

# **ZIMBABWE SCHOOL EXAMINATIONS COUNCIL** **AMENDMENT ACT, 2019**

## **EXPLANATORY MEMORANDUM**

### **1. PURPOSE OF THE REVIEW**

The ZIMSEC Act was enacted in 1994, and since then, there have arisen many gaps that require to be filled through this amendment bill. It is necessary to align the ZIMSEC Act with the various developments that have taken place since its enactment so as to make it more relevant and applicable in the present day.

### **2. WORK UNDERTAKEN**

ZIMSEC Board identified key areas in the Act that required attention and listed them down in a memorandum delivered to its legal practitioners, Dube, Manikai & Hwacha, who were instructed to prepare a comprehensive draft amendment bill for consideration by the Board. The draft bill was reviewed by the ZIMSEC Board and thereafter further amendments were made to it by ZIMSEC's said lawyers. The draft was then circulated to all stakeholders including the Ministry of Primary and Secondary Education, parents, students, heads of primary and secondary schools, representatives of school development committees and representatives of teachers' unions for comments. This was then followed by an intense stakeholders' meeting which was held at Manna Safari Lodge, Glen Lorne, Harare on 6<sup>th</sup> September 2019 where further proposals to the amendment bill were made.

### **3. CLAUSE BY CLAUSE ANALYSIS**

The ZIMSEC Act Amendment Bill proposes the following changes

- 3.1. **Preamble** – The Amendment Bill has proposed a new preamble which more precisely aligns the Act with its purpose. It reads as follows: *“AN ACT to establish the Zimbabwe School Examinations Council and to provide for its functions and to provide for matters connected with or incidental to the foregoing, more specifically, to protect and promote the integrity of the Zimbabwe School Examinations system in line with the qualifications, goals*

*and objectives of the Zimbabwe National Qualifications Framework, and to ensure that it remains of exceptional quality and comparable standards with regional and international levels of primary and secondary examination systems.”*

- 3.2. **Section 2:** Interpretation – it has been deemed necessary for the Act to define what constitutes examinations malpractice and the following definition has been proposed: *“Any conduct committed by an examination candidate either intentionally or realising that there is a real possibility that such conduct may desecrate or undermine the integrity of an examination and which conduct will afford the concerned examination candidate an unwarranted advantage over other examination candidates.”*

It has also been proposed that the definition of the word “Director” be deleted and replaced with “Chief Executive Officer” which shall mean: *“the Chief Executive Officer of the Council appointed in terms of section nineteen”*

It has also been proposed that the definition of the word “candidate” be included *and it shall mean “any person who has registered to sit for an examination offered by ZIMSEC”*

- 3.3. **Section 4 (i)** – this provision has been amended so as to give ZIMSEC the ability to deregister examination centres that do not comply with ZIMSEC’s standards of appropriate examination centres.
- 3.4. **Section 6** – numerous changes have proposed regarding the composition of the ZIMSEC Board, which changes are intended to strengthen the independence and efficiency of the Board by equipping it with the necessary skilled persons that can adequately meet ZIMSEC’s mandate.
- 3.5. **Section 11 (1)** – there has been suggested an increase in the number of annual meetings held by the ZIMSEC Board from three to four.
- 3.6. **Section 12** – there has been suggested an additional mandate of the Examination Committee, and it has been further suggested that all actions, resolutions and decisions of the Examination Committee are subject to ratification by the ZIMSEC Board
- 3.7. **Section 19** – it has been proposed that the term “Director” of ZIMSEC be upgraded to “Chief Executive Officer” as is the case with other national examinations bodies in Africa and abroad.

- 3.8. **Section 22** – it has been proposed that powers to invest funds which ZIMSEC may not immediately require for its use should be given to the ZIMSEC Board, acting on its own volition or on the recommendations of its Finance Committee, as opposed to being vested in the Minister of Primary and Secondary Education. This allows for less rigidity and enables ZIMSEC to fluidly invest its resources without the haggles of government bureaucracy.
- 3.9. **Section 26** – it is proposed to change the ending of ZIMSEC's financial year from 30<sup>th</sup> June to 31<sup>st</sup> December.
- 3.10. **Section 34** – certain proposals have been made in order to strengthen and consolidate the powers of the Board to protect the integrity of the national examinations system.
- 3.11. **Section 34A** – there has been introduced this new section to provide for the procedure of withholding examination results pending investigations by ZIMSEC
- 3.12. **Section 34B** – there has been introduced this new section to provide for the taking of an oath of secrecy for all persons that handle examinations material or work closely with ZIMSEC such that they may gain access to examinations material
- 3.13. **Section 34C** – there has been introduced this new section intended to deal with issues pertaining to conflict of interest
- 3.14. **Section 35** – additions have been proposed to the list offences listed thereunder and to further enumerate acts of examinations malpractice
- 3.15. **Section 37** – this new section has been proposed in order to cater for the gender neutrality of the Act
- 3.16. **Schedule: Powers of Council** – it is proposed that there be added clause 26 under this schedule which provides for the powers of Council to source funding through obtaining loans or other financial assistance



## ZIMBABWE

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# ACT

To amend the Zimbabwe School Examinations Council Act [Chapter 25:18] and to provide for matters connected with or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

### 1 Short title

This Act may be cited as the Zimbabwe School Examinations Council Amendment Act, 2019 and is deemed to have come into force on \_\_\_\_\_ [date of entry into force to be inserted]

### 2 Preamble

The preamble is hereby deleted and substituted with the following:

*AN ACT to establish the Zimbabwe School Examinations Council and to provide for its functions and to provide for matters connected with or incidental to the foregoing, more specifically, to protect and promote the integrity of the Zimbabwe School Examinations system in line with the qualifications, goals and objectives of the Zimbabwe National Qualifications Framework, and to ensure that it remains of exceptional quality and comparable standards with regional and international levels of primary and secondary examination systems.*

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

There is hereby added further interpretation clauses which shall read as follows:

*“examinations malpractice” means “Any conduct committed by any persons and or candidates either intentionally or realising that there is a real possibility that such conduct may desecrate or undermine the integrity of an examination .”*

*“candidate” means “any person who has registered to sit for an examination offered by ZIMSEC”*

### **4 Amendment of section 4 (1)**

(a) Subsection (1) (d) is hereby deleted and is replaced by the following:

- (d) (i) -to consider and grant or deny applications for examination centre registration*
- (ii) where appropriate, deregister examination centres that have contravened this Act or any of its regulations*

### **5 Amendment of section 6**

(a) Subsection 6 (1) (b) is hereby deleted and substituted with the following:

*(b) Three representatives from universities, comprising the following:*

- (i) Two representatives shall be chosen on rotation from state owned universities established in terms of an Act of Parliament,*
- (ii) One representative shall be chosen in rotation from privately owned universities established by charter*

(b) Subsections 6 (1) (c) – (e) are hereby deleted, and substituted with the following:

*(c) The Minister shall appoint not fewer than seven and no more than ten representatives who shall be chosen from lists submitted to him by established and recognized industry representative bodies and professional associations from which the professionals such as but not limited to the following shall be drawn :*

- (i) a financial specialist,*
- (ii) a scientist,*
- (iii) an auditor,*
- (iv) a human resources practitioner,*
- (v) a lawyer; and*
- (vi) an educationist*
- (vii) ICT specialist*

*Provided that:*

- (i) At least one of the chosen representatives shall be a person living with a disability, who will represent the interests of persons living with disabilities*
- (c) Subsection 6 (1) (g) is hereby deleted and substituted with the following:  
  
*(g) not more than two other members appointed by the Minister.*
- (d) Subsection 6 (4) is hereby deleted and substituted with the following:  
  
*Members shall be appointed in terms of paragraph (g) of subsections (1) for their ability and experience in administration or education or their professional qualifications or their suitability otherwise for appointment.*

## **6 Amendment of section 8**

### **a. Subsection (1) is hereby amended as follows**

**An appointed member shall hold office for such a period, not exceeding four years as the Minister may fix on his appointment.**

## **7 Amendment of section 11**

The number of meetings which the Board shall hold per year as prescribed in the *proviso* to section 11 (1) is hereby amended from three times a year to four times a year.

Tenure of the Board should be revised to four years as opposed to current three

## **8 Amendment of section 12**

- (a) There shall be added a new subsection, that is, subsection 2 (i), which shall read as follows:

*(i) To investigate the suitability and integrity of an examination centre, and to recommend to the Board its registration or deregistration accordingly.*

## **9 Amendment of section 19**

- (a) Section 19 (1) is hereby deleted and substituted with the following:

### *19. Appointment of Chief Executive Officer*

*(1) Subject to this Act, the Board shall appoint, on such terms and conditions as the Board may fix, a person approved by the Minister to be the Chief Executive Officer of the Council.*

- (b) There shall be added a new subsection, subsection 8, which shall read as follows:

*(8) Every reference in this Act to the term "Director" shall be construed as referring to "Chief Executive Officer"*

## **10 Amendment of section 21**

Section 21 (b) is hereby deleted and substituted with the following:

*(b) such moneys as may, with the approval of the Minister, be obtained by the Council as loans or by way of other financial assistance; and*

## **11 Amendment of section 22**

Section 22 is hereby deleted and substituted with the following:

*Moneys not immediately required by the Council may be invested in such a manner as the Board, acting either on the advice of the Finance Committee or mero motu, may approve.*

## **12 Amendment of section 26**

Section 26 is hereby deleted and substituted with the following:

*The financial year of the Council shall be the period of twelve months ending on the 31<sup>st</sup> December each year or on such other date as may be prescribed by the Board, with the approval of the Minister.*

### **13 Amendment of Section 34**

- (a) Subsection (1) shall be amended by the addition of a new subsection, that is, subsection 1 (e), which shall read as follows:

*(e) any of the offences specified in section 35 has been contravened*

- (b) The following phrase in subsection 2 is hereby deleted:

*“the Board may prohibit him from sitting the examination or may annul his results or withdraw any certificate, diploma or award given to him in respect of the examination, as may be appropriate”*

and is hereby substituted with the following phrase:

*“the Board may do any one or more of the following:*

- i. prohibit him from sitting the examination or may annul his results or withdraw any certificate, diploma or award given to him in respect of the examination, as may be appropriate; and*
- ii. impose a bar on him prohibiting him from sitting for any examination for a minimum period of four examination sessions or sittings”*

- (c) Subsection 3 is hereby deleted and substituted with the following:

*(3) Taking into cognisance the need to protect the integrity of the examinations systems of primary and secondary schools in Zimbabwe, and recognizing that the right to administrative action, the right to equal protection of the law and the right to a fair trial, amongst other rights which are guaranteed by the Constitution of Zimbabwe, are not absolute, and accepting that the constitutional rights aforesaid are capable of limitation in accordance with section 86 (2) of the Constitution of Zimbabwe, it shall not be necessary for the Board to consult or invite representations from any person before cancelling, annulling or postponing the results of an*



*examination in terms of subsection (1) or imposing a prohibition on the candidate in terms of subsection (2).*

*(4) Where the Board has reason to believe that the integrity of a particular examination or specific paper thereof has been compromised the Board may in its discretion direct that the results of that particular examination or specific paper thereof, be annulled or cancelled for the affected candidates for that examination. Where the exposure and manner of leakage is deemed by ZIMSEC to be widespread, ZIMSEC reserves the right to nullify the affected paper for all candidates.*

(d) There shall be added to section 34 additional subsections which shall read as follows:

*(5) The filing of any process in the High Court by a candidate pursuant to the provisions of subsection 4 above shall not automatically entitle a candidate to receive his or her results before the final and definitive conclusion of the court proceedings.*

*(6) Any reference in this section to an examination shall include an entire examination sitting, that is to say, all subjects which a candidate is registered to write in a given sitting.*

*(7) Any reference in this section to any examination material shall include actual or purported examination papers and items as well as examination answers.*

*(8) The Board shall not be precluded from cancelling or annulling the results of a candidate's entire examination sitting on account the candidate having been permitted to write the remainder of his examinations in that sitting after the commission of an act of examinations malpractice.*

*(9) The criminal prosecution of a candidate shall not preclude the Board from taking action against that candidate under this Act, regardless of the outcome of such criminal prosecution.*

**14 Introduction of Section 34A ( Lawyers to manage numbering because this an insertion must reconcile with 34(1) and ( 2)**

There shall be added a new section which shall be titled section 34A and which shall read as follows:

**34A** *Withholding of examination results pending investigations of malpractice*

*Where the Board has reason to suspect that a candidate has been involved in any examination malpractice set out in section 34 (1) and (2), section 35 or any regulations that may be made by the Minister in terms of section 36, the Board may withhold the examination results of the candidate concerned, pending the outcome of its investigations which shall be completed within forty-two days.*

## **15 Introduction of section 34B**

There shall be added a new section which shall be titled section 34B and which shall read as follows:

### **34B Oath of secrecy**

- (1) The Council may require an officer, agent or staff performing the work of the Council or being engaged in the conduct of any examination or handling of any examination paper or material, including but not limited to printing, transportation and delivery, or any other person whom by virtue of their job, profession or role, has access to any examination paper or material, to take and subscribe to such oath of secrecy as the Council may prescribe.*
- (2) Any person to whom Council administers an oath of secrecy in accordance with the provisions of subsection (1) does or omits to do any act in contravention of the oath of secrecy, commits an offence and is liable, upon conviction, to a fine not exceeding level fourteen or to imprisonment not exceeding nine years, or to both such a fine and such imprisonment.*

## **16 Introduction of section 34C**

There shall be added a new section which shall be titled section 34C and which shall read as follows:

### **34C Conflict of Interest**

- (1) For purposes of this section, a conflict of interest arises when a person, whether directly employed by the Council or not, has a conflict of roles relating to the functions and purpose of Council and is serving two or more competing interests having a bearing on the Council, whether financial, academic or otherwise, which can harm or cause a loss of public confidence in the Council and the Board and which can directly or*

*indirectly impair the integrity of the Board, the Council or the Council's examinations system.*

- (2) A person who knowingly fails to disclose a conflict of interest or realising that there is a real risk or possibility that his actions or omissions may constitute failure to disclose a conflict of interest shall be guilty of an offence and liable, upon conviction, to pay a fine not exceeding level fourteen or imprisonment for a period not exceeding nine years or to both such fine and such imprisonment.*

## **17 Amendment of Section 35**

- (a) There shall be added new subsections to section 35 which shall read as follows:
- (h) unduly accesses or possesses physical copies, electronic forms, excepts or impressions of an examination paper/material before, during or after the examination*
  - (i) intentionally or negligently loses or misuses examination papers or material; or*
  - (j) Intentionally or negligently causes damage to or destruction of examination materials or facilities; or*
  - (k) copies other candidates' work during an examination; or*
  - (l) deliberately exposes his or her work during an examination for another candidate to copy or*
  - (m) is found in possession of disruptive material during an examination or causes disturbances during or at examination; or*
  - (n) distributes an actual or purported examination paper, material or model answers to a candidate or another person , before or during an examination or*
  - (o) discloses the contents of an examination paper or material to a candidate or another person or*
  - (p) makes additions to or generally alters or replaces a candidate's original answer script or responses or*
  - (q) changes or in any way interferes with the marks awarded to a candidate or*

- (r) *uses electronic gadgets outside the examination rubric such as but not limited to cellphones, cameras, calculators, tape recorders and smart watches or*
  - (s) *unduly tampers with sealed examination material such as but not limited answer scripts or question papers*
  - (t) *administers examinations in an environment or conditions that violate ZIMSEC standards and regulations .*
  - (u) *transports, packages or stores examination material in a way that contravenes ZIMSEC standards and regulations.*
  - (v) *fraudulently conceals witnessed or suspected examination malpractice*
  - (w) *engages in any other conduct which undermines or potentially undermines the integrity of the examination system;*
- (b) The following phrase in section 35 is hereby deleted:
- “a fine not exceeding level seven or to imprisonment for a period not exceeding one year”*
- and is hereby substituted with the following phrase:
- “a fine not exceeding level fourteen or to imprisonment for a period not less than nine years and not exceeding twenty-five years”*
- (c) In arriving at an appropriate sentence of a person convicted of the offence provided in section 35, the Magistrate or other judicial officer shall consider a minimum term of imprisonment of at least two years as mandatory for adults, notwithstanding that the offender may be a first-time offender.

Classify the malpractices and penalties as opposed to the global approach. These should have different penalties have categories.

## **18 Introduction of section 37**

There shall be added a new section which shall be titled section 37 and which shall read as follows:

### **37 Gender Neutrality**

- (1) *Every reference in this Act to the word “Chairman” shall be construed as reference to a Chairperson instead.*

- (2) *Every reference in this act to the words “he”, “him” and “his” shall be construed as including the words “she”, “her” and “hers”, and vice-versa.*

**19 Amendment of Schedule (Section 4 (2))**

There shall be added a new provision under the Schedule which shall read as follows:

- 26. To obtain funding as loans or by way of other financial assistance, subject to approval by the Minister.*

**20 Changing of title of s5 from Examination Board to The Zimbabwe School Examinations Council Board**

*The operations of the Council shall , subject to this Act, be controlled by a Board to be known as the Zimbabwe School Examinations Council Board, constituted in terms of this Part*

- 6. For the better exercise of its functions the Board may establish one or more committees in which it may vest such of its functions as deemed appropriate. Proposed deletion of Ministerial consent to establish subcommittees of the Board*

**21 Clarification of capacity of Council, upon approval by the Board, to borrow funds as may be requisite and proper for business requirements.**

*By addition of new subsection under schedule (section 4(2))*

**POWERS OF COUNCIL**

- 25 To borrow funds as may be necessary and proper for business requirements.*

**24 Current 25 to become 26**