfully entitled, including—
    - (i) any moneys accruing from the sale of any articles in terms of section sixty-four; and
    - (ii) any moneys accruing from the enforcement of any financial obligations arising out of regulations made for a purpose referred to in paragraph (g) of subsection (2) of section sixty-nine; and
    - (iii) fees payable for any examination conducted or held with moneys from the Fund; and
    - (iv) gifts and donations from any person.
- (4) The Fund shall be administered by the Board, subject to this Act.
- [subsection (4) substituted by section 11(b) of [Act 12 of 2020](#)]*
- (5) *[subsection (5) repealed by section 11(b) of [Act 12 of 2020](#)]*

#### 48. Application of Fund

- (1) In this section—
- “approved trainee” means a person undergoing such technical or vocational training as may be prescribed, and includes a student at university or university college.
- (2) In order to give effect to the object of the Fund described in [section 47\(2\)](#), the Board may, do any or all of the following—
- (a) employ such persons as may be necessary for the purposes of this Act;
  - (b) administer the Fund and monitor the use of grants made to the Fund to ensure adherence to the purposes for which the fund is disbursed;
  - (c) meet the expenses of promoting and mobilising support for research, innovation and technological or engineering solutions and business enterprise;

- (d) pay any other costs, charges or expenses of whatever kind involved in the establishment and maintenance of any scheme or purpose connected with teacher education, technical and vocational education and training, or skills development;
- (e) pay any reasonable and necessary expenses arising from the maintenance of the Fund, including loans and advances made therefrom;
- (f) pay any other cost, charge or expense which, in terms of this Act is to be made from the Fund;
- (g) invest and deal with the moneys of the Fund not immediately required upon such security and in any such manner as it may determine;
- (h) invest in the development and uptake of emerging technologies in institutions of higher and tertiary education;
- (i) mobilise resources for research and development, innovation and commercialisation of research results;
- (j) support the incubation of start-ups resulting from research activities;
- (k) on its own initiative or at the request of the Minister, to investigate and make recommendations to the Minister on any matter affecting the development of national skills and training;
- (l) establishing community workspace and innovation centres that provide talented persons with an enabling environment to carry out research and innovation;
- (m) purchase, construct, take on lease or in exchange, hire or otherwise acquire, maintain, alter or repair, manage, work and control any movable or immovable property;
- (n) sell, exchange, let, mortgage, dispose of, turn to account, develop, manage or otherwise deal with any property or rights acquired by the Board or any part thereof for such consideration as the Board thinks fit;
- (o) insure with any person against any losses, damage, risks or liabilities which the Board may incur;
- (p) pay bursaries, loans or advances to apprentices and other approved trainees for training purposes;
- (q) pay the wages and allowances of apprentices and other approved trainees;
- (r) pay the costs and out-of-pocket expenses incurred by apprentices and other approved trainees in connection with courses and examinations in terms of this Act;
- (s) award prizes for success by apprentices and other approved trainees in any courses and examinations in terms of this Act;
- (t) provide for the remuneration and allowances of members of the National Manpower Advisory Council.
- (u) make grants and rebates to such registered employers, teachers colleges and technical or vocational institutions for the promotion of such manpower development programmes, as the Board may specify.

*[subsection (2) substituted by section 12(a) of [Act 12 of 2020](#)]*

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

*[subsection (3) substituted by section 12(a) of [Act 12 of 2020](#)]*

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

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

[section 48A inserted by section 13 of [Act 12 of 2020](#)]

#### 48B. Zimbabwe Manpower Development Board

- (1) There is hereby established a board to be known as the Zimbabwe Manpower Development Board.
- (2) The Board referred to in subsection (1) shall consist of—
  - (a) the Chief Executive who shall be an *ex officio* member; and
  - (b) one member appointed by the Minister from a list of three nominations from each of the following bodies—
    - (i) the Zimbabwe Institution of Engineers established in terms of the Zimbabwe Institution of Engineers (Private) Act [*Chapter 27:16*];
    - (ii) the Law Society of Zimbabwe established in terms of the Legal Practitioners Act [*Chapter 27:07*];
    - (iii) Public Accountants and Auditors Board established in terms of the Public Accountants and Auditors Act [*Chapter 27:12*];
    - (iv) organisations representing industry and commerce;
    - (v) an organisation representing the churches;
    - (vi) the National Council of the Disabled Persons;
  - (c) two more persons from persons with knowledge and experience in any other business-related fields;
  - (d) one former Vice Chancellor of a University or former Principal of a Tertiary institution.
- (3) The Minister shall appoint, among members referred to in subsection (2)—
  - (a) one member as chairperson of the Board;
  - (b) one member as vice-chairperson of the Board and the vice-chairperson shall exercise the functions of the chairperson during any period that the chairperson is unable to exercise his or her functions as chairperson:

Provided that the vice-chairperson shall be of a different gender from the chairperson.
- (4) In appointing members in terms of this section the Minister must comply with sections 17 and 18 of the Constitution.
- (5) If any person referred to in subsection (2) fails to submit a nomination within a reasonable period after being called by the Minister to do so, the Minister may appoint as members in terms of the paragraph concerned any person whom the Minister considers will adequately represent the interests of the body concerned.
- (6) Members of the Board shall, subject to good performance, hold office for a five-year term renewable for only one further term.
- (7) The Minister shall publish the names of persons appointed to the Board by notice in the *Gazette*.
- (8) Sections [21](#), [22](#), [23](#), [24](#), [25](#), [27](#), [28](#), [29](#) and [30](#) shall apply *mutatis mutandis* with respect to the Board.

- (9) The Board may, subject to the Public Entities Corporate Governance Act [Chapter 10:31], require the Chief Executive to vacate his or her office if the Chief Executive—
- (a) has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
  - (b) has failed to comply with any condition of his or her office; or
  - (c) is mentally or physically incapable of efficiently performing his or her duties as a member.
- [section 48B inserted by section 13 of Act 12 of 2020]*

#### **49. Advances to Fund**

- (1) The Minister responsible for finance may advance to the Fund, out of moneys appropriated for the purpose by Act of Parliament, moneys sufficient to meet any deficiency in the Fund.
- (2) Advances in terms of subsection (1) shall be made on such terms and conditions, including terms and conditions relating to interest, as the Minister responsible for finance may determine.

#### **50. Accounts, audit of Fund and financial statements**

- (1) The Board shall cause proper books of account of the Fund to be kept together with adequate financial and other records in relation thereto and, within three months after the end of the financial year to which the accounts relate, shall arrange for the submission of the accounts to the Comptroller and Auditor-General for audit.

*[subsection (1) amended by section 14(a) of Act 12 of 2020]*

- (2) The Comptroller and Auditor-General shall, as soon as possible after he receives any accounts submitted to him in terms of subsection (1), audit the accounts and, in relation thereto, he shall have all the powers conferred upon him by the Audit and Exchequer Act [Chapter 22:03] in relation to the audit of public moneys.
- (3) As soon as possible after the end of each financial year, the Board shall cause a statement of accounts to be prepared for the Fund in respect of that financial year or in respect of such other period as the Minister may direct, and shall cause the statement to be submitted to the Minister.

*[subsection (3) added by section 14(b) of Act 12 of 2020]*

#### **50A. Internal auditor**

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

*[section 50A inserted by section 15 of Act 12 of 2020]*

#### **51. Financial year of Fund**

The financial year of the Fund shall be the period of twelve months ending on the 30th June in each year or on such other date as may be prescribed.

#### **52. Holding of Fund**

- (1) All moneys received on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized to do so by the Board.

*[subsection (1) amended by section 16(a) of Act 12 of 2020]*

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

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

*[subsection (2) substituted by section 16(b) of [Act 12 of 2020](#)]*

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

*[subsection (3) added by section 16(c) of [Act 12 of 2020](#)]*

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

*[subsection (4) added by section 16(c) of [Act 12 of 2020](#)]*

### 53. Imposition of levies

- (1) In this section "wage-bill" includes—
- (a) salaries and wages of all employees and agents; and
  - (b) cash in lieu of rations; and
  - (c) any bonuses paid in terms of a contract of service or for work performed; and
  - (d) the employer's pension and medical aid contributions; and
  - (e) cost of living, housing, holiday, education, climatic and other allowances of a similar nature; and
  - (f) leave pay; and
  - (g) commissions; and
  - (h) the value of free food, free quarters, including rent paid on behalf of any employees, electricity, water and any other remuneration in kind; and
  - (i) directors' fees and all other pre-tax emoluments paid to directors; and
  - (j) any other remuneration or moneys that may be specified in a statutory instrument in terms of subsection (2).
- (2) The Minister may, on the advice of the Council and with the approval of the Minister responsible for finance, by statutory instrument impose a levy on such employers as may be specified in the statutory instrument.
- (3) A levy may be—
- (a) a per capita amount on the employees, other than apprentices, of the employers concerned; or
  - (b) a sum equal to such percentage of the total wage-bill or such portion of the total wage-bill of the employers concerned;
- as may be specified in the statutory instrument imposing the levy.
- (4) A statutory instrument imposing a levy in terms of subsection (2) may provide for—
- (a) the manner in which and the time or times within which the levy is to be collected and paid;

- (b) the imposition of interest and additionally, or alternatively, a surcharge if the levy is not paid within the specified time or times.

#### 54. Payment, collection and recovery of levies

- (1) Whenever a levy is imposed, every employer liable thereto shall, in accordance with the statutory instrument imposing the levy, pay to the Fund the amount due from him in the specified manner and at the specified time or times.
- (2) No employer shall recover, in full or in part, directly or indirectly, the amount of any levy, or the amount of any interest or surcharge payable in connection with any levy, from the remuneration of any of his employees.
- (3) The Chief Executive shall be responsible for the collection of any levy, together with any interest or surcharge in connection with any levy, on behalf of the Fund.
- (4) A levy, and any interest or surcharge connected therewith, shall be a debt to the Fund and any amount of levy or of such interest or surcharge that is unpaid or owing may be recovered by action in a court of competent jurisdiction at the suit of the Minister.
- (5) An employer who—
  - (a) without just cause, contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five;
  - (b) contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection as inserted by section 4 of Act No. 22 of 2001]*

- (6) On the conviction of a person for an offence in terms of subsection (5) involving failure or refusal to pay the amount of any levy, the court convicting him may, on the application of the prosecutor and in addition to any penalty it may impose, give summary judgment against the convicted person in favour of the Minister, in his capacity as trustee of the Fund, for the unpaid amount of the levy, including any interest and any surcharge to which the convicted person may be liable under a statutory instrument published in terms of section fifty-three.

*[subsection as inserted by section 4 of Act No. 22 of 2001]*

- (7) A judgment given by a court in terms of subsection (6) shall have the same effect and may be executed by the Minister in the same manner as if the judgment had been given in civil proceedings instituted in the court.

*[subsection as inserted by section 4 of Act No. 22 of 2001]*

#### 55. Amended levy assessments

- (1) Subject to subsection (2), if the Chief Executive is satisfied that, in any financial year of the Fund, an employer—
  - (a) has paid less by way of a levy than he should have paid; or
  - (b) has been granted a refund to which he was not entitled in respect of any levy payment;the amount so underpaid or the amount of the refund, as the case may be, shall be recovered from the employer.
- (2) No amount shall be recovered from an employer in terms of subsection (1)—
  - (a) if the levy was assessed or the refund granted, as the case may be, in accordance with the practice generally prevailing at the time it was assessed or granted; or



- (b) after the expiry of six years from the end of the financial year concerned.
- (3) Subject to subsection (4), if the Chief Executive is satisfied that, in any financial year of the Fund, an employer—
  - (a) has paid more by way of a levy than he should have paid; or
  - (b) has not been granted a refund to which he was entitled in respect of any levy payment;the amount of the overpayment or of the unpaid refund, as the case may be, shall be paid to the employer from the Fund.
- (4) No amount shall be paid to an employer in terms of subsection (3)—
  - (a) if the levy was assessed or the refund unpaid, as the case may be, in accordance with the practice generally prevailing at the time it was assessed or unpaid, as the case may be, and the assessment or failure to pay was accepted by the employer; or
  - (b) after the expiry of six years from the end of the financial year concerned.

## Part VI – Chief Executive of Fund and other employees

### 56. Appointment and remuneration of Chief Executive of Fund

- (1) From amongst the persons employed in terms of paragraph (a) of subsection (2) of section forty-eight the Board shall appoint, on such terms and conditions as he may fix, a person to be the Chief Executive of the Fund.

*[subsection (1) amended by section 17(a) of [Act 12 of 2020](#)]*

- (2) No person shall be appointed as Chief Executive and no person shall be qualified to hold office as Chief Executive if he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe.
- (3) The appointment of the Chief Executive shall terminate if he would be required in terms of paragraph (b) or (c) of subsection (1) of section twenty-three to vacate his office had that section and paragraphs (a), (b) and (c) of subsection (1) of section twenty-one, applied to him.
- (4) the contract of employment of the Chief Executive shall be subject to good performance.

*[subsection (4) added by section 17(b) of [Act 12 of 2020](#)]*

*[section 56 amended by section 19 of [Act 12 of 2020](#)]*

### 57. Functions of Chief Executive and other employees

- (1) Subject to this Act the Chief Executive shall perform such of the Minister's functions specified in subsection (2) of section forty-eight as the Board may delegate to him.

*[subsection (1) amended by section 18(a) of [Act 12 of 2020](#)]*

- (2) With the consent of the Board, the Chief Executive may delegate any function which is vested in him under this Act to any other person employed in terms of paragraph (a) of subsection (2) of section forty-eight and, subject to subsection (4), the employee concerned may perform the function as if he were the Chief Executive

*[subsection (2) amended by section 18(b) of [Act 12 of 2020](#)]*

- (3) Nothing in subsection (2) shall prevent the Chief Executive from withdrawing any delegation in terms of that subsection or from amending any condition thereof, or from himself exercising any function so delegated.

- (4) The employees referred to in subsection (2) shall perform their functions under this Act in accordance with such directions as the Chief Executive may give them.

[section 57 amended by section 20 of [Act 12 of 2020](#)]

## Part VII – Manpower research and planning

### 58. Manpower surveys and plans

- (1) The Minister may publish a notice in the *Gazette* directing that, subject to such conditions as may be specified in the notice or prescribed in regulations made under section sixty-nine—
- (a) a manpower survey be conducted into such matters, and on such date or during such period, as he shall specify in the notice; and additionally, or alternatively;
  - (b) such statistical information be collected, compiled, analysed or abstracted as relates to or may facilitate the making of any manpower plan.
- (2) A manpower survey referred to in paragraph (a) of subsection (1) may be conducted into any one or more of the following—
- (a) the manpower resources of Zimbabwe;
  - (b) the types of establishment in which manpower resources are utilized;
  - (c) the capital investment and output of any establishment;
  - (d) the training facilities of any establishment;
  - (e) the earnings of employers and employees;
  - (f) actual and potential sources of manpower resources;
  - (g) the level of reliance on expatriate manpower resources in any establishment or in any profession, designated trade or occupation;
  - (h) any other matter relating to manpower resources or manpower planning or research which the Minister may specify in the notice published in terms of subsection (1).
- (3) Subject to the directions of the Minister, the Secretary shall be responsible for—
- (a) conducting any manpower survey referred to in paragraph (a) of subsection (1) and for reporting thereon to the Minister; and
  - (b) organizing the collection, compilation, analysis and abstraction of any information referred to in paragraph (b) of subsection (1) and the preparation of any resulting manpower plan.

### 59. Power to obtain information

- (1) For the purposes of any manpower survey or manpower plan referred to in subsection (1) of section fifty-eight, the Secretary or any person authorized by him may require any person who has information relevant to the survey or plan, or who is believed on reasonable grounds to have such information, to provide him with any such information.
- (2) The Secretary may require a person to provide the information referred to in subsection (1)—
- (a) by interviewing the person; or
  - (b) by leaving at the person's last known address a form with a notice requiring the form to be completed and returned in such manner and within such time as may be specified in the notice; or
  - (c) in such other manner as may be prescribed.

- (3) Any person who, upon being required to provide any information in terms of subsection (1)—
- (a) without just cause, fails or refuses to provide the information forthwith, shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment;
  - (b) provides information which he knows to be false or incorrect in a material particular or which he does not have reasonable grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- [subsection substituted by section 4 of Act No. 22 of 2001]*
- (4) The Secretary, or any person authorized by him to require the provision of information under section (1), shall produce evidence of his identity if required to do so by any person whom he wishes to interview in terms of paragraph (a) of subsection (2).

## Part VIIA – Tertiary Education Service

### 1 – Establishment, functions and powers

*[Part VIIA inserted by section 21 of Act 12 of 2020]*

*[Please note sections 59C and 59G missing in the original.]*

#### 59A. Establishment of Tertiary Education Council

- (1) In this Part—
- “council” means the Tertiary Education Service Council;
- “Secretary” means the Head of the Tertiary Education Service Secretariat”
- (2) There is hereby established a Tertiary Education Service, which shall be responsible for the administration of tertiary education in Zimbabwe.
- (3) The operations of the Tertiary Education Service shall, subject to this Act, be controlled and managed by a board to be known as the Tertiary Education Council.
- (4) The Tertiary Education Service shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.
- (5) The Council shall consist of—
- (a) the Secretary who shall be an *ex officio* member; and
  - (b) not less than five and not more than nine members appointed, subject to subsection (3), by the Minister in consultation with the President.
- (6) Members referred to in subsection (2)(b) shall be appointed for their knowledge of and experience in academia, business-related fields, engineering, human resource management and law.
- (7) Amongst the members appointed in terms of subsection (2), the Minister shall appoint—
- (a) one member as chairperson;
  - (b) one member as vice-chairperson and the vice-chairperson shall exercise the functions and powers and perform the duties of the chairperson during any period that the chairperson is unable to exercise his or her functions or the office of the chairperson is vacant:

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

- (8) In appointing members in terms of this section the Minister must comply with sections 17 and 18 of the Constitution.
- (9) Members of the Council shall, subject to good performance, hold office for a five-year term which may be renewable for only one further term.
- (10) The Minister shall publish the names of persons appointed to the Council by notice in the *Gazette*.
- (11) The Council may require the Secretary to vacate his or her office if the Secretary—
  - (a) has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or
  - (b) has failed to comply with any condition of his or her office fixed in terms of section 59E; or
  - (c) is mentally or physically incapable of efficiently performing his or her duties as a member.
- (12) Sections [21](#), [22](#), [23](#), [24](#), [25](#), [27](#) and [28](#) shall apply, with necessary changes to the Council.  
*[section 59A inserted by section 21 of [Act 12 of 2020](#)]*

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

- (1) Subject to this Act and any other enactment, the functions of the Council or its delegated authorities, shall be—
  - (a) to appoint persons to technical or vocational institution and teacher's colleges to, whether as permanent members or on contract or otherwise, to assign and promote them to offices, posts and grades and to fix their conditions of service; and
  - (b) to inquire into and deal with complaints made by members;
  - (c) to exercise disciplinary powers in relation to members;
  - (d) to formulate, develop and implement measures and policies designed to—
    - (i) co-ordinate and integrate the functioning and operations of members of technical or vocational institution and teacher's colleges; and
    - (ii) ensure the provision and promote the enhancement of efficient professional services by members of technical and vocational institution and teacher's colleges;and
  - (e) to encourage dialogue between the Government, and the institutions of technical or vocational institution and teacher's colleges and to implement Government policy on any matter relating to the tertiary education; and
  - (f) to hear appeals referred to it in terms of this Act; and
  - (g) to exercise any other functions that may be imposed or conferred upon the council in terms of this Act or any other enactment.
- (2) The Council shall exercise its functions under this Act in a manner that ensures the well-being and good administration of tertiary institutions and its maintenance in a high state of efficiency.
- (3) Except as is otherwise provided in this Act, the Council shall not be subject to the direction or control of any person or authority in the exercise of its functions under the Act.
- (4) In the interests of ensuring the greatest degree of delegation of decision-making functions consistent with good administration, the Council, in consultation with the Minister, shall—
  - (a) ensure that the functions vested in it by or under this Act are delegated wherever practicable to management of technical or vocational institutions and teacher's colleges; and

- (b) take such steps as are necessary to encourage the greatest possible delegation of decision-making functions within all technical or vocational institution and teacher's colleges.
- (5) A delegation of a function by the Council in terms of subsection (1)(a)—
  - (a) may be made absolutely or subject to conditions; and
  - (b) may be amended or revoked at any time; and
  - (c) shall not preclude the Council from exercising the function so delegated.
- (6) A person to whom the Council has delegated a function in terms of subsection (1)(a) may, with the consent of the Council, further delegate the function, either absolutely or subject to conditions, to any other member of the Tertiary Education Service who is under his or her control or authority.
- (7) Where the Council has delegated a function in terms of subsection (4) to any person, any conditions or limitations applicable to the exercise of that function by the Council shall apply to the exercise of the function by the person to whom it has been delegated.
- (8) Where a person has been or is about to be appointed to or promoted within the Tertiary Education Service pursuant to a power delegated by the Council in terms of subsection (1)(a), and the Council considers that—
  - (a) the person does not have the qualifications or ability necessary to carry out the duties of the position he or she occupies or will occupy, as the case may be; or
  - (b) his or her appointment or promotion has contravened or would contravene, as the case may be, any condition under which the power was delegated;

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

Provided that—

- (i) before taking any action in terms of this subsection, the Council shall give the person whose appointment or promotion is in issue and the person who appointed or promoted him or her or proposed to appoint or promote him or her, an adequate opportunity to make representations in the matter;
  - (ii) where a person has been appointed or promoted and the Council is satisfied that the appointment or promotion was not effected as a result of any fraud or wilful misrepresentation on his or her part, the Council shall not revoke the appointment or promotion.
- (9) This section shall not be construed as limiting any power which the Council or any other person may have under any other law to delegate functions to another person.

*[section 59B inserted by section 21 of [Act 12 of 2020](#)]*

## II – Membership of Tertiary Education Service

### 59D. Constitution of Tertiary Education Service

The Tertiary Education service shall consist of the following persons—

- (a) members of the Tertiary Education Council; and
- (b) every person who occupies a post in the technical and vocational institutions and teacher's colleges; and

- (c) every person, who is employed to assist any person referred to in paragraph (a).

*[section 59D inserted by section 21 of [Act 12 of 2020](#)]*

#### **59E. Tertiary Education Service Secretariat**

- (1) The Council shall appoint an individual as Secretary of the Tertiary Education Service Secretariat and such other members of staff as may be necessary for the proper functioning of the Tertiary Education Service.
- (2) The Secretary shall, subject to the general control of the Council, be the Head of the Secretariat responsible for—
  - (a) managing the affairs of the Tertiary Education Service and implementing the decisions of the Council;
  - (b) providing technical advice to the Council;
  - (c) formulating the strategy and co-ordinating work programmes for the Tertiary Education Service;
  - (d) formulating administrative rules, guidelines and procedures to facilitate the achievement of the targets set up by the Council;
  - (e) exercising any other functions that may be imposed or conferred upon him or her in terms of this Act or any other enactment;
  - (f) supervising members of the Tertiary Education Service.

*[section 59E inserted by section 21 of [Act 12 of 2020](#)]*

#### **59F. Appointments, promotions and dismissals**

- (1) The appointment, assignment and promotion of persons to offices, posts and grades within the Tertiary Education Service shall be effected by the Council.
- (2) When considering persons for appointment to or promotion within the Tertiary Education Service, the Council or institution concerned shall—
  - (a) have regard to the merit principle, that is, the principle that preference should be given to the person who is deserving of appointment to the office, post or grade concerned; and
  - (b) ensure that there is no discrimination on the ground of race, tribe, place of origin, political opinion, colour, creed, gender or physical disability.
- (4) The discipline, suspension and dismissal of persons from the Tertiary Education Service shall be effected by the Council.

*[Please note: numbering as in original.]*

*[section 59F inserted by section 21 of [Act 12 of 2020](#)]*

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

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

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

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

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

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

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

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

- (a) he or she will serve the Tertiary Education Service for a period specified in the agreement following the completion of all or any part of such course; and
- (b) should he or she be discharged from or leave the Tertiary Education Service at any time during the course or before the expiry of the period specified in paragraph (a), he or she will repay to the State such amount as may be provided for in the agreement; and any amount referred to in paragraph (b) shall be a debt due by him or her to the State and may be sued for or otherwise recovered from him or her by the Minister.

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

- (a) owing to—

- (i) the abolition of his or her office or post; or
- (ii) a reduction in or an adjustment of the organisation of any part of the Tertiary Education service; or

- (b) if the removal will help to improve efficiency or economy in the Tertiary Education service, or in the Ministry or the department of the Tertiary Education service in which he or she is serving.

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

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

*[section 59H inserted by section 21 of [Act 12 of 2020](#)]*

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

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

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

*[section 59I inserted by section 21 of [Act 12 of 2020](#)]*

#### **59J. Persons under contract**

- (1) The Council may engage persons under contract, on such conditions as may be prescribed.
- (2) Upon the termination of a contract entered into in terms of subsection (1), the person under contract shall cease to be a member of the Tertiary Education Service, unless the contract is renewed or the member is appointed to the Tertiary Education Service in some other capacity.

*[section 59J inserted by section 21 of [Act 12 of 2020](#)]*

#### **59K. Recognised associations and organisations**

- (1) The Minister, after consultation with the Council, may, by written notice to the association or organisation concerned, declare any association or organisation representing all or any members of the Tertiary Education Service to be a recognised association or a recognised organisation, as the case may be, for the purposes of this Act.
- (2) The Minister, after consultation with the Council, may at any time, by written notice to the recognised association or organisation concerned, revoke any declaration made in terms of subsection (1).
- (3) Without derogation from subsection (1)—
  - (a) the Minister and the Council may consult with a recognised association or organisation on such matters affecting the efficiency, well-being or good administration of the Tertiary Education Service or the interests of members of the recognised association or organisation as the Minister and the Council think appropriate; and
  - (b) a recognised association or organisation may make representations to the Minister and the Council concerning the conditions of service of the members of the Tertiary Education service represented by the association or organisation, and the Minister and the Council shall pay due regard to any such representations when exercising any function in terms of this Act.
- (4) Any member of the Tertiary Education Service who is eligible to do so may join a recognised association or organisation and, subject to this Act, participate in its lawful activities.
- (5) A member of the Tertiary Education Service who fails or refuses to join a recognised association or organisation shall not, on account of such failure, be debarred from or prejudiced in respect of any appointment, promotion or advancement within the Tertiary Education Service.

*[section 59K inserted by section 21 of [Act 12 of 2020](#)]*

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

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



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

*[section 59L inserted by section 21 of [Act 12 of 2020](#)]*

#### **59M. Funds of Tertiary Education Service**

- (1) The funds of the Tertiary Education Service shall consist of—
- (a) moneys appropriated by Act of Parliament for salaries and allowances payable to and in respect of members of the Tertiary Education Service and the recurrent administrative expenses of the Tertiary Education Service; and
  - (b) any other moneys that may be payable to the Tertiary Education Service from moneys appropriated for the purpose by Act of Parliament; and
  - (c) any donations, grants, bequests made to the Tertiary Education Service and accepted by the Council with the approval of the Minister; and
  - (d) any other moneys that may vest in or accrue to the Tertiary Education Service, whether in terms of this Act or otherwise.
- (2) The Council shall apply the funds referred to in subsection (1) to the fulfilment of its functions.

*[section 59M inserted by section 21 of [Act 12 of 2020](#)]*

#### **59N. Reports of Council**

- (1) The Council—
- (a) shall report to the Minister as occasion requires and shall, within three months after the 31st December in that year, submit to the Minister an annual report dealing generally with all the proceedings and activities of the Council during that financial year; and
  - (b) may at any time submit to the Minister a special report on any matter upon which the Minister requests the Council to report.
- (2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the reports are received by him or her—
- (a) the annual report submitted to him or her in terms of subsection (1)(a); and
  - (b) any special report submitted to him or her in terms of subsection (1)(b) which the Council requests be laid before Parliament.

*[section 59N inserted by section 21 of [Act 12 of 2020](#)]*

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

- (1) The Minister may give general directions of policy to the Board and the Council shall take all necessary steps to comply with them.
- (2) If the Council has failed to carry out any duty imposed upon it by this Act or any other law, the Minister may direct the Council to take such action as he or she considers necessary to rectify the matter within such time as he or she may specify: Provided that before doing so the Minister shall give the Council an opportunity to make such representations as it may wish to make in the matter.

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

*[section 59O inserted by section 21 of [Act 12 of 2020](#)]*

## Part VIII – General

### 60. Powers to enter and inspect and obtain information

- (1) Subject to subsection (7), the Secretary, or any person authorized by him in writing, may at all reasonable times enter and inspect any registered teachers college, technical or vocational institution or any hostel or premises at or attached thereto, for the purpose of—
- (a) examining buildings, grounds and equipment in order to ascertain whether the provisions of this Act are being complied with or whether the registration of the college or institution should be cancelled or amended; or
  - (b) inquiring into the conduct, discipline and progress of students attending the college or institution, and the standard of teaching and qualifications of lecturers at the college or institution; or
  - (c) inspecting any accounts or records required to be kept at or in respect of the college or institution; or
  - (d) inquiring into the application of any fee, grant or other moneys paid to or received by the college or institution, whether in terms of this Act or any other law.
- (2) Subject to subsection (7), the Secretary, or any person authorized by him in writing, may at all reasonable times enter and inspect any premises in respect of which there are reasonable grounds for believing that any education or training is being conducted which requires registration in terms of this Act.
- (3) Subject to subsection (7), the Secretary, or any person authorized by him in writing, may at all reasonable times—
- (a) enter any premises in which a former student such as is referred to in subsection (1) of section fifteen is believed on reasonable grounds to be employed;
  - (b) require any person upon the premises—
    - (i) to disclose all information at his disposal; and
    - (ii) to produce any book, payroll, statement or record or copy thereof or extract therefrom;that may relate in any way to the employment, remuneration and conditions of employment of any such former student;
  - (c) make copies of or take extracts from any book, payroll, statement or record referred to in paragraph (b).
- (4) Subject to subsection (7), the Secretary, or any person authorized by him in writing, may at all reasonable times—
- (a) enter and inspect the premises of any registered employer or of any person, other than a registered employer, who is believed on reasonable grounds to be employing any other person as an apprentice or to be providing apprenticeship training to any other person;
  - (b) require any registered employer or other person referred to in paragraph (a)—
    - (i) to disclose all information at his disposal; and

- (ii) to produce any book, payroll, statement or record or copy thereof or extract therefrom;  
that may relate in any way to the remuneration and conditions of employment of any apprentice or trainee skilled worker or approved trainee;
- (c) make copies of or take extracts from any book, payroll, statement or record referred to in paragraph (b).
- (5) Subject to subsection (7), the Secretary, or any person authorized by him in writing, may at all reasonable times—
  - (a) require an employer upon whom a levy has been imposed or who is believed on reasonable grounds to be liable to pay a levy—
    - (i) to disclose all information at his disposal; and
    - (ii) to produce any book, payroll, financial statement, balance sheet or record or copy thereof or extract therefrom;  
that may relate in any way to the payment of the levy or to his liability to pay the levy;
  - (b) make copies of or take extracts from any book, payroll, financial statement, balance sheet or record referred to in paragraph (a).
- (6) Subject to subsection (7), the Secretary, or any person authorized by him in writing, may, at all reasonable times and for any purpose reasonably connected with any manpower survey or manpower plan referred to in section fifty-eight—
  - (a) enter and inspect any premises;
  - (b) make any inquiries;
  - (c) require any person on any premises—
    - (i) to disclose any information at his disposal; and
    - (ii) to produce any book, payroll, statement or record or copy thereof or extract therefrom;
  - (d) make copies of or take extracts from any book, payroll, statement or record referred to in paragraph (c).
- (7) The powers of entry and inspection conferred by this section shall not be exercised except with the consent of the owner or person in charge of the premises concerned, or where there are reasonable grounds for believing that it is necessary to exercise them—
  - (a) for the prevention, investigation or detection of an offence, whether in terms of this Act or any other law, or for the obtaining of evidence relating to such an offence; or
  - (b) for the enforcement of any levy; or
  - (c) for the purpose of protecting the rights of any person undergoing or entitled to any education or training to which this Act applies.
- (8) Any person who—
  - (a) without just cause, fails or refuses to provide any information or produce any document or other thing when required to do so in terms of this section shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment;
  - (b) upon being required to provide any information in terms of this section, provides information which he knows to be false or incorrect in a material particular or which he does not have reasonable grounds for believing to be true, shall be guilty of an offence and liable

to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

- (c) obstructs, hinders or resists any person in the performance of his functions in terms of this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection as inserted by section 4 of Act [No. 22 of 2001](#)]*

### **61. Information to be kept confidential**

- (1) The Secretary and any other person who obtains information in terms of section fifty-nine or sixty shall take all steps necessary to ensure that it is kept confidential and is not disclosed to any other person except—
- (a) for the purpose of enforcing this Act; or
  - (b) for the investigation or prosecution of an offence; or
  - (c) for the enforcement of any levy; or
  - (d) for the purposes of any manpower survey or manpower plan; or
  - (e) in such other circumstances as may be prescribed.
- (2) Any person who—
- (a) contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
  - (b) uses for personal gain any information which he has obtained in terms of section fifty-nine or sixty, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

*[subsection as inserted by section 4 of Act [No. 22 of 2001](#)]*

### **62. Delegation of functions by Secretary**

- (1) Subject to such conditions as he may fix, the Secretary may delegate any of his functions in terms of this Act to any person employed in the Ministry or in terms of paragraph (a) of subsection (2) of section forty-eight, and any person to whom a function is so delegated may exercise the function, subject to any conditions so fixed, as if he were the Secretary.
- (2) Nothing in subsection (1) shall prevent the Secretary at any time from withdrawing any delegation in terms of subsection (1) or from amending any condition thereof, or from himself exercising any function so delegated.
- (3) This section shall not be construed as limiting any power which the Secretary or any other person may have under any other law to delegate any function conferred or imposed upon him in terms of this Act.

### **63. Establishment and administration of Government scholarship schemes**

- (1) The Minister may establish and maintain, out of moneys appropriated for the purpose by Act of Parliament or otherwise placed at his disposal by the State, such scholarship schemes as he may consider necessary or desirable for the purposes of manpower development.
- (2) Any scholarship scheme established in terms of subsection (1)—
- (a) shall be administered in accordance with the directions of the Minister; and

- (b) shall be assessed and reviewed from time to time against national manpower development policy; and
- (c) may provide for the bonding to the State, under such conditions as may be prescribed, of any person who receives any scholarship under the scheme.

#### **64. Sale of products of practical training**

Upon the sale of any articles produced by persons, either in the course of attendance at any Government teachers college or Government technical or vocational institution or for the purpose of any examination in terms of this Act, the proceeds of the sale shall be paid into the Fund if the materials from which such articles are produced were provided out of the Fund.

#### **65. Recognition of associations of lecturers**

- (1) The Minister may recognize one or more associations of lecturers as representing lecturers or any class of lecturers in Zimbabwe.
- (2) An association of lecturers recognized by the Minister in terms of subsection (1) may advise and make representations to the Secretary and may be consulted by the Minister on any matters appertaining to manpower development in Zimbabwe to which this Act applies.

#### **66. Continuing offences**

A conviction for an offence under this Act shall not, in the case of a continuing offence, be a bar to further prosecution for that offence.

*[section substituted by section 4 of Act [No. 22 of 2001](#)]*

#### **67. Certificates as evidence**

In any criminal proceeding relating to an offence under this Act, a certificate purporting to be signed by any person and purporting to state facts obtained from records which are required to be in his custody or are known to him in his official capacity shall on its production by the prosecutor, be admissible as *prima facie* proof of the facts stated therein.

#### **68. Presumption re conduct of institution**

Any person who, in any premises or place, provides any teacher education or any technical or vocational education shall be deemed, unless the contrary is proved, to be conducting a teachers college or a technical or vocational institution, as the case may be, in those premises or that place, as the case may be.

#### **69. Regulations**

- (1) The Minister may make regulations prescribing anything which in terms of this Act is required or permitted to be prescribed or which, in his opinion, is necessary or convenient to be prescribed for giving effect to this Act.
- (2) Regulations in terms of subsection (1) may provide for any of the following matters—
  - (a) in relation to Government teachers colleges and technical or vocational institutions—
    - (i) the enrolment of students, their attendance at such colleges and institutions and their accommodation in hostels;
    - (ii) the discipline of students attending such colleges and institutions and the punishments that may be imposed for infractions of discipline, including the imposition of monetary penalties;

- (iii) the establishment, functions and procedures of advisory councils and the payment of allowances to members of such councils;
- (iv) the establishment and maintenance of amenities funds and the fees that shall be paid thereto and payments that may be made therefrom;
- (v) the establishment and operation of staff development programmes;
- (b) in relation to non-Government teachers colleges and technical or vocational institutions—
  - (i) the establishment, staffing, equipment and maintenance of such colleges and institutions;
  - (ii) the standards for admission of students to such colleges and institutions;
  - (iii) the control and regulation of fees and other charges that may be levied or made at such colleges and institutions;
  - (iv) the courses and examinations that may be conducted at such colleges and institutions;
- (c) the functions of responsible authorities of teachers colleges and technical or vocational institutions;
- (d) the health of students at teachers colleges, technical or vocational institutions and hostels connected therewith, including—
  - (i) the entry and inspection of such colleges, institutions and hostels by Government medical officers or medical practitioners authorized thereto by the Secretary;
  - (ii) the closing of any such college, institution or hostel on the grounds of health;
  - (iii) the exclusion from any such college, institution or hostel of any person who—
    - (A) is suffering or has recently suffered from, or has been in contact with a person suffering from, any communicable disease; or
    - (B) is verminous;
  - (iv) requiring certificates or reports to be furnished as to whether or not any student is suffering from, or has been in contact with a person suffering from, any communicable or infectious disease;
  - (v) the examination of any student by a psychiatrist or by an educational psychologist;
  - (vi) the medical or dental treatment of students, the supply of medicines and dental and surgical appliances to them and the performance of X-ray and other examinations upon them, and the fees payable therefor;
  - (vii) minimum standards to be observed in regard to dietary and hygienic conditions;
- (e) any other matter that is likely to promote good order and administration and the proper regulation of teachers colleges and technical or vocational institutions;
- (f) the payment of grants and any other moneys out of the Fund;
- (g) requiring persons who have attended any teachers college or technical or vocational institution or who have undergone any apprenticeship training to undertake any specified employment in Zimbabwe for a specified period, and providing monetary and other penalties for persons who fail to undertake such employment;
- (h) the approval of apprenticeship training programmes established by employers;

- (i) the making, registration, transfer, modification, rescission and completion of contracts of apprenticeship, the terms and conditions of such contracts and the rights and duties of the parties thereto;
  - (j) the form of certificates and other documents issued or required in terms of this Act;
  - (k) fees and charges for examinations conducted, certificates issued and other things made or done in terms of this Act;
  - (l) any other thing which, in the opinion of the Minister will promote teacher education, technical or vocational education or the development of manpower in Zimbabwe.
- (3) Regulations may provide penalties for contraventions thereof, but no such penalty shall exceed a fine of level four or imprisonment for a period of three months or both such fine and such imprisonment.

*[subsection as amended by section 4 of Act [No. 22 of 2001](#)]*

## 70. Savings and transitional provisions

- (1) In this section—
- “Education Act” means the Education Act [[Chapter 25:04](#)];
- “repealed Act” means the Manpower Planning and Development Act, 1984 ([No. 36 of 1984](#)).
- (2) Notwithstanding sections seventy and seventy-one—
- (a) any Government teachers colleges which, immediately before the 1st November, 1995, was established under the Education Act shall be deemed to have been established under this Act;
  - (b) any non-Government teachers college which, immediately before the 1st November, 1995, was registered under the Education Act shall be deemed to have been registered under this Act;
  - (c) any proceedings which were commenced before the 1st November, 1995, in relation to the registration of any non-Government teachers college under the Education Act and which are pending on the 1st November, 1995, shall be deemed to have been commenced under this Act and may be continued accordingly;
  - (d) any general purpose fund or teachers amenities fund that was in existence under the Education Act in respect of a Government teachers college shall continue to exist under this Act;
  - (e) any regulations made or deemed to have been made under the Education Act in respect of any non-Government teachers college shall be deemed to have been made under this Act;
  - (f) any Government vocational or technical institution which, immediately before the 1st November, 1995, was established or deemed to have been established under the repealed Act shall be deemed to have been established as a technical or vocational institution under this Act;
  - (g) any private vocational or technical training institution which, immediately before the 1st November, 1995, was registered under the repealed Act shall be deemed to have been registered under this Act as a non-Government technical or vocational institution;
  - (h) any proceedings which were commenced before the 1st November, 1995, in relation to the registration of any private vocational or technical institution under the repealed Act and which are pending on that date shall be deemed to have been commenced under this Act in relation to the registration of the institution concerned as a non-Government technical or vocational institution, and may be continued accordingly;

- (i) any person who, immediately before the 1st November, 1995, was a member of the National Manpower Advisory Council established by the repealed Act shall be deemed to have been appointed to the Council under this Act for the remainder of the period of his appointment under the repealed Act;
  - (j) any contract of apprenticeship which, immediately before the 1st November, 1995, was registered or deemed to have been registered under the repealed Act shall be deemed to have been registered under this Act;
  - (k) any certificate of journeyman status which was issued under the Apprenticeship Training and Skilled Manpower Development Act [*Chapter 266 of 1974*] shall be deemed to be a certificate of skilled worker qualification issued under this Act;
  - (l) any certificate, licence or other document that was issued, or statutory instrument that was made or any other thing that was made, done or commenced under the repealed Act and which, immediately before the 1st November, 1995, had or was capable of acquiring force or effect shall be deemed to have been issued, made, done or commenced, as the case may be, under the appropriate provision of this Act, and shall have or acquire force or effect accordingly.
- (3) The Minister shall endeavour to employ in terms of paragraph (a) of subsection (2) of section forty-eight as many of the members of the Public Service who, on the 1st November, 1995, are attached to —
- (a) the Fund; and
  - (b) the secretariat of the National Manpower Advisory Council; and
  - (c) the Management Training Bureau of the Ministry of Higher Education;
- as is possible without prejudicing the efficiency and economic viability of the Fund:

Provided that every such person shall be engaged for employment on the same terms and conditions as were applicable to him immediately before his engagement, and his service with the State shall be deemed to form part of and be continuous with his service with the Fund subsequent to his engagement.

## 71. Additional savings and recalculation of certain levies

- (1) In this section—

“omitted matter” means any item or matter that is included in the definition of “wage-bill” in subsection (1) of section fifty-three but which was omitted from the definition of that term in section 2 of the Vocational Education and Training (Levy) Notice, 1982, published in [Statutory Instrument 802 of 1982](#).
- (2) It is declared, for the avoidance of doubt, that the Vocational Education and Training (Levy) Notice, 1982, published in [Statutory Instrument 802 of 1982](#), was saved in force by paragraph (l) of subsection (1) of section seventy and accordingly, subject to subsection (4), the notice remained in operation from the 1st November, 1995, until its repeal on the 12th March, 1999.
- (3) Any employer entitled to claim a refund on the ground that, between the 1st November, 1995, and the 12th March, 1999, the levy paid by such employer was assessed on the basis that any terminal benefit paid by him to an employee formed part of his wage-bill shall, in lieu of a refund, be entitled to set off the amount so paid in excess against any amount of levy due from him after the commencement of this Act.
- (4) If any levy paid by any employer in respect of the period from the 1st November, 1995, to the 12th March, 1999, was less than the amount he would have been required to pay had any omitted matter been included in the definition of “wage-bill” in section 2 of the Vocational Education and Training (Levy) Notice, 1982, published in [Statutory Instrument 802 of 1982](#), the employer concerned shall



pay the difference to the Fund within six months after the date of commencement of the Manpower Planning and Development Amendment Act, 2001.

- (5) Any amount payable in terms of subsection (4) shall be regarded as a levy and shall be collected and may be sued for and recovered accordingly.

## 72. Transitional provisions in respect of transfer of employees

- (1) In this section—

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

- (2) Any person who immediately before the fixed date was employed by the State as a member of the Civil Service and who has been employed in technical and vocational or teacher’s colleges shall continue in such employment; and
- (3) Any regulation, notice, circular or other document which, immediately before the fixed date, regulated the conditions of service of any class of transferred members in terms of the Public Service Act [*Chapter 16:04*] shall continue, on and after that date, to regulate the conditions of service of—
- (a) those transferred members; and
- (b) any persons who join the service after the fixed date and who are in the same class as those transferred members;

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

- (4) If on the fixed date—

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

[section 72 added by section 22 of [Act 12 of 2020](#)]