

Zimbabwe

## Judicial Service Act

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# Zimbabwe

## Judicial Service Act

### Chapter 7:18

Commenced on 18 June 2010

*[Up to date as at 31 December 2016]*

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

**To make further provisions for the Judicial Service Commission; to constitute the Judicial Service; to establish the Judicial Service Committees and to provide for their functions; to provide for the administration and the conditions of service of members of the Judicial Service employed in the Supreme Court and the High Court and other courts subordinate to the Constitutional Court, Supreme Court and the High Court; and to provide for the transfer of persons from the Public Service to the Judicial Service; to make consequential amendments to various Acts; and to provide for matters connected with or incidental to the foregoing.**

*[long title amended by Act 3 of 2016]*

WHEREAS section 190 of the Constitution provides as follows—

190 (1) The Judicial Service Commission may tender advice to the Government on any matter relating to the judiciary or the administration of justice, and the Government must pay due regard to any such advice.

(2) The Judicial Service Commission must promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice in Zimbabwe, and has all the powers needed for this purpose.

(3) The Judicial Service Commission, with the approval of the Minister responsible for justice, may make regulations for any purpose set out in this section.

(4) An Act of Parliament may confer on the Judicial Service Commission functions in connection with the employment, discipline and conditions of service of persons employed in the Constitutional Court, the Supreme Court, the High Court, the Labour Court, the Administrative Court and other courts.

AND WHEREAS it is desirable to make further provisions for the Judicial Service Commission and for persons employed in connection with the administration of justice in Zimbabwe:

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

*[preamble amended by Act 3 of 2016]*

## Part I – Preliminary

### 1. Short title and date of commencement

This Act may be cited as the Judicial Service Act *[Chapter 7:18]*.

### 2. Interpretation

In this Act-

“**approved service**” means—

- (a) the Civil Service; or
- (b) a disciplined force; or

- (c) the service of Parliament; or
- (d) the service of a government, statutory body, local authority or institution approved by the Minister, after consultation with the Commission, for the purposes of this Act;

“**Commission**” means the Judicial Service Commission established in terms of section 189 of the Constitution;

“**committee**” means a committee established by the Commission in terms of [section 4](#);

“**fixed date**” means the date fixed in terms of [section 1\(2\)](#) as the date of commencement of this Act;

“**court**” means any court established by law in Zimbabwe other than a customary court;

“**customary court**” means a court established in terms of the Customary Law and Local Courts Act [*Chapter 7:05*];

“**disciplined force**” has the meaning given to that term in section 332 of the Constitution;

“**Judges Pension Scheme**” means the scheme set out in the Judges Pension Scheme Notice, 2006 (published in [Statutory Instrument 71 of 2006](#)) or any other scheme that may be substituted for it;

“**Judicial Service**” means the service constituted by the persons referred to in [section 3](#);

“**member**”, in relation to Judicial Service means a person employed in the Judicial Service, including a person employed under contract in terms of [section 8](#);

“**Minister**” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“**pension benefit**” means any pension, commutation of a pension, gratuity or other similar allowance or benefit or any refund of pension contributions, including any interest payable thereon, for a person in respect of his or her service as a member of the Judicial Service or in respect of any ill-health or injury arising out of and in the course of his or her official duties as such a member or for a dependant or personal representative of such person in respect of such service, ill-health or injury or on the death of such person;

“**Public Service Pension Scheme**” means the scheme set out in the Public Service (Pensions) Regulations, 1992 (published in [Statutory Instrument 124 of 1992](#)) or any other scheme that may be substituted for it;

“**recognised association or organisation**” means an association or organisation declared to be a recognised association or recognised organisation, as the case may be, in terms of [section 13](#);

“**Secretary**” means the Secretary of the Commission referred to in [section 10](#);

“**service regulations**” means regulations made in terms of [section 25](#) regulating conditions of service of members of the Judicial Service.

*[section amended by Act 3 of 2016]*

## Part II – Judicial Service Commission

### 3. Constitution of Judicial Service

The Judicial Service shall consist of the following members—

- (a) the Chief Justice appointed in terms of section 180 of the Constitution; and
- (b) the judges of the Supreme Court; and
- (c) the Judge President and the other judges of the High Court; and
- (d) persons presiding over other courts subordinate to the Supreme Court and the High Court other than persons presiding over customary courts; and
- (e) *[paragraph repealed by Act 3 of 2016]*

- (f) the Secretary of the Commission and all other support staff of the Judicial Service; and
- (g) assessors; and
- (h) such persons under contract as may be prescribed; and
- (i) such other persons in the employment of the State as may be prescribed.

#### **4. Establishment of committees**

- (1) The Commission may constitute, on a permanent or temporary basis, one or more advisory committees to advise the Commission on such matters relating to the Judicial Service as the Commission may from time to time consider necessary.
- (2) A committee formed in terms of subsection (1) may, subject to the direction of the Commission, regulate its own procedure, and its members shall hold office on such terms and conditions as the Commission may determine.

#### **5. Functions of Judicial Service Commission**

- (1) Subject to the Constitution, this Act or any other enactment, the Commission shall have the following functions—
  - (a) fix by means of service regulations conditions of service for its members; and
  - (b) administering and supervising the Judicial Service; and
  - (c) appointing persons to the Judicial Service, whether as permanent members on pensionable conditions of service or on contract or otherwise, assign and promote them to offices, posts and grades in the Judicial Service, and fixing their conditions of service; and
  - (d) inquiring into and dealing with complaints or grievances made by or against members of the Judicial Service; and
  - (e) exercising disciplinary powers in relation to members of the Judicial Service; and
  - (f) exercising any other functions that may be imposed or conferred upon it in terms of this Act or any other enactment;
- (2) The Commission shall exercise its functions under this Act so as to ensure the well-being and good administration of the Judicial Service and its maintenance in a high state of efficiency.

#### **6. Delegation of functions**

- (1) Subject to the Constitution and any other enactment, for the better exercise of its functions and in the interest of ensuring the greatest possible degree of devolution of decision-making consistent with good administration, the Commission may delegate decision-making functions to the appropriate departments and sub-departments of the Judicial Service.
- (2) The delegation of a function by the Commission in terms of subsection (1)—
  - (a) may be made subject to conditions; and
  - (b) may be amended or revoked at any time; and
  - (c) shall not preclude the Commission from exercising the function so delegated.
- (3) Where the Commission has delegated a function in terms of subsection (1), any conditions or limitations applicable to the exercise of that function by the Commission shall apply to the exercise of the function by the person to whom it has been delegated.

## Part III – Administration of Judicial Service

### 7. Departments and classification of members of Judicial Service

- (1) Subject to the Constitution and any other enactment, the Judicial Service shall have such departments and sub-departments as the Commission may establish from time to time, each headed by an officer of such grade and designation as the Commission shall determine.
- (2) For each department the Commission shall assign such members of the Judicial Service as may be necessary to carry out the Commission's functions.
- (3) Members of the Judicial Service shall be classified in such manner as may be prescribed.

### 8. Persons under contract

- (1) Subject to the Constitution and any other enactment, the Commission may engage as members of the Judicial Service persons under contract, on such conditions as may be prescribed.
- (2) There may be incorporated in the conditions referred to in subsection (1) such provisions of any service regulations applicable to members of the Judicial Service not engaged under contract as may be considered necessary or desirable in the light of the nature of the contract.
- (3) 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 Judicial Service, unless the contract is renewed or he or she is appointed to the Judicial Service in some other capacity.

### 9. Probationary period

- (1) A member of the Judicial Service referred to in [section 3\(d\)](#), (f), (g) and (i) appointed otherwise than under contract shall serve a probationary period of not less than six months and not more than one year, as the Commission may prescribe or fix in relation to that member.
- (2) The appointment of a member under subsection (1) shall be confirmed at the end of the probationary period unless, at any time during the probationary period, the Commission considers that the member does not meet the required standard of performance, in which case the Commission may—
  - (a) discharge the member; or
  - (b) extend the probationary period by not more than six months, at the end of which period the member shall be discharged if he or she fails to meet the required standard of performance.

### 10. Appointment and functions of Secretary of Commission

- (1) The Commission shall appoint, on such terms and conditions as the Commission shall fix, a person to be the Secretary of the Commission.
- (2) The Secretary of the Commission shall, subject to the Commission's directions, supervise and manage the Commission's staff, activities, funds and property and perform such other functions on behalf of the Commission as the Commission may assign to him or her.
- (3) The Secretary of the Commission is prescribed for the purposes of section 49 of the Public Finance Management Act [*Chapter 22:19*] (Act No. 11 of 2009) to be the accounting officer of the Judicial Service.

*[subsection amended by section 3 of Act 5 of 2011]*

### 11. Consultations re conditions of service of members of Judicial Service

- (1) The Commission shall engage in regular negotiations with recognised associations and organisations in regard to the conditions of service of members of the Judicial Service who are represented by the

recognised associations or organisations.

- (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 negotiations in terms of subsection (1).

## 12. Secondment and deployment of members of Judicial Service

- (1) A member referred to in [section 3\(d\)](#), (f) (other than the Secretary), (g) and (i) or, with his or her consent, any other member, may at any time be deployed or seconded by the Judicial Service to a post in an approved service.
- (2) The terms and conditions of service of a member while on secondment shall, subject to any policy directive issued by the Commission, be governed by contract between the member and the approved service concerned.
- (3) A member who, having been seconded from the Judicial Service to an approved service—
  - (a) resigns or retires from the approved service; or
  - (b) is discharged from the approved service on account of misconduct or on the grounds that he or she is unfit or incapable of performing efficiently the duties of his or her post;

shall be deemed to have resigned, retired or been discharged from the Judicial Service in similar circumstances with effect from the date that he or she resigned or was discharged from the approved service unless the Commission reinstates that person as a member of the Judicial Service with effect from the day following the said date.

## 13. Recognised associations and organisations

- (1) The Minister responsible for labour may, after consultation with the Commission, by written notice to the association or organisation concerned, declare any association or organisation representing all or any members of the Judicial Service to be a recognised association or a recognised organisation, as the case may be, for the purposes of this Act.
- (2) The Minister responsible for labour may, after consultation with the Commission, at any time by written notice to the recognised association or organisation concerned, revoke any declaration made in terms of subsection (1).
- (3) Any member of the Judicial Service who is eligible to do so may join a recognised association or organisation and, subject to this Act, participate in its lawful activities.
- (4) A member of the Judicial 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 Judicial Service.

## 14. Prohibition from engaging in any work outside Judicial Service

- (1) A member of the Judicial Service shall not engage in any activities outside the Judicial Service that—
  - (a) conflict with the member's functions within the Judicial Service; or
  - (b) bring into question the member's ability to act impartially as a member.
- (2) A member shall not engage in any financial and business dealings that may reasonably be perceived to exploit a member's position within the Judicial Service.
- (3) Subject to subsections (1) and (2), a member may manage and participate in—
  - (a) a business conducted by the member or members of his or her family; or

- (b) a business entity primarily engaged in the investment of the financial resources of the member or members of his or her family.

## **Part IV – Discipline of members of Judicial Service**

### **15. Investigation and adjudication of misconduct cases**

Subject to the Constitution, this Act or any other enactment, any case involving misconduct or suspected misconduct on the part of a member of the Judicial Service shall be investigated, adjudicated upon and, where appropriate, punished by the Commission.

### **16. Freedom of persons presiding over courts from arrest or search in court premises**

No arrest or search of the person presiding over a court, in pursuance of any proceedings shall—

- (a) in the case of an arrest, be made within his or her chambers or within the precincts of a court over which he or she is presiding; or
- (b) in the case of a search, be executed within his or her chambers or within the precincts of a court over which he or she is presiding, except with his or her consent;

whether or not the person presiding over the court is conducting any proceedings therein.

### **17. Codes of conduct**

Service regulations may prescribe one or more Judicial Service employment codes of conduct providing for—

- (a) the disciplinary rules to be observed in the Judicial Service including the precise definition of those acts or omissions that constitute misconduct;
- (b) the procedures to be followed in the case of any breach of the code;
- (c) the penalties for any breach of the code, which may include oral or written warnings, fines, reductions in pay for a specified period, suspension with or without pay or on reduced pay, demotion and dismissal from employment;
- (d) the person, committee or authority that shall be responsible for implementing and enforcing the rules, procedures and penalties of the code;
- (e) the notification to any person who is alleged to have breached the code that proceedings are to be commenced against him or her in respect of the alleged breach;
- (f) the right of a person referred to in paragraph (e) to be heard by the appropriate person, committee or authority referred to in paragraph (d) before any decision in his or her case is made;
- (g) a written record or summary to be made of any proceedings or decisions taken in terms of the code, which record or summary shall be made at the time such proceedings and decisions are made.

### **18. Code of ethics**

Service regulations may prescribe one or more Judicial Service codes of ethics providing for—

- (a) the requirement of strict impartiality of judicial officers when performing their duties;
- (b) the requirement of judicial officers to discharge duties with propriety without being influenced by—
  - (i) any partisan interest, or public clamour or fear;
  - (ii) family, personal, social, political or other interests;
- (c) the requirement of judicial officers not to make any public comment that may affect or may reasonably be

construed to affect the outcome of any proceedings or impair their fairness, or make any comment that might compromise a fair trial or hearing;

- (d) the prohibition or limitation of gifts to judicial officers or to members of their families residing with them that may influence or reasonably be construed to influence the execution of the duties of judicial officers;
- (e) the definition of any other corrupt practices or acts of improper behaviour on the part of judicial officers.

## 19. Appeals to Labour Court

- (1) Subject to the Constitution and any other enactment, any member or former member of the Judicial Service who is aggrieved by—

- (a) any decision reached; or
- (b) any penalty imposed upon him or her; or
- (c) both the decision reached and the penalty imposed upon him or her;

in respect of misconduct committed or alleged to have been committed by him or her may, subject to this section, appeal against the decision or penalty to the Labour Court within thirty days from the date of the decision or imposition of the penalty.

- (2) Sections 90, 91(1), 92 and 92E of the Labour Act [*Chapter 28:01*] shall apply, with such changes as may be necessary, in relation to any appeal in terms of subsection (1) as if the decision appealed against were a determination in terms of that Act.

## Part V – Financial provisions

### 20. Funds of Judicial Service

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

### 21. Investment of moneys not immediately required by Judicial Service

Moneys not immediately required by the Judicial Service may be invested in such manner as the Commission considers appropriate.

### 22. Accounts of Judicial Service

- (1) The Judicial Service shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Judicial Service's activities, funds and property, including such particular accounts and records as the Commission may direct.
- (2) As soon as possible after the end of each financial year, the Secretary shall prepare and submit to the Commission a statement of accounts in respect of that financial year or in respect of such other period as

the Commission may direct.

- (3) Section 19 of the Audit and Exchequer Act [Chapter 22:03] shall apply, with such changes as may be necessary, to the appointment of an internal auditor to the Judicial Service in all respects as if the Judicial Service were a Ministry or a department of a Ministry.

## 23. Audit of accounts

- (1) The accounts of the Judicial Service shall be audited by the Comptroller and Auditor-General, who for that purpose shall have the functions conferred on him or her by sections 8 and 9 of the Audit and Exchequer Act [Chapter 22:03].
- (2) Any person under the authority or supervision of the Commission who refuses to provide the Comptroller and Auditor-General with an explanation or information required by him or her for the purposes of an audit in terms of subsection (1), or knowingly provides to the Comptroller and Auditor-General any false explanation or information, or any explanation or information that the person has no grounds for believing to be true, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- (3) Notwithstanding anything contained in subsection (1), the Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of the Judicial Service and if he or she does so—
  - (a) subsections (1) and (2) shall apply in respect of the person so appointed as if he or she were the Comptroller and Auditor-General; and
  - (b) any expenses incurred by the person so appointed in carrying out his or her audit shall be met from the funds of the Commission.

## Part VI – General

### 24. Pension rights of members of Judicial Service

- (1) Subject to the Constitution and any other enactment, every member of the Judicial Service who, immediately before the fixed date, is a person referred to in [section 3\(a\)](#), (b) or (c) or is employed in the Public Service on pensionable conditions of service and who on that date is engaged as member of the Judicial Service, shall continue to contribute towards the Judges Pension Scheme or the Public Service Pension Scheme as if his or her service with the Judicial Service forms part of and is continuous with his or her service as a judge of the Supreme Court or the High Court or with the Public Service prior to his or her engagement.
- (2) Any person, other than a person referred to in [section 3\(a\)](#), (b) or (c), who is engaged by the Judicial Service after the fixed date shall, on the date of his or her engagement, have the option to contribute—
  - (a) towards the Public Service Pension Scheme ; or
  - (b) towards any pension scheme that the Commission may establish or permit members of the Judicial Service to participate in; or
  - (c) any pension scheme of their choice.

### 25. Service regulations

- (1) Subject to the Constitution and this Act, the Commission may, with the approval of the Minister, make regulations providing for the conditions of service of members of the Judicial Service.
- (2) Regulations made in terms of subsection (1) may provide for—
  - (a) the appointment, classification, qualifications, salaries, allowances and other remuneration and benefits of members of the Judicial Service, and their promotion, functions, hours of work and leave of absence;

- (b) the pension benefits payable to members of the Judicial Service and to other persons in respect of the members' service with the Public Service or the Judicial Service, the contributions payable in respect of such pension benefits and the circumstances in which such pension benefits may be reduced, suspended or withdrawn;
  - (c) codes of conduct and codes of ethics for members of the Judicial Service;
  - (d) training and development courses for members of the Judicial Service and the attendance of such members thereat;
  - (e) the use by members of the Judicial Service of vehicles, equipment and other property of the State, their indemnification in respect of such use and additionally, or alternatively, the recovery from them of compensation and penalties in respect of damage or loss caused by such use;
  - (f) the manner in which members of the Judicial Service may make representations in regard to matters affecting their conditions of service and general welfare;
  - (g) the manner in which grievances of members of the Judicial Service may be expressed, investigated and redressed;
  - (h) the terms and conditions of contracts entered into in terms of [section 8](#);
  - (i) the circumstances in which the Commission may assent to cessions of salary, allowances or other remuneration;
  - (j) the discipline of members of the Judicial Service, and the penalties that may be imposed upon them and other measures, including dismissal, that may be taken against them for misconduct or if they are inefficient or unsuitable or incapable of performing their duties or if they are convicted of criminal offences;
  - (k) the suspension, retirement, resignation, discharge, abandonment of employment and other termination of service of members of the Judicial Service;
  - (l) the transfer, secondment and appointment of members of the Judicial Service to offices, posts or grades in an approved service and vice versa and the terms and conditions upon which such transfers, secondments and appointments may be made;
  - (m) the conduct of investigations, inspections and examinations for the purposes of this Act;
  - (n) any other matter which, in the opinion of the Commission, is necessary or convenient to prescribe in order to ensure the well-being and good administration of the Judicial Service and its maintenance in a high state of efficiency.
- (3) To the extent that regulations made in terms of subsection (1) may result in an increase in expenditure chargeable on the Consolidated Revenue Fund, the Commission shall obtain the concurrence of the Minister responsible for finance before they are enacted.
- (4) Regulations made in terms of subsection (1) may provide that any enactment relating to the conditions of service of members of the Public Service shall apply to or in respect of any members of the Judicial Service, subject to such modifications, exceptions or conditions as may be specified in the regulations, and thereupon the enactment concerned shall so apply to or in respect of those members of the Judicial Service.
- (5) If, after an enactment has been made applicable to any members of the Judicial Service as provided in subsection (4), the enactment concerned is amended, the amendment shall also apply to or in respect of the members concerned unless the Commission provides in regulations that it shall not apply.

## 26. Act not to affect application of certain other laws

To the extent that the appointment, conditions of service, termination of service or pension benefits of a member of the Judicial Service is or are provided for by or under the Constitution or any other enactment, this Act shall not apply to or in respect of that member.

## 27. Amendment of Acts

The Act specified in each Part of the Schedule is amended to the extent set out in that Part.

## 28. Transitional provisions

- (1) In this section—
- “transferred member” means a person who is transferred from the Public Service to the Judicial Service in terms of subsection (2).
- (2) Every person specified in [section 3](#) who, immediately before the fixed date, was employed by the Public Service, shall be deemed to have been transferred to the Judicial Service, unless he or she opts out of employment with the Judicial Service—
- (a) in writing to the Commission and the Public Service Commission within thirty days from the fixed date;
- (b) where the fixed date is fixed in terms of [section 1\(2\)](#) to be a date not earlier than fifty days after the date of promulgation of this Act, in writing to the Public Service no later than the thirtieth day before the fixed date.
- (3) Every transferred member shall, on the fixed date, be engaged for employment with the Judicial Service on terms and conditions not less favourable than those that were applicable to him or her immediately before his or her engagement.
- (4) All offices in the Public Service held by transferred persons shall from the fixed date, be transferred to the Judicial Service, and accordingly any person who refuses to be transferred to the Judicial Service in terms of subsection (2) shall be entitled to the terminal benefits upon resignation from, not abolition of, an office in the Public Service.
- (5) The assets and rights of the State which—
- (a) before the fixed date, were used or otherwise connected with the Ministry responsible for this Act and the Attorney-General’s Office; and
- (b) are specified by the Minister by notice in a statutory instrument;
- together with any liabilities or obligations attaching to them, shall be transferred with effect from the date specified in the notice in any one or more of the following ways—
- (i) to the Judicial Service exclusively; or
- (ii) to the Ministry responsible for this Act and the Attorney-General’s Office exclusively; or
- (iii) in joint and undivided shares to the Judicial Service, the Ministry responsible for this Act and the Attorney-General’s Office, in which event the accounting officer of the Ministry responsible for this Act shall continue to be the accounting officer in respect of those assets.
- [subsection inserted by Act 5 of 2011]*
- (6) 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 Judicial Service after the fixed date and who are in the same class as those transferred members;
- until the Commission replaces the regulation, notice, circular or other document concerned or otherwise alters the conditions of service concerned in terms of this Act.

*[subsection inserted by section 3 of Act 5 of 2011]*

- (7) If on the fixed date—
- (a) there were any 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 Public Service and, if the proceedings result in the dismissal of that person, that person shall not be transferred to the Judicial Service;
  - (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 Public 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 Judicial Service at the equivalent grade or post;
  - (c) any civil proceedings were 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 Public Service.

*[subsection inserted by section 3 of Act 5 of 2011]*