

LAND COMMISSION BILL, 2016

EXPLANATORY MEMORANDUM

This Bill seeks to provide for the Zimbabwe Land Commission referred to in section 296 of the Constitution and for matters pertinent thereto, including the allocation of rights in State Land for agricultural purposes, the registration of such rights, the creation and extinction of servitudes over State Land, the settlement of persons on such land, the control of the subdivision and lease of land for farming or other purposes, and the limitation of the number and sizes of pieces of land that may be owned by any individual. In that connection this Bill seeks the repeal of the Agricultural Land Settlement Act [*Chapter 20:01*] and the Rural Land Act [*Chapter 20:18*], and to amend the Land Acquisition Act [*Chapter 20:18*].

The individual clauses of the Bill are explained below:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause defines terms used throughout the Bill.

Clause 3

This clause provides for the corporate status of the Commission. It also cross-references the First and Second Schedules, the first of which provides for the tenure of office and conditions of service of the members of the Commission, and the procedure to be followed by the Commission at its meetings; whilst the second one sets out the ancillary powers of the Commission to do the sorts of things that corporate bodies may at law do.

Clauses 4

This clause reiterates the Commission's functions as set out in section 297 of the Constitution.

Clause 5

Under this clause the appointment of an Executive Secretary of the Commission and employment of other staff members is set out as well as the engaging of consultants where necessary.

Clause 6

This clause provides for the independence and impartiality of the Commission and its members. It also addresses conflicts of interest on the part of members of the Commission and its staff in the course of discharging their duties.

Clause 7

This clause provides for the provision of reports by the Commission to the Minister and the tabling of such reports by the Minister before Parliament.

Clause 8

This clause provides jurisdiction of the Commission to conduct comprehensive inspections and audits of agricultural land.

Clause 9

This clause sets out the jurisdiction of the Commission to conduct investigations whenever a person has a complaint regarding the supervision, administration and allocation of agricultural land or is affected by a dispute regarding agricultural land.

Clause 10

This clause sets out the procedure for lodging complaints with the Commission

Clause 11

This clause provides for the refusal by the Commission to investigate any complaint that it may find it is constitutionally not authorised to investigate.

Clause 12

This clause sets out the manner in which the Commission may conduct investigations and audits. Primarily such investigations will take the form of public or closed hearings.

Clause 13

This clause provides for the avoidance of conflict of interest affecting members of the Commission that may arise during audits or investigations by the Commission.

Clause 14

This clause sets out what happens once an audit or investigation by the Commission is concluded.

Clause 15

This clause interprets certain terms used only in Part IV of the Bill relating to the general administration of State Land).

Clause 16

This clause empowers the Minister to acquire land for the State by means of exchange, bequest or gift (this power existed under the Rural Land Act).

Clause 17

This clause provides for the lease or other alienation of State Land by the Minister after consultation with the Commission and with the approval of the President.

Clauses 18 to 20

These clauses provide for the prohibition of share cropping agreements except with the prior approval of the Minister (these provisions presently appear in the Rural Land Act and are sought to be carried over into this Bill).

Clause 21

This clause provides for the regulation making power of the Minister in relation to Part IV only.

Clause 22

This clause provides for the establishment of land settlement schemes by the Minister after consultation with the Commission.

Clause 23

This clause provides for the issuance of offer letters, leases, deeds of grant and permits by the Minister.

Clause 24

This clause sets out the procedure in regards to applications for leases of Gazetted or State land, which must be referred to the Commission for advice.

Clause 25

This clause sets out matters to be considered by the Commission when considering to recommend or not recommend to the Minister the issuance of leases over Gazetted or State land.

Clause 26

This clause empowers the Minister (following upon any recommendation by the Commission under clause 25) to issue leases over Gazetted or State land.

Clause 27

This clause provides for the authority vested in the President to retake any land alienated under this Bill.

Clause 28

This clause prohibits the cession, assignment, hypothecation or other alienation by any holder of an offer letter, lease or permit over State land, without the consent in writing of the Minister.

Clause 29

This clause carries over (in the Fourth Schedule) certain special provisions relating to leases with a purchase option that were issued to indigenous farmers under the Agricultural Land Settlement Act to be repealed by this Bill.

Clauses 30 to Clause 35

These clauses provide for the following matters: the control and occupation of agricultural land; the Minister's authority to cause investigations to be conducted and to give orders to both lawful holders or occupiers and other occupiers of farms; the issuance of a notice of a proposal to make an order; and the variation or revocation or time extension of any such order. These provisions are carried over from the Agricultural Land Settlement Act to be repealed by this Bill.

Clauses 36 and 37

These clauses deal with the appellate and dispute settlement functions of the Commission, as well as the power to make regulations in relation thereto. The procedure

to be followed by the Commission for the settling of appeals or disputes is more fully set out in the Fifth Schedule to this Bill.

Clauses 38 to 42

Under these clauses the Register of Partially Alienated State Land Rights is established, which shall be administered by the Secretary of the Ministry responsible for this Bill in his or her capacity as the Registrar. Every entry in the Register of a partially alienated State land right shall be deemed to be the definitive record of such right, and in the event of any inconsistency between such entry and any other record of such right kept in terms of this Act or otherwise, the entry in the Register shall prevail as proof of the partially alienated State land right or any particular thereof.

Clauses 43 to 52

Under these clauses the Ministry responsible for this Bill is enabled, through its designated officers, to create, vary or cancel statutory servitudes over or in favour of holdings of partially alienated State Land. Clause 51 provides for the reference of disputes in connection with proposed statutory servitudes and the rights, privileges and obligations of interested parties at the hearing of such disputes before the Commission. Provision is made for the registration of statutory servitudes in the Registry of Partially Alienated State Land Rights and, where appropriate, in the Deeds Registry.

Clauses 53 to 55

These clauses provide for the funds, accounts, appointment of an internal auditor and audit of the accounts of the Commission by the Auditor-General.

Clauses 56 to Clause 63

These clauses are part of the general provisions of the Bill and deal with the following matters: rentals for State Land; the Minister's authority to give the Commission policy directions; limited immunity against legal proceeding for the Commission or any member of the Commission, Executive Secretary or person acting under the direction of the Commission in pursuance of this Bill; the provincial, district and other offices of the Commission; entry upon land (other than dwelling houses) by members of the Commission or employees of the Commission authorised by the Commission, and the right of an appeal by any person aggrieved by any decision made by the Commission; the creation of an offence for false statements made in applications for partially alienated State land rights; and the regulatory powers of the Commission.

Clause 64

This clause repeals the Agricultural Land Settlement Act [*Chapter 20:01*] and the Rural Land Act [*Chapter 20:18*], and provides for transitional provisions relating to such repeals.

Clause 65

This clause provides for the transfer of certain employees from the Ministry responsible for the repealed Acts to the staff of the Commission.

Clause 66

This clause amends the Land Acquisition Act [*Chapter 20:01*] to allow the Secretary or authorised delegate to sit in at any meeting of the Derelict Land Board, provided written notice has been sent to the Chairperson of the said Board.

LAND COMMISSION BILL, 2016

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BILL

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AN ACT to provide for the Zimbabwe Land Commission established by section 296 of the Constitution; to provide for the acquisition of State land and the disposal of State land; to provide for the settlement of persons on, and the alienation of, agricultural land; to provide for the control of the subdivision and lease of land for farming or other purposes; to provide for limiting of the number of pieces of land that may be owned by any person and the sizes of such land; to repeal the Agricultural Land Settlement Act [*Chapter 20:01*] and the Rural Land Act [*Chapter 20:18*]; to amend the Land Acquisition Act [*Chapter 20:10*]; and to provide for matters connected with or incidental to the foregoing.

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WHEREAS sections 296 and 297 of the Constitution provide as follows:—

296 Establishment and composition of Zimbabwe Land Commission

(1) There is a commission to be known as Zimbabwe Land Commission consisting of—

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- (a) a chairperson and deputy chairperson; and*
- (b) a minimum of two and a maximum of seven other members appointed by the President.*

(2) Members of the Zimbabwe Land Commission must—

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- (a) be chosen for their integrity and competence in, and knowledge and understanding of, the best practices in land management and administration; and*
- (b) reflect the diversity of Zimbabwe's population, in particular its regional interests and gender balance.*

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(3) Section 237 applies in relation to the removal from office of members of the Zimbabwe Land Commission as if it were an independent Commission established by Chapter 12.

297 Functions of Zimbabwe Land Commission

- (1) The Zimbabwe Land Commission has the following functions— 5
- (a) to ensure accountability, fairness and transparency in the administration of agricultural land that is vested in the State;
 - (b) to conduct periodical audits of agricultural land;
 - (c) to make recommendations to the Government regarding— 10
 - (i) the acquisition of private land for public purposes;
 - (ii) equitable access to and holding and occupation of agricultural land, in particular— 15
 - A. the elimination of all forms of unfair discrimination, particularly gender discrimination;
 - B. the enforcement of any law restricting the amount of agricultural land that may be held by any person or household;
 - (iii) land usage and the size of agricultural land holdings;
 - (iv) the simplification of the acquisition and transfer of rights in land;
 - (v) systems of land tenure; and
 - (vi) fair compensation payable under any law for agricultural land and improvements that have been compulsorily acquired; 20
 - (vii) allocations and alienations of agricultural land;
 - (d) to investigate and determine complaints and disputes regarding the supervision, administration and allocation of agricultural land.
- (2) The Zimbabwe Land Commission, with the approval of the Minister responsible for land, may make regulations for any of the purposes set out in subsection (1). 25
- (3) The Zimbabwe Land Commission must exercise its functions in accordance with any general written policy directives which the Minister responsible for land may give it.
- (4) In discharging its functions, the Zimbabwe Land Commission must be guided by the principles set out in section 289. 30
- (5) The State and all institutions and agencies of government at every level, through legislative and other measures, must assist the Zimbabwe Land Commission in carrying out its functions and must protect its independence, impartiality, integrity and effectiveness. 35
- (6) The Government must make adequate and suitable provision, through legislation and other appropriate means, to ensure that—
- (a) the Zimbabwe Land Commission is able to exercise its functions efficiently and independently; and
 - (b) persons employed by the Zimbabwe Land Commission carry out their duties conscientiously, fairly and impartially. 40

AND WHEREAS it is desirable to make further provision for the Zimbabwe Land Commission and for persons employed in connection with that Commission;

AND WHEREAS, in terms of section 292 of the Constitution, it is provided that The State must take appropriate measures, including legislative measures, to give security of tenure to every person lawfully owning or occupying agricultural land:

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

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Land Commission Act [*Chapter 20:29*].

2 Interpretation

In this Act—

“A1 farm” means a farm held under a permit allocated under the Model A1 scheme (villagised, and three-tier land-use plans with minimum plots of three hectares) described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April, 2001 (as re-issued and amended from time to time);

“A2 farm” means a farm held under a ninety-nine year lease allocated under the Model A2 scheme (the Commercial Farm Settlement Scheme, not exceeding the maximum farm sizes prescribed under Statutory Instrument 419 of 1999 or any other law substituted for the same) described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April, 2001 (as re-issued and amended from time to time);

“acquiring authority” means the President or person or authority compulsorily taking possession of or acquiring the property or any interest or right therein in terms of the Constitution or Land Acquisition Act [*Chapter 20:10*];

“agricultural land” has the same meaning as provided in section 72 of the Constitution and, unless the context otherwise requires, refers to agricultural land that is State land;

“alienate”, in relation to agricultural land that is State land, includes to issue a ninety-nine year lease, lease with a purchase option, permit, offer letter or deed of grant to a person;

“Commission” means the Zimbabwe Land Commission established by section 296 of the Constitution;

“deed of grant” means the deed by which the transfer of ownership of unalienated State land is evidenced in terms of section 16(1)(b) of the Deeds Registries Act [*Chapter 20:05*];

“farm” means any area of agricultural land which is not within—

(a) parks and wild life land or forest land; or

(b) a municipal area, town area or local government area as defined in the Urban Councils Act [*Chapter 29:15*]; or

(c) a town ward of a rural district council or an area that has been declared a specified area in terms of the Rural District Councils Act [*Chapter 29:13*]; or

(d) the area of any township as defined in the Land Survey Act [*Chapter 20:12*]; or

- (e) State land the layout of which has been approved in terms of—
- (i) section 127 of the Town and Country Planning Act [*Chapter 213 of 1974*]; or
 - (ii) section 43 of the Regional, Town and Country Planning Act [*Chapter 20:12*];
- “piece of land” means a piece of land registered as a separate entity in the Deeds Registry;
- “farmer” means the owner or lessee of, or permit-holder or holder of an offer letter in relation to, a farm;
- “Gazetted land” means agricultural land acquired pursuant to the land reform programme under section 72(2) of the Constitution or referred to in section 72(4) of the Constitution;
- “holder” in relation to an offer letter, means the holder of an offer letter who has indicated that he or she has accepted the offer of a farm described in the letter but who is not yet a party to a ninety-nine year lease;
- “household” consists of spouses living together as husband and wife and their dependant children or other dependants whom they are lawfully required to maintain;
- “indigenous person” has the same meaning as in the Indigenisation and Economic Empowerment Act [*Chapter 14:33*] (No. 14 of 2007);
- “land” includes anything permanently attached to or growing on land;
- “lease” means a ninety-nine year lease or lease with a purchase option or other lease of agricultural land, and “lease” shall be construed accordingly;
- “lease with a purchase option” means a lease of a holding issued by the State in terms of the repealed Agricultural Land Settlement Act to an indigenous person, that contains an option to purchase the holding to which it relates, and includes the tenure of a holding after the right to purchase the holding has been exercised and until title has been issued in respect thereof;
- “member”, in relation to the Commission, means a member of the Commission;
- “Minister” means the Minister of Lands and Rural Resettlement 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;
- “ninety-nine year lease” means a lease of any portion of Gazetted land, and relating in particular to that category of resettlement land allocated under the A2 Model Scheme described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April, 2001 (as re-issued and amended from time to time);
- “Natural Region” means a Natural Region specified in section 3 of the Rural Land (Farm Sizes) Regulations, 1999, published in Statutory Instrument 419 of 1999, or any other law that may be substituted for those regulations;
- “offer letter” means a letter issued by the Minister that offers to allocate an A2 farm to the person to whom the letter is addressed;
- “partially alienated State land right” means—
- (a) a ninety-nine year lease or other lease of agricultural land; or
 - (b) a lease with a purchase option; or
 - (c) a permit; or
 - (d) an offer letter;

and includes any right incidental to or connected with any of the foregoing rights (such as a statutory servitude created in terms of Part IX), and the expression “holder of partially alienated State land” shall be construed accordingly;

5 “permit” means a permit to hold any portion of Gazetted land and relating in particular to that category of resettlement land allocated under the A1 Model Scheme described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April, 2001 (as re-issued and amended from time to time);

10 “province” means an area of Zimbabwe declared as such in terms of the Provincial Councils and Administration Act [*Chapter 29:11*];

“principal officer”, in relation to—

15 (a) a public authority which is a Government Ministry or department or a statutory body, means the head of the Ministry or department in question, or the chairperson of the governing body or chief executive officer of the statutory body in question, by whatever title he or she may be called;

20 (b) a company, other corporate body or unregistered association, means the chairperson or any member of the board or other governing body of the company, corporate body or unregistered association;

“public authority”, in relation to an authority or official against whom or which any complaint has been made in terms of section 10, means any person, body, organ, agency or institution belonging to or controlled or employed by the State, a local authority or statutory body;

25 “quarter” means a period of three months ending on the 31st March, 30th June, 30th September and 31st December in each year;

“Register” and “Registrar” bear the meanings given in section 38(1);

“repealed Agricultural Land Settlement Act” means the Agricultural Land Settlement Act [*Chapter 20:01*] repealed by section 64;

30 “rental” means a rental payable in terms of section 56;

“statutory servitude” means a servitude created in terms of Part IX;

“this Act” includes, where applicable, the provisions of any lease or permit issued or deemed to have been issued under this Act.

PART II

35 ZIMBABWE LAND COMMISSION AND STAFF

3 Corporate status of Commission, etc.

(1) The Zimbabwe Land Commission 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.

40 (2) The First Schedule applies to the tenure of office and conditions of service of the Commissioners as well as to the procedure to be followed by the Commission at its meetings.

(3) The Second Schedule sets out the ancillary powers of the Commission.

4 Exercise of functions of Commission

45 (1) For the avoidance of doubt it is declared that, conformably to section 297(3)

of the Constitution, the Commission exercises its functions (apart from its dispute settlement function) subject to any policy directives which the Minister may give it.

(2) The Commission shall do such other things, not inconsistent with the Constitution or this Act, as may be required by the Minister.

5 Executive Secretary and other staff of Commission and consultants 5

(1) The Commission shall—

- (a) appoint an Executive Secretary; and
- (b) employ such other staff as may be necessary for the proper exercise of its functions, and engage consultants where necessary:

Provided that the Commission shall consult the Minister and the Minister responsible for Finance on the extent to which additional public moneys may be required for this purpose. 10

(2) In order for a person to be appointed as Executive Secretary of the Commission, he or she must have knowledge and understanding of, or be professionally qualified in, the principles pertaining to the best practices in land management and administration. 15

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

(4) The Executive Secretary shall, subject to the general control of the Commission— 20

- (a) be responsible for carrying out the decisions of the Commission and the day-to-day administration and management of the affairs, staff and property of the Commission; and
- (b) be the custodian of the Commission’s records; and
- (c) attend all meetings of the Commission, but shall have no vote on any matter before the Commission; and 25
- (d) perform such other functions as may be assigned by the Commission.

6 Independence and impartiality of Commission, members of Commission, etc.

(1) A member of the Commission or a member of staff of the Commission shall serve impartially and independently and in particular exercise or perform his or her functions in terms of Part III in good faith and without fear, favour, bias or prejudice and subject only to the Constitution, this Act and the law. 30

(2) No person, body, organ, agency or institution shall interfere with, hinder or obstruct the Commission, its members or any member of staff of the Commission, in the exercise or performance of its, his or her functions pursuant to Part III. 35

(3) Every person, body, organ, agency or institution, belonging to or employed by the State, shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.

(4) No member of the Commission or member of the staff of the Commission shall conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or any other interest which might preclude him or her from exercising or performing his or her functions in a fair, unbiased and proper manner. 40

(5) If a member of the Commission or member of the staff of the Commission fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation while having an interest so contemplated in 45

the matter being investigated, the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

7 Reports of Commission

5 (1) The Commission shall no later than sixty days after the end of each financial year submit to the Minister an annual report on its operations and activities during the preceding financial year.

(2) In addition, the Commission—

10 (a) shall submit to the Minister any other report, and provide him or her with any other information, that he or she may require in regard to the operations and activities of the Commission; and

(b) may submit to the Minister any other report that it considers desirable.

(3) The Minister shall table before Parliament any report submitted to him or her by the Commission under subsections (1) and (2), no later than the thirtieth sitting day of whichever House of Parliament sits first after he or she has received such report.

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PART III

AUDITS AND INVESTIGATIONS BY COMMISSION

8 Jurisdiction of Commission to conduct comprehensive inspections and audits of agricultural land

20 (1) Subject to subsection (2), the Commission shall, on its own initiative, on not less than fourteen days' written notice to the Minister, undertake—

25 (a) comprehensive inspections of agricultural land, whether nationwide or incrementally and rotationally by province, not more frequently than twice in any calendar year, in connection with any or all of the matters upon which it may make recommendations to the Government in terms of section 297(1)(c) of the Constitution, or for any purpose related to its functions; and

30 (b) comprehensive audits of agricultural land, whether nationwide or incrementally and rotationally by province, not more frequently than once in any continuous period of five years, in connection with any or all of the matters upon which it may make recommendations to the Government in terms of section 297(1)(c) of the Constitution, or for any purpose related to its functions.

35 (2) The Minister may, on not less than fourteen days' written notice to the Commission, direct the Commission to undertake an additional or extraordinary comprehensive inspection or audit of agricultural land, whether nationwide or incrementally and rotationally by province.

9 Jurisdiction of Commission to conduct investigations

40 (1) Any person having a complaint or affected by a dispute regarding the supervision, administration and allocation of agricultural land may make a written complaint to the Commission requesting it to investigate such complaint or dispute.

45 (2) When a person by whom a complaint might have been made under this section has died or is for any reason unable to act for himself or herself, the complaint may be made by his or her legal representative or a member of his or her family or such other person as the Commission considers suitable to represent him or her.

- (3) The Commission shall not investigate a complaint or dispute—
 - (a) unless the complaint is made within three years from the date on which the cause of the complaint or dispute first arose or came to the notice of the complainant or disputant; or
 - (b) where the action or omission to which the complaint or dispute relates—
 - (i) is the subject-matter of civil proceedings before any court of competent jurisdiction; or
 - (ii) involves relations or dealings between the Government and a foreign Government.

10 Manner of making complaints 10

(1) The Commission shall, in regulations prescribe the general manner in which complaints to it should be made, including the particulars required to be completed in a form specified by the Commission in those regulations.

(2) The Commission may require a complaint to be supported by such evidence and documentation as it may prescribe or in any particular case ask for. 15

(3) The Commission shall not refuse to investigate a complaint solely on the grounds that the complaint is not in proper form or not in compliance with the prescribed requirements or that it is not accompanied by the required documentation.

11 Refusal to investigate

(1) The Commission shall refuse to investigate any complaint if it is satisfied that it is not authorised in terms of the Constitution or this Act to carry out such investigation. 20

(2) The Commission shall discontinue any investigation if it is satisfied by the evidence received that it is not authorised in terms of the Constitution or this Act to continue the investigation. 25

(3) If the Commission refuses to investigate a complaint or discontinues an investigation it shall, in writing—

- (a) inform the complainant and any party complained against of its decision, stating its reasons for the decision; and
- (b) if appropriate, advise the complainant of any other remedy that appears to it to be available to him or her. 30

12 Manner of conducting investigations and audits

(1) Subject to subsection (6) (concerning non-disclosure of certain evidence) the Commission may in its discretion conduct an investigation or audit in the form of a public or closed hearing, for which purpose the Commission shall have the following powers— 35

- (a) to issue summons to any individual, or to the principal officer of any public authority, company, corporate body or unregistered association, to attend before the Commission and to produce any document or record relevant to any investigation or audit by the Commission; and 40
- (b) to put any questions to the individual, or to the principal officer of any public authority, company, corporate body or unregistered association, which the Commission considers will assist its investigation of the complaint or the audit in question; and 45

- (c) to require any person questioned by it to answer such questions and to disclose any information within such person's knowledge which the Commission considers relevant to any investigation or audit by it; and
- (d) to request the assistance of the police during an investigation or audit.

5 (2) In conducting a hearing the Commission shall not be bound by the common law rules of evidence, and it may ascertain any relevant fact by any means which it thinks fit and which is not unfair or unjust to any party.

10 (3) The Commission shall afford any individual, or the principal officer of any public authority, company, corporate body or unregistered association, who is alleged to be responsible for any act or omission giving rise to the complaint or dispute subject to the investigation, an adequate opportunity to respond to such allegations.

(4) Any person appearing before the Commission may be represented by a legal practitioner.

15 (5) Information obtained by the Commission or any member of its staff at a closed hearing shall not be disclosed to any person except—

- (a) without disclosing the identity of any person who gave the information in confidence, for the purposes of the investigation and for any report to be made thereon; or
- (b) for the purposes of any proceedings for perjury alleged to have been committed in the course of an investigation.

20 (6) The Minister may, at any stage during the investigation of a complaint by the Commission, produce to the Commission a certificate in writing signed by him or her to the effect that the disclosure of any evidence or documentation or class of evidence or documentation specified in the certificate is, in his or her opinion, contrary to the public interest on the grounds that it may prejudice the defence, external relations, internal security or economic interests of the State, whereupon the Commission shall make arrangements for evidence relating to that matter to be heard *in camera* at a closed hearing and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter.

30 (7) Upon receipt of a certificate in terms of subsection (6)—

- (a) the Commission or any member of the staff of the Commission shall not communicate any such evidence or documentation to any other person for any purpose, unless the Minister allows the Commission to do so, subject to such conditions as he or she may fix; and
- (b) an aggrieved person may, in accordance with the Administrative Justice Act [Chapter 10:28] (No. 24 of 2004), appeal against such certificate, and the court hearing the appeal shall treat any evidence or documentation subject to the certificate in the manner specified in section 8 (“Discretion to refuse or to restrict supply of reasons”) of the Administrative Justice Act [Chapter 10:28] (No. 24 of 2004).

40 (8) Any person who—

- (a) has been summoned by the Commission to give evidence or to produce any documentation for the purposes of an investigation and who fails to attend or to remain in attendance until excused by the Commission from further attendance, or refuses without sufficient cause, the onus of proof whereof lies upon him or her, to be sworn as a witness or to answer fully and satisfactorily a question lawfully put to him or her, or to produce the evidence or documentation requested; or

- (b) gives false evidence to the Commissioners, knowing such evidence to be false or not knowing or believing it 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.

(9) For the avoidance of doubt it is declared that the law relating to the competence or compellability of any person on the grounds of privilege to give evidence, answer any questions or produce any book or document before the Commission, shall apply. 5

(10) Any member of the Commission or member of staff who without being authorised to do so by the Commission, discloses any information, evidence or documentation referred to in subsection (5) or (6), or makes any use of such information for his or her benefit, shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. 10

13 Conflicts of interest 15

(1) No member shall participate in an audit or investigation or have a vote on any question before the Commission, whether or not involving any audit or investigation, in which the member is aware that he or she has direct or indirect interest that may conflict with his or her functions as a Commissioner.

(2) A member who 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. 20

14 Proceedings after audit or investigation

(1) If, after conducting an audit or investigation, the Commission is of the opinion that the action or omission which was the subject-matter of the audit or investigation constitutes grounds for a criminal prosecution or delictual action, or involves any sanctionable breach of a constitutional right or statutory duty, and that— 25

- (a) the action or omission relates to any decision or practice on the part of any public authority which needs to be abolished, cancelled, reversed, varied or altered; or 30
- (b) the issue giving rise to the complaint should be given further consideration by the public authority against whom or which the complaint was made; or
- (c) the action or omission should be rectified; or
- (d) any law on which the act or omission was based should be reconsidered; or 35
- (e) reasons should have been given for any decision complained against; or
- (f) any other steps should be taken in relation to the action or omission complained against;

the Commission shall report its opinion, together with its reasons, to the public authority or person against whom the complaint was made and may make such recommendations as it thinks fit and shall also send a copy of its report and recommendations to the Minister. 40

(2) In particular, the Commission may, where it considers it necessary, recommend— 45

- (a) specific remedial measures in favour of a person aggrieved by an action or omission giving rise to the complaint or dispute; or
- (b) that the complainant seek redress in a court of law.

5 (3) The Commission may request the authority or person in relation to whom or which it made any recommendation to notify it, within a specified time, of the steps, if any, that it proposes to take to give effect to its recommendation.

(4) If, within a reasonable time after a report is made in terms of subsection (1), no action is taken which, in the opinion of the Commission, is adequate and appropriate, the Commission may, if it thinks fit after considering the comments, if any, made by
10 or on behalf of any authority or person affected, submit a special report on the case to the Minister for the Minister to present to the President and lay before Parliament.

PART IV

POWERS OF APPROPRIATE MINISTER IN RELATION TO STATE LAND GENERALLY

15 Interpretation in Part IV

15 In this Part—

“appropriate Minister” means the Minister responsible for the State land in question;

20 “property” means any land which is described as a single piece of land in any deed of grant, transfer or other certificate of title registered in the Deeds Registry;

“share-cropping” means any right to depasture livestock on any portion of a property or cultivate any portion of a property granted in return for a share in the crops grown or livestock depastured, or under an obligation to sell all or part of such crops or livestock to the owner of the property,
25 but does not include such agreements or arrangements in the nature of share-cropping as may be prescribed;

“State land” means all State land to which this Act applies, but does not include any land held by a statutory corporation or other entity wholly owned by the State.

30 16 Acquisition of land otherwise than by means of Cap. 20:10

(1) In addition or alternatively to the acquisition of land by the use of the Land Acquisition Act [*Chapter 20:10*], the Minister may—

- (a) with the approval of the President, by way of exchange for State Land; or
 - 35 (b) by means of the acceptance of gifts or bequests;
- acquire land on behalf of the State.

(2) Subject to this section, the appropriate Minister shall direct the Registrar of Deeds to cancel the title deeds of any land acquired in terms of subsection (1) and the Registrar of Deeds shall comply with such direction.

40 (3) Before a direction in terms of subsection (2) is given—

- (a) the Minister shall—
 - (i) give notice, in terms of subsection (4), of his or her intention to direct the Registrar of Deeds to cancel the title deeds of the land concerned; and

- (ii) consider every objection lodged in accordance with the notice given in terms of subsection (4);
- (b) every servitude or other encumbrance registered over the land concerned shall be extinguished.
- (4) A notice referred to in subsection (3)(a) shall — 5
 - (a) be published in the *Gazette* and in a newspaper circulating in the district where the land concerned is situated, once a week for three consecutive weeks; and
 - (b) state that the appropriate Minister proposes to direct the Registrar of Deeds to cancel the title deeds of the land concerned; and 10
 - (c) state the name, if any, of the land concerned, the district in which the land is situated, the name of the registered owner of the land and the number, if any, of the title deeds of the land; and
 - (d) call upon any person who has any objection to the proposed cancellation to lodge his or her objection in writing with the appropriate Minister within thirty days of the date of the last publication of the notice in terms of paragraph (a). 15
- (5) Where the title deeds of any land have been cancelled in terms of subsection (2) the land shall vest in the President.
- (6) On one of the thirty days on which Parliament next sits after the beginning of each session of Parliament the appropriate Minister shall lay before Parliament a report on any business transacted under this section during the previous calendar year, together with a schedule of the land acquired. 20

17 Lease or other alienation of State Land

(1) The Minister may, after consultation with the Commission and with the approval of the President, lease, sell or otherwise dispose of State land for such purposes and subject to such conditions as he or she may determine. 25

(2) Land may be leased or alienated to a single individual, a single corporate body, a single household or to two or more persons jointly.

18 No share-cropping without agreement approved by Minister

(1) No owner or occupier of land to which this Act applies shall permit the occupation on a share-cropping basis by another person of any portion of such land unless an agreement in writing has been entered into between such owner or occupier and such other person in respect of the occupation of such land on a share-cropping basis and such agreement has been approved by the Minister. 30

(2) The Minister shall within seven days of the receipt of an agreement mentioned in subsection (1) acknowledge the receipt thereof and if no decision has been made within six weeks of the date of acknowledgement thereof the agreement, the owner or occupier concerned shall be entitled to make an application in terms of the Administrative Justice Act [*Chapter 10:28*] (No. 12 of 2004) (or any other law that may be substituted for that Act) to compel the Minister to consent to or withhold his or her consent to the transaction, or otherwise give written reasons for the delay. 35 40

19 Penalty for contravention of section 18

(1) Any owner or occupier of land who contravenes section 18(1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. 50

(2) Where an owner of land is convicted of an offence under subsection (1), the court before which he or she is convicted shall order that any alienation, lease, permit or right granted in contravention of section 18(1) shall be cancelled, and shall, in the case of any alienation, lease, permit or right registered in the Deeds Registry, cause a copy of such order to be sent to the Registrar of Deeds who shall note the contents thereof on any document relating to the land concerned which is registered in the Deeds Registry and shall make the necessary entries in the registers kept in his or her office.

20 Exercise of duties pursuant to sections 17 and 18

In the exercise of the duties, functions and powers pursuant to sections 17 and 18 regard shall be had to—

- (a) the matters mentioned in the Third Schedule; and
- (b) any representations made in connection with any matters by any local authority, a town planning or responsible authority, any environment committee appointed in terms of section 61 of the Rural District Councils Act [*Chapter 29:13*] or any farmers' association, which is affected or likely to be affected thereby.

21 Regulations under Part IV

(1) The Minister shall have power to make such regulations as he or she may deem expedient to give force or effect to this Part or for its better administration.

(2) The appropriate Minister may make regulations in terms of subsection (1) providing for—

- (a) limiting the number of pieces of land that any person may own or hold for farming or other purposes;
- (b) limiting the size of any piece of land that may be owned by any person for farming or other purposes and, in so doing, the Minister may fix the size of any such piece of land according to the natural region in which such land is located or according to such other criteria as he or she considers appropriate;
- (c) restricting the right of—
 - (i) individuals who are not indigenous citizens of Zimbabwe to own, lease or otherwise occupy State land in Zimbabwe;
 - (ii) individuals who are not residents or citizens of Zimbabwe, or companies or bodies corporate whose activities are controlled by individuals who are not resident in Zimbabwe, to own, lease or otherwise occupy land in Zimbabwe.

PART V

LAND SETTLEMENT

22 Minister may make provisions for land settlement, etc.

After consulting the Commission, the Minister may establish schemes or make other provision for—

- (a) the settlement of persons on and the alienation to such persons of agricultural land;
- (b) objects incidental to and connected with any object referred to in paragraph (a).

23 Minister may issue offer letters, leases, deeds of grant and permits

The Minister may, subject to section 17, issue offer letters, leases, deeds of grant and permits in respect of Gazetted or other State land.

24 Applications for leases to be referred to Commission

No lease in respect of Gazetted or other State land shall be issued to an applicant therefor until the application has been referred to the Commission for its consideration and report: 5

Provided that nothing in this section shall be construed as requiring the Minister to comply with a recommendation or report of the Commission in relation to an application.

25 Matters to be considered by Commission 10

(1) In the exercise of its functions referred to in section 24, the Commission shall have regard to—

- (a) the age of the applicant;
- (b) the character and legal competence of the applicant to hold, acquire and farm the holding or portion of Gazetted or other State land; 15
- (c) whether the applicant possesses the qualifications and capital necessary to make proper use of the holding or portion of Gazetted or other State land, having regard to the purpose for which it is proposed to be alienated;
- (d) any other facts which, in the opinion of the Commission, are relevant to the individual applicant or the holding. 20

(2) The Commission shall not recommend an applicant who is a corporate body, unless it is a company—

- (a) incorporated under the law of Zimbabwe relating to companies; and
- (b) legally competent to acquire, hold and farm the holding; and
- (c) that possesses or is able to raise share capital which is necessary to make proper use of the holding, having regard to the purpose for which it is proposed to be alienated; and 25
- (d) that has no shareholder who, individually or through another company, holds other agricultural land in contravention of any provision of this Act prohibiting or restricting the multiple holding of agricultural land; and 30
- (e) that is otherwise compliant, in terms of the composition of its directors and shareholders and otherwise, with the provisions of Indigenisation and Economic Empowerment Act [*Chapter 14:33*] (No. 14 of 2007).

26 Issue of lease

Where the Minister leases a holding or portion of Gazetted or other State land to an applicant, such lease, subject to this Act shall— 35

- (a) be on such terms and conditions as may be fixed by the Minister;
- (b) not contain an option to purchase the land to which it relates if the land in question is Gazetted land.

27 President may retake for public purposes 40

(1) The President may, at any time and in such manner and under such conditions as he or she may deem fit, retake possession of land alienated in terms of this Act or any portion thereof, for State, local authority or public purposes on payment

to the lessee or grantee, as the case may be, of such compensation as may be agreed upon or, failing such agreement, as may be determined by arbitration:

5 Provided that if the land retaken is land held under ninety-nine year lease, compensation shall be payable only for the improvements to such land on the date of retaking.

(2) Moneys required for the payment of compensation referred to in subsection (1) shall be paid out of moneys appropriated for the purpose by Act of Parliament.

28 Prohibition of cession, etc.

10 (1) Subject to the terms of the offer letter, lease or permit in question, an offer letter holder, lessee or permit holder shall not—

(a) cede, assign, hypothecate or otherwise alienate his or her lease or his or her rights thereunder or place any other person in possession of his or her holding or portion of Gazetted land;

15 (b) enter into a partnership for the working of his or her holding or portion of Gazetted land;

without the consent in writing of the Minister.

(2) A transaction entered into by a lessee in contravention of subsection (1) shall be of no force and effect.

29 Special provisions relating to leases with a purchase option

20 (1) The Fourth Schedule applies to leases with an option to purchase.

(2) The provisions of the repealed Agricultural Land Settlement Act shall, to the extent that they are re-enacted or substantially re-enacted in the Fourth Schedule, be construed as being continued without interruption from the date of commencement of that Act.

PART VI

CONTROL AND OCCUPATION OF AGRICULTURAL LAND

30 Interpretation in Part VI

In this Part—

“lawful holder or occupier”, in relation to a farm or land that is—

30 (a) private agricultural land, means the owner thereof;

(b) any portion of State land or Gazetted land, means the holder of a lawful authority from the State to hold, use or occupy such land in the form of—

(i) an offer letter; or

(ii) a ninety-nine year lease or other lease; or

35 (iii) a lease with a purchase option; or

(iv) a permit; or

(v) any other land settlement lease;

and the word “landholder” shall be construed accordingly.

31 Minister may require Commission to carry out investigations

40 (1) In order to ensure that in the national interest agricultural land is not being occupied adversely in regard to the land or neighbouring holders of land the Minister

may by notice in writing, direct the Commission to undertake an investigation of any farm within any area to ascertain whether or not the farm is being so occupied.

(2) On receipt of a notice in terms of subsection (1) the Commission shall carry out as expeditiously as possible any investigation directed by the notice and shall report to the Minister thereon.

5

32 Minister may give orders to lawful holders or occupiers of farms

(1) Subject to section 34, after considering any report in terms of section 31, the Minister may, by order in writing served on the holder or occupier of the farm, direct the holder or occupier—

- (a) not to permit any more than such number of persons as is specified in the order to occupy the farm; or
- (b) to permit only such class of persons as is specified in the order to occupy the farm; or
- (c) to permit only such activities or class of activities as is specified in the order to be conducted on the farm;

10

15

and may in such order direct the holder or occupier to take measures as may be specified in the order to ensure compliance therewith.

(2) Any holder or occupier of a farm who contravenes or fails to comply with an order served on him or her in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

20

33 Minister may give orders to other occupiers of farms

(1) Subject to section 34, where the Minister makes an order in terms of section 32 he or she may, in addition, by order in the *Gazette* and in a newspaper circulating in the district where the farm concerned is situated, direct such persons or classes of persons as are specified or described in the order to cease to occupy the farm concerned within such period as may be specified in the order and that—

25

- (a) no more than such number of persons shall occupy the farm; or
- (b) no persons other than such class as is specified in the order shall occupy the farm; or
- (c) no activities or class of activities other than those specified in the order shall be conducted on the farm;

30

until such time as the order is revoked or varied in terms of section 35.

(2) Any person who contravenes or fails to comply with an order in terms of 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.

35

34 Minister to give notice of proposal to make order

(1) Before making an order in terms of section 32 or 33 the Minister shall give notice of his or her intention to make such order—

40

- (a) to the lawful holder or occupier of the farm concerned; and
- (b) to the persons or classes of persons who will be required to cease occupying the farm concerned or cease conducting the prohibited activities, as the case may be;

and shall afford such persons the opportunity of making representations in writing in relation to the proposal.

(2) Notice to persons or classes of persons referred to in subsection (1)(b) may be given by notice published in a newspaper circulating in the district where the farm concerned is situated.

35 Minister may revoke or vary order or extend time for compliance therewith

(1) The Minister may at any time—

(a) revoke; or

(b) with the consent of the lawful holder or occupier to whom an order was given, vary;

an order made in terms of section 32 or 33.

(2) If the lawful holder or occupier of a farm or any person or classes of persons referred to in section 34(1)(b) to whom an order in terms of section 32 or 33 has been given feels that he or she will be unable to comply with the order within the time specified he or she may request the Minister to grant an extension of that time, and if the Minister refuses to do so or grants him or her an extension which he or she considers to be inadequate he or she may, before the expiry of the specified time, appeal to the Minister through the Commission, and section 61(4) and (5) shall apply to the appeal.

(3) The Minister may, in determining the appeal, seek, but not be bound by, the advice of the Commission on the appeal.

PART VII

APPELLATE AND DISPUTE SETTLEMENT FUNCTIONS OF COMMISSION

36 Appellate and dispute settlement functions of Commission

(1) The Commission or any three of its members appointed by the chairperson for the settlement of any particular dispute or appeal has jurisdiction to determine—

(a) any appeal which this Act expressly provides shall be determined by the Commission; and

(b) any dispute or appeal which regulations made under this Act or the terms of any lease or permit provide shall be determined by the Commission.

(2) In determining a dispute or appeal the Commission—

(a) shall be bound by the rules of natural justice, and otherwise by the rules set forth in the Fifth Schedule; and

(b) shall not be bound by the common law rules of evidence, and may ascertain any relevant fact by any means which it thinks fit and which is not unfair or unjust to any party; and

(c) any contempt of the Commission by any party to an appeal or dispute before the Commission shall constitute the crime of contempt of court in terms of section 181 of the Criminal Law Code.

(3) For the purposes of determining any appeal or dispute before the Commission the chairperson of the Commission shall select two assessors from a panel of names submitted by the Minister responsible for justice after consultation with the Minister.

(4) An assessor who is not in the full-time employment of the State shall be paid such remuneration and allowances as the Minister responsible for justice, after consultation with the Minister responsible for finance, may fix.

(5) For the avoidance of doubt it is declared that the existing law on the devolution of property on marriage, dissolution of marriage, death, insolvency and mental and other incapacity shall apply to partially alienated State land except to the extent that different provision for such eventualities is expressly made by or under this Act or in a lease or permit issued under this Act or the repealed Agricultural Land Settlement Act. 5

37 Regulations relating to appellate and dispute settlement functions of Commission and amendment of Fifth Schedule 10

(1) The Commission, with the approval of the Minister may make regulations providing for all matters which in its opinion are necessary or convenient for carrying out or giving effect to this Part.

(2) Regulations made in terms of subsection (1) may provide for— 15

- (a) regulating appeals to the Commission and the determination of disputes by it and the fees payable in connection therewith;
- (b) the manner in which assessors shall perform their functions;
- (c) the determination of appeals or disputes which appear to it to be frivolous or vexatious. 20

(3) Subject to subsection (1), the Minister, after consultation with the Commission, may by notice in a statutory instrument amend or replace the Fifth Schedule.

(4) When the Minister wishes to amend or substitute the Fifth Schedule the Minister shall— 25

- (a) refer the draft statutory instrument amending or substituting the Fifth Schedule to Cabinet for its approval; and
- (b) if Cabinet approves the draft statutory instrument amending or substituting the Fifth Schedule (with or without amendments), lay the draft statutory instrument before the House of Assembly. 30

(5) If the House of Assembly makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is laid before it under subsection (4), the Minister shall cause it to be published in the *Gazette*.

PART VIII

REGISTER OF PARTIALLY ALIENATED STATE LAND RIGHTS 35

38 Interpretation in Part VIII

(1) In this Part—

“Register” means the Register of Partially Alienated State Land Rights, being the central register of such rights referred to in section 40(1);

“Registrar” means the Secretary as provided in section 39(1). 40

(2) For the avoidance of doubt it is declared that offer letters are subject to registration in terms of this Part prior to the registration of the lease to which they relate.

39 Registrar of Partially Alienated Land Rights

(1) For the purposes of this Part there shall be a Registrar of Partially Alienated Land Rights, who shall be the Secretary.

(2) The Registrar shall be assisted by such other employees in the Ministry specially designated by the Registrar as are necessary to assist the Registrar in discharging the functions of his or her office.

(3) The Registrar may delegate or assign all or any of his or her functions to any one or more of the employees referred to in subsection (2), and any reference in this Act to the “Registrar” shall be construed as including a reference to any such employee.

40 Register of Partially Alienated State Land Rights

(1) The Registrar shall establish and maintain at the head office of the Ministry a register to be known as the Register of Partially Alienated State Land Rights.

(2) There shall be entered in the Register—

- (a) the name of every holder of a partially alienated State land right; and
- (b) the date of the registration of every partially alienated land right; and
- (c) particulars of any renewal, transfer, cancellation, revocation, suspension, termination, surrender or repossession of any partially alienated State land right, and of any statutory servitude in relation to any such right; and
- (d) the location of the partially alienated State land to which the registered right refers; and
- (e) such other particulars as the Registrar may deem necessary.

(3) Notwithstanding subsection (2), regulations in terms of section 63 may provide for different registers to be kept in respect of different partially alienated State land rights or classes thereof, or for the Register to be divided into different parts for the registration of such different partially alienated State land rights or classes thereof.

(4) Any person may, with the written consent of the holder of the partially alienated State land right in question—

- (a) on payment of the prescribed fee, if any, inspect the entry in the Register relating to that holder at all reasonable times at the head office of the Registry or at such other places as the Registrar may specify by notice published in the *Gazette*; and
- (b) be furnished by the Registrar with a certified copy of the entry in the Register relating to that holder on payment of the prescribed fee.

(5) Any person may, without the consent of the holder of the partially alienated State land right in question or, if the request for information does not relate to any particular holder of a partially alienated State land right—

- (a) on application in writing to the Registrar in the prescribed form, and on payment of the prescribed fee, if any, inspect the Register at all reasonable times at the head office of the Registry or at such other places as the Registrar may specify by notice published in the *Gazette*; and
- (b) be furnished by the Registrar with a certified copy of any entry in the Registry requested in the form referred to in this subsection, on payment of the prescribed fee.

(6) The Registrar shall consider an application in terms of subsection (5) as expeditiously as possible and in any event no later than seven working days from the date of the application.

(7) On consideration of an application pursuant to subsection (5) the Registrar may—

- (a) grant it unconditionally;
- (b) refuse to grant it, or grant it partially or conditionally on the grounds that the disclosure or full or unconditional disclosure of the requested information is prejudicial or potentially prejudicial to the defence, public safety or public order of Zimbabwe or to the general public or national interest. 5

41 Registration of partially alienated State land rights

(1) Immediately upon receiving any application for the issue or grant of a partially alienated land right, the Registrar shall without delay transmit the particulars thereof to the Executive Secretary of the Commission, which shall at its next meeting (whether ordinary or extraordinary) without undue delay determine whether or not to recommend to the Minister the final registration of the partially alienated State land right in question: 10

Provided that in order to enable the Commission to properly consider the application the Commission may, through the Executive Secretary, request for further particulars from the Registrar in connection with the application for the partially alienated State land right in question, and the Registrar shall promptly comply with such request so that the question of whether or not to recommend that the Minister should exercise his or her powers in terms of section 17 to grant the application may be made by the Commission no later than its next meeting after the meeting when the additional particulars were requested. 15 20

(2) Immediately on concluding its consideration of an application in terms of subsection (1) the Commission shall transmit in writing to the Minister through the Registrar its recommendation together with any observations it may wish to make thereon, and the Minister, after taking into account any observations of the Commission, do any one the following as may be appropriate or seem fit to him or her— 25

- (a) uphold the recommendation of the Commission not to issue or grant the partially alienated State land right; or
- (b) reject the recommendation of the Commission not to issue or grant the partially alienated State land right; or 30
- (c) uphold the recommendation of the Commission to issue or grant the partially alienated State land right; or
- (d) reject the recommendation of the Commission to issue or grant the partially alienated State land right. 35

(3) If the Minister makes a decision in accordance with—

- (a) subsection (2)(a) or (2)(d), he or she shall communicate his or her decision to the Commission in writing through the Registrar, giving his or her reasons for the decision where he or she makes a decision in accordance with subsection (2)(d); or 40
- (b) subsection (2)(b) or (2)(c), he or she shall communicate his or her decision to the Commission through the Registrar (giving his or her reasons for the decision where he or she makes a decision in accordance with subsection (2)(b)), and thereupon the Registrar shall without delay register the partially alienated State land right to which the particulars relate by entering it in the Register. 45

(4) A partially alienated State land right shall be or be deemed to be finally registered on the date such partially alienated State land right is entered in the Register.

42 Entries in Register to be conclusive proof of partially alienated State land right

(1) Every entry in the Register of a partially alienated State land right shall be deemed to be the definitive record of such right, and in the event of any inconsistency between such entry and any other record of such right kept in terms of this Act or otherwise, the entry in the Registry shall prevail as proof of the partially alienated State land right or any particular thereof.

(2) A document (including one issued pursuant to section 40(4)(b) or (5)(b)) purporting to be a certificate issued by the Registrar of the contents of any entry in the Registry shall be admissible in any proceedings on its production by any person as *prima facie* evidence of such contents.

PART IX

STATUTORY SERVITUDES IN RELATION TO PARTIALLY ALIENATED STATE LAND

43 Interpretation in Part IX

In this Part—

“claimant” means an interested party who lodges a request for the creation or variation in his or her favour of a statutory servitude in terms of section 45(1)(b), and includes—

- (a) any one or more interested parties who are lawful holders or occupiers referred to in paragraph (b) of the definition of “lawful holder or occupier”; or
- (b) the owner of private agricultural land claiming a statutory servitude over partially alienated State land, in relation to which servitude he or she will be the holder of the dominant tenement thereof;
- (c) the State or a local authority; or
- (d) any statutory body other than one referred to in section 44(2);

“creation”, in relation to a statutory servitude, includes the preservation, confirmation, restoration or adjustment of a pre-existing servitude by means of the creation of the statutory servitude;

“designated officer” means—

- (a) a Government Land Officer; or
- (b) such other officer as the Secretary may designate in writing;

“dispute in connection with the creation of a statutory servitude” means a dispute about whether to create the servitude in question, or about the nature, scope or particulars of the statutory servitude to be created, or whether any compensation is payable for an alleged loss or deprivation of rights suffered by the holder of a servient tenement in relation to that servitude, and as to the amount of the compensation, if payable;

“interested party” means every lawful holder or occupier of land within the area on or over which a statutory servitude is proposed to be created, varied or cancelled in terms of section 45;

“lawful holder or occupier”, in relation to land that is—

- (a) private agricultural land, means the owner thereof;

- (b) any portion of State land or Gazetted land, means the holder of a lawful authority from the State to hold, use or occupy such land in the form of—
- (i) an offer letter; or
 - (ii) a ninety-nine lease; or 5
 - (iii) a lease with a purchase option; or
 - (iv) a permit;
 - (v) any other land settlement lease;
- and the word “landholder” shall be construed accordingly;
- “negotiated statutory servitude” means a proposed statutory servitude referred to in section 45(1)(c); 10
- “permanent servitude” means a servitude other than a temporary servitude;
- “servitude” means any praedial or personal servitude registrable as such in terms of the Deeds Registries Act, including (but not limited to) a servitude for a right of way, a water servitude, a grazing servitude, and a servitude for the extraction of water, wood or other materials from the servient tenement; 15
- “servitude of passage” means the right to occupy and use so much land belonging to another as may be necessary for or incidental to the passage of water and includes the right—
- (a) to construct such water works as may be necessary for such passage on such land and over, under or alongside other water works, or to enlarge and extend existing water works; and 20
 - (b) of access to and over the area subject to such right of occupation and use, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of constructing, inspecting, maintaining and operating water works referred to in paragraph (a) or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition; 25
- “servitude of right of way” means the right to pass through land lawfully held or occupied by another; 30
- “servitude of storage” means the right to occupy and use land lawfully held or occupied by another by inundating it with water by means of water storage works, together with such land—
- (a) contiguous to the land so inundated as may be required to be occupied and used by the holder of the servitude of storage for the purpose of preventing the pollution of the water stored by or in the water storage works; and 35
 - (b) adjacent to or near the land so inundated as may be required to be occupied and used for the purpose of passage, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of cleansing and maintaining the water storage works or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition; 40
- “temporary servitude” means a servitude with a duration of—
- (a) a fixed number of years; or 45
 - (b) the period for which it is used for the purpose for which it is granted, with or without further specification of such duration;

“Water Act” means the Water Act [*Chapter 20:24*] (No. 31 of 1998) or any other law that may be substituted for the same;

“water storage works” means a dam, reservoir or well;

“water works” means—

- 5 (a) a borehole, canal, channel, embankment, filter, filterbed, pipeline, pumping plant, purification plant, plant for the generation of hydro-electric power, water storage works or well; or
- 10 (b) any accessory, apparatus, appliance, fitting, machinery or other thing constructed, erected or used for or in connection with the abstraction, control, diversion, drainage, filtration, passage, purification, storage, supply or use of water, including effluent or waste water, or the conservation of rainfall or the development of water power; or
- 15 (c) any land occupied for or in connection with the abstraction, control, diversion, drainage, filtration, passage, purification, storage, supply or use of water, including effluent or waste water; or
- (d) any gauge post, measuring weir or other appliance erected or used for undertakings authorised by or in terms of the Water Act.

44 Application of Part IX

20 (1) This Part applies to the creation of statutory servitudes, including water servitudes as defined in the Water Act, as between—

- (a) interested parties who are all lawful holders or occupiers referred to in paragraph (b) of the definition of “lawful holder or occupier” in section 43; or
- (b) any one or more interested parties who are lawful holders or occupiers referred to in paragraph (b) of the definition of “lawful holder or occupier” and—
 - 25 (i) a claimant who is the owner of private agricultural land, if the claimant is proposed to be the holder of the dominant tenement in relation to the statutory servitude;
 - (ii) an owner of private agricultural land, if the owner is proposed to be the holder of the servient tenement in relation to the statutory servitude and the owner consents in writing to the designated officer to the proposal for the creation of the statutory servitude being dealt with in accordance with this Part.

(2) Where any statutory body is—

- (a) established directly by or under any enactment; and
- 35 (b) empowered or required by the enactment referred to in paragraph (a) to acquire any servitude;

and the statutory body wishes to acquire a servitude in relation to partially alienated State land that is lawfully held or occupied by persons referred to in paragraph (b) of the definition of “lawful holder or occupier” in section 43, then, subject to subsection 40 (3), where the land is held under—

- (c) a ninety-nine year lease or a lease with a purchase option, the provisions of the enactment concerned shall apply as if the holder or lessee is the owner of private agricultural land; or
- 45 (d) an offer letter, a permit or any land settlement lease other than a ninety-nine year lease or a lease with a purchase option, this Part shall, despite

anything contained in the enactment concerned, apply as if the statutory body is a claimant.

(3) If the enactment referred to in subsection (2) provides for the compulsory acquisition by the statutory body of the servitude in question, then, to the extent that this Part applies to the acquisition of that servitude in terms of subsection (2)(d), neither the designated officer nor the Commission shall entertain any dispute or question concerning the creation of the servitude, other than disputes or questions involving—

- (a) the extent of the loss or deprivation of rights (if any) likely to result from the creation of the servitude; and
- (b) if the extent of such loss or deprivation is established, the amount of compensation payable therefor by the statutory body.

(4) Where, in relation to private agricultural land, the Minister is satisfied, after affording the owner thereof a reasonable opportunity to make representations in the matter, that it is necessary—

- (a) in the interests of defence, public safety, public order, public morality, public health or town and country planning; or
- (b) for a purpose beneficial to the community;

to create a statutory servitude in favour of any one or more interested parties who are lawful holders or occupiers referred to in paragraph (b) of the definition of “lawful holder or occupier” in section 43, the Minister may, if negotiations with the owner concerned do not result in an agreement to create the statutory servitude in question, apply the provisions of the Land Acquisition Act [*Chapter 20:10*] for the purpose of acquiring such right or interest in the private agricultural land concerned as may be required for the creation of the servitude.

45 Powers of designated officers in regard to creation, variation and cancellation of statutory servitudes

(1) Subject to this Part, a designated officer (on notice to the Secretary, and subject to any written directions of the Secretary) may—

- (a) on his or her own initiative; or
- (b) at the written request of any claimant or person wishing to have a statutory servitude created, cancelled or varied; or
- (c) at the written request of two or more interested parties who are holders of the dominant and servient tenements involved in the creation or variation of the statutory servitude and have agreed to the creation or variation of the statutory servitude (hereinafter in this Part referred to as a “negotiated statutory servitude”); or
- (d) at the written request of two or more interested parties wishing to cancel an existing statutory servitude who are holders of the dominant and servient tenements of that servitude;

exercise his or her power to create, vary or cancel any statutory servitude in relation to any portion of State land or Gazetted land that is lawfully occupied by two or more holders of offers letters, ninety-nine year leases, leases with a purchase option, permits, other leases issued by the State, or any combination of the foregoing.

(2) Subject to subsection (3) a designated officer shall not exercise his or her power in terms of subsection (1) to create, vary or cancel a statutory servitude—

- (a) except for the purpose of preserving, confirming, restoring or adjusting any pre-existing servitude in relation to the land referred to in that subsection

(whether or not the servitudes in question were extinguished when the land was originally acquired by the State); or

(b) unless, in the case of the proposed creation of any new servitude in relation to the land referred to in that subsection, or the variation of an existing statutory servitude, the designated officer is satisfied that—

(i) the object for which the servitude is to be created or the existing servitude varied is best achieved by the creation or variation of the servitude, as the case may be; and

(ii) the proposed new servitude, or the variation of an existing one, is fair and reasonable and is—

A. of sufficient agricultural or other utility to justify its creation or variation; or

B. required to secure access by any landholder to his or her holding or to the nearest public road; or

C. required for a purpose (other than a purpose referred to in subparagraph A or B) which is justifiable in the public or national interest.

or

(c) unless, in the case of the proposed cancellation of an existing statutory servitude in relation to the land referred to in that subsection, the designated officer is satisfied that there is no reasonable or sufficient objection or impediment to its cancellation.

(3) Before exercising his or her power in terms of subsection (1) a designated officer shall conduct such investigation as he or she deems fit to ensure that the creation, variation or cancellation of the statutory servitude in question will not involve—

(a) undue damage to or interference with the rights of any landholder subjected to the servitude; or

(b) where three or more landholders will be affected by the creation, variation or cancellation of the servitude, more loss to or damage or interference with the rights of any landholder subjected to the servitude than would be justified by the benefits accruing to the affected landholders collectively; or

(c) in the case of a negotiated statutory servitude, unfairness to any of the interested parties involved, or will not prejudicially affect the rights of neighbouring landholders.

(4) For the purpose of an investigation in terms of subsection (3) the designated officer and any person authorised in writing by him or her may enter upon any land, other than a dwelling-house thereon, for the purpose of obtaining the information required for compliance with that subsection.

46 Method of creating, varying or cancelling statutory servitudes

(1) Where a designated officer proposes to create, vary or cancel a statutory servitude (whether on his or her own initiative or in the circumstances referred to in section 45(1)(b), (c) or (d)) he or she shall serve on every interested party notice in writing—

(a) describing the locality and nature of the proposed or existing statutory servitude, whether the proposed statutory servitude is permanent or

temporary and, in the case of a variation of an existing statutory servitude, the nature and extent of the variation; and

- (b) state whether the proposal to create, vary or cancel the statutory servitude is being made at the designated officer’s own initiative, or at the request of any claimant or interested party (in which event each claimant or interested party concerned shall be named in the notice); and 5
- (c) inviting any interested party—
 - (i) to state whether he or she agrees to the creation, variation or cancellation of the statutory servitude conditionally or unconditionally and, if conditionally, to specify the conditions under which he or she may agree to its creation, variation or cancellation; and 10
 - (ii) if he or she wishes to seek compensation in respect of any loss or deprivation of rights likely to result from the creation, variation or cancellation of the statutory servitude, to submit to the designated officer, within a period of sixty days from the date of service of the notice or such longer period as the designated officer may for good and sufficient reason allow, a statement in writing specifying in detail the nature of the loss or deprivation of rights likely to be caused to the interested party as a result of the creation, variation or cancellation of the statutory servitude. 15 20

(2) Where a designated officer seeks to create or vary a statutory servitude to give effect to a negotiated statutory servitude, he or she shall, after an investigation, if any, referred to in section 45(3)(c), proceed in terms of subsection (6).

(3) Where compensation in respect of any loss or deprivation of rights likely to result from the creation, variation or cancellation of a statutory servitude is sought by an interested party in terms of this section and the proposal to create, vary or cancel a statutory servitude was made— 25

- (a) on the initiative of the designated officer, the compensation shall be payable by the Ministry alone or, where the statutory servitude is to be created in favour of any interested party (“the beneficiary”), in the shares agreed by the Ministry and the interested party concerned; or 30
- (b) at the request of any claimant or interested party, the compensation shall be payable by the claimant or interested party, and the designated officer shall transmit a copy of any statement referred to in subsection (1)(c)(ii) to the claimant or interested party 35

(4) If an interested party notifies the designated officer that he or she agrees to the creation, variation or cancellation of the statutory servitude conditionally upon compensation being paid in respect of any loss or deprivation of rights likely to result from its creation, variation or cancellation, the designated officer shall endeavour within sixty days of the service of the notice under subsection (1)— 40

- (a) to establish the extent of the loss or deprivation of rights (if any) likely to result from the creation, variation or cancellation of the statutory servitude; and
- (b) if the extent of such loss or deprivation is established, to conclude an agreement on the amount of compensation payable therefor by the Ministry, the claimant or interested party, or the Ministry and beneficiary jointly, as the case may be. 45

(5) If an interested party (hereinafter referred to as a “non-concurring interested party”) referred to in subsection (1)—

- 5 (a) does not, within a period of sixty days from the date of service of the notice referred to in that subsection or such longer period as the designated officer may for good and sufficient reason have allowed—
 - (i) agree in writing to the request referred to in paragraph (a) of that subsection for the creation, variation or cancellation of the statutory servitude; or
 - 10 (ii) agree in writing with the designated officer, claimant or beneficiary on the amount of compensation payable for any loss or deprivation of rights likely to result from the creation, variation or cancellation of the statutory servitude;
- or
- 15 (b) lacks full legal capacity to agree to the request referred to in paragraph (a) of that subsection;

the designated officer shall require by notice in writing every non-concurring interested party or his or her legal representative to furnish to the Secretary (within thirty days of the receipt of the notice) the prescribed security for the costs of having the dispute determined by the Commission.

20 (6) If there is no dispute about the creation, variation or cancellation of a statutory servitude or about any compensation to be payable therefor, or if no non-concurring party furnishes the prescribed security within the allowed period (or such longer period as the Secretary may for good and sufficient reason allow), the designated officer shall by notice in writing to every interested party, summon every interested party or his or her legal representative, if any, to attend a meeting at the time and place specified in the notice for the purpose of enabling the designated officer to verify the particulars of the statutory servitude in the presence of every interested party in attendance:

Provided that—

- 30 (a) every interested party or his or her legal representative, if any, shall have not less than three days’ notice (including Saturdays, Sundays and public holidays) of the time and place of the meeting; and
- (b) the failure by any interested party to attend the meeting of which he or she has been given due notice in accordance with this subsection shall not affect the validity of the meeting or anything done in the course or 35 as a result of the meeting.

(7) At a meeting convened in terms of subsection (6) the designated officer shall—

- 40 (a) cause the document embodying the particulars of the proposed creation, variation or cancellation of the statutory servitude (hereinafter called the “statutory servitude protocol”) to be read over or made available to every interested party; and
- (b) record on the statutory servitude protocol the time and place of the meeting, the names of all those who attended at the meeting and the capacities in which they so attended; and 45
- (c) verify the statutory servitude protocol by endorsing upon it the word “verified” and his or her signature and the place and date of verification; and

- (d) invite every interested party present, or his or her legal representative, to sign the statutory servitude protocol:

Provided that any failure by an interested party to sign the protocol shall not affect its validity.

(8) At the conclusion of the meeting convened in terms of subsection (6) the designated officer shall transmit two authenticated copies of the statutory servitude protocol to the Secretary in his or her capacity as the Registrar of Partially Alienated State Land Rights, and the Secretary shall make the appropriate entries in the Register recording the creation, variation or cancellation of the statutory servitude as an endorsement or encumbrance on the offer letter, lease or permit concerned:

Provided that if there is any prescribed fee for the making of this record by the Secretary, any claimant for the statutory servitude or its variation recorded in his or her favour (or, in the case of a negotiated statutory servitude, all the parties thereto in equal shares) shall pay the prescribed fee.

(9) Upon receiving written confirmation from the Secretary that the appropriate entries in the Register have been made, the designated officer shall furnish an authenticated copy of the statutory servitude protocol to every interested party with the date of the recording of the creation, variation or cancellation of the statutory servitude endorsed thereon.

(10) Sections 47 and 48 shall apply if—

- (a) there is a dispute about the creation, variation or cancellation of a statutory servitude or about any compensation to be payable therefor; and
- (b) any non-concurring party furnishes the prescribed security within the allowed period (or such longer period as the Secretary may for good and sufficient reason allow).

47 Reference of disputes in connection with proposed statutory servitudes and rights, privileges and obligations of interested parties at hearings

(1) If a designated officer responsible for proposing the creation, variation or cancellation of a statutory servitude (whether on his or her own initiative or in the circumstances referred to in section 45(1)(b), (c) or (d)) receives written confirmation from the Secretary that a non-concurring party in relation to that proposal has furnished to the Secretary the prescribed security within the allowed period (or such longer period as the Secretary may for good and sufficient reason allow), the designated officer shall, through the Secretary, lodge with the Commission the notice referred to in section 46(1) and a written statement of the issues in dispute, and thereafter provisions of the Fifth Schedule and section 61 shall apply to the resolution of the dispute.

(2) A non-concurring party and every other interested party shall—

- (a) have the right to appear as a party before the Commission on the hearing of a proposal to create, vary or cancel a statutory servitude or an issue of compensation or both; and
- (b) if he or she appears in terms of paragraph (a)—
 - (i) have all the privileges belonging to; and
 - (ii) be subject to all the obligations which are or may be imposed on;

a party to proceedings before the Administrative Court.

48 Powers of Commission in regard to disputes in connection with proposed statutory servitudes

5 (1) Subject to this section, the Commission may, if a dispute in connection with the creation, variation or cancellation of a statutory servitude is not resolved in accordance with the Fifth Schedule and is put before it for its determination in accordance with that Schedule—

- (a) grant the proposed servitude or endorse its variation or cancellation, with or without modifications and subject to such conditions as it thinks fit; or
- 10 (b) dismiss the proposal for the creation, variation or cancellation of the statutory servitude, or for the preservation, confirmation, restoration or adjustment of a pre-existing servitude by means of the statutory servitude, on the ground that—
 - 15 (i) the proposal is not, in terms of section 44, a competent one to be made in accordance with this Part; or
 - (ii) the object for which the servitude is to be created, varied or cancelled or, if it relates to a pre-existing servitude, preserved, confirmed, restored or adjusted, is better achieved by other means; or
 - 20 (iii) the proposed new servitude or the variation of an existing servitude is not—
 - A. of sufficient agricultural or other utility to justify its creation; or
 - B. required for a purpose (other than a purpose referred to in subparagraph A) which is justifiable in the public or national interest;
 - 25 or
 - (iv) the proposal is not fair and reasonable or is not made in good faith; or
 - (v) the servitude concerned or its variation is likely to cause—
 - 30 A. undue damage to or interference with the rights of any landholder subjected to the servitude; or
 - B. where three or more landholders will be affected by the creation of the servitude, more loss to or damage or interference with the rights of any landholder subjected to the servitude than would be justified by the benefits accruing to the affected landholders collectively;
 - 35

40 and shall dismiss the proposal if, in the case of a servitude referred to in section 11 of the Communal Land Act [*Chapter 20:04*], the Minister responsible for the administration of that Act has not consented to the creation of the servitude, or a condition fixed by that Minister in giving his or her consent cannot be made binding on a claimant, beneficiary or any holder of a servient or dominant tenement in relation to the proposed servitude.

45 (2) Subject to this section, the Commission may, on an issue of compensation that is put before it for its determination in accordance with the Fifth Schedule, award or refuse to award compensation to the interested party concerned in respect of any loss or deprivation of rights likely to result from the creation of the proposed statutory servitude.

(3) Whenever any diagram showing the land affected by, and the situation thereon of, the proposed statutory servitude is sought to be adduced or received in evidence at the hearing of a dispute in connection with the creation, variation or cancellation of a statutory servitude, the diagram shall not be admissible in evidence before the Commission unless it has been prepared in accordance with the Land Survey Act [*Chapter 20:12*]. 5

(4) Compensation awarded by the Commission in terms of subsection (2) shall not exceed an amount representing compensation for any expense or loss which may reasonably be incurred or suffered directly as a result of the creation, variation or cancellation of the statutory servitude. 10

49 Rights of lawful holders or occupiers subject to statutory or other servitudes of passage, rights of way, storage, etc.

(1) A lawful holder or occupier of land who constructs water works for the passage of water, which water works—

- (a) prevent any owner of land from passing freely over or on to his or her land or from exercising his or her rights under a statutory servitude or other servitude of right of way or of passage; or 15
- (b) obstruct the free circulation of water in the drainage or irrigation of any land or interfere with any mining operations thereon;

shall construct, maintain and repair— 20

- (i) such bridges and other works as will make it convenient and safe to pass over or on to the land referred to in paragraph (a); or
- (ii) such aqueducts, culverts and other works as are necessary to secure the free circulation of water referred to in paragraph (b) or prevent interference with the mining referred to in that paragraph; 25

unless he or she is exempted from the duty to do so by agreement or otherwise.

(2) In exercising a statutory servitude or other servitude of passage across a road, the holder of the servitude of passage shall, after having obtained the consent of the road authority concerned, construct, maintain and repair such works as will prevent inconvenience or danger to members of the public using the road, in accordance with the instructions of the Secretary. 30

(3) Subject to any statutory servitude protocol or other agreement or award by which the servitude concerned was acquired, a statutory servitude or other servitude of storage shall not deprive the lawful holder or occupier of the land subject to the servitude of the use of any part of the land, whether submerged or unsubmerged: 35

Provided that such use is not detrimental to the enjoyment of the servitude of storage.

(4) The holder of a statutory servitude or other servitude of storage shall, before commencing the construction of the water storage works concerned, notify the lawful holder or occupier of the land subject to the servitude of storage in writing of— 40

- (a) his or her intention to construct the water storage works; and
- (b) the provisions of subsection (5).

(5) The lawful holder or occupier of land subject to a statutory servitude or other servitude of storage may, before the construction of the water storage works concerned is commenced and on— 45

(a) payment to the holder of the servitude of storage of such share of the costs of constructing, enlarging, maintaining or repairing the water storage works; and

5 (b) fulfilment of such conditions, other than the payment referred to in paragraph (a);

as may be agreed or, failing agreement, as may be fixed by the designated officer, participate in the benefit of the water storage works in proportion to the share of the cost:

Provided that, if the servitude of storage has been acquired by—

- 10 (a) the State or a local authority; or
- (b) any statutory body—
- (i) established or re-established directly by or under an enactment, including; and
- (ii) empowered or required by the enactment referred to in subparagraph (i) to acquire the servitude of storage;

15 the lawful holder or occupier of land shall not be entitled so to participate in the benefit of such water storage works.

(6) Every statutory or other water storage servitude or other servitude for the construction or maintenance of water works shall include a right to take gravel, rock, sand, soil, stone or wood from the land subject to the servitude for the purpose of

20 maintaining or repairing any water works thereon on payment to the lawful holder or occupier of such land of such compensation as may be agreed or, failing agreement, as may be fixed by the designated officer:

Provided that no gravel, rock, sand, soil, stone or wood shall be taken from—

- 25 (a) within a distance of five hundred metres of any afforested or cultivated lands, premises or other structures, mining works or quarries; or
- (b) forest land as defined in the Forest Act [*Chapter 19:05*];

without the permission of the lawful holder or occupier thereof.

(7) Notwithstanding anything contained in subsection (1), the designated officer—

- 30 (a) may, if he or she considers that the permission of the lawful holder or occupier concerned is being unreasonably withheld, authorise the taking of gravel, rock, sand, soil, stone or wood from—
- (i) within the distance referred to in paragraph (a) of the proviso to subsection (1); or

35 (ii) forest land as defined in the Forest Act [*Chapter 19:05*];

and

- (b) shall determine what compensation, if any, is to be paid by the holder of the servitude concerned to the lawful holder or occupier referred to in paragraph (a) in respect of any loss or damage which may result from any taking authorised in terms of that paragraph.

40 (8) In subsection (2)—

“road” and “road authority” have the respective meanings given by the Roads Act [*Chapter 13:18*] (No. 6 of 2001).

50 Registration of statutory servitudes in Deeds Registry

- (1) Any lawful holder or occupier of land affected by the creation of a statutory servitude who is—
- (a) the owner of private agricultural land that is—
 - (i) the dominant tenement in respect of the statutory servitude in question, shall, at his or her own expense, register the servitude at the Deeds Registry in accordance with this section; or 5
 - (ii) the servient tenement in respect of the statutory servitude in question, shall (unless otherwise agreed by the parties to the servitude), register the servitude at the Deeds Registry in accordance with this section at the expense of the holder of the dominant tenement in question (which expense, if not paid by the holder of the dominant tenement, may be sued for by the holder of the servient tenement in a court of competent jurisdiction); 10
 - or 15
 - (b) the lessee of a ninety-nine year lease, may, in accordance with this section, register the servitude at the Deeds Registry by endorsement of his or her lease as if references to a “title deed” and or “owner” in this section and in the Deeds Registries Act were references to such lease and such lessee.
- (2) For the purpose of registration of a servitude, there shall be lodged with the Registrar of Deeds the necessary registration fees together with— 20
- (a) in the case of a servitude awarded by the Commission, two copies of the award duly certified by the Registrar:
 - Provided that no such copies shall be lodged with the Registrar of Deeds until after the expiry of the period within which notice of an appeal in terms of section 61(1) to the Minister against such award may be given or, if notice of appeal has been given, until the award of the servitude has been confirmed on appeal or the appeal concerned has not been prosecuted or has been dismissed; 25
 - or 30
 - (b) in the case of a servitude created by virtue of a statutory servitude protocol, the copies of the protocol and such other documents as may be required by the Registrar of Deeds for the registration of the servitude.
- (3) On receipt of the fees and documents referred to in subsection (2), the Registrar of Deeds shall, if satisfied that the fees and documents are in order, cause the servitude concerned to be registered on the title deeds of all pieces of land affected by it and in the appropriate registers in accordance with the terms of the award or agreement concerned: 35
- Provided that the Registrar of Deeds may refuse to register a servitude referred to in subsection (2)(a) if, in his or her opinion, the award or agreement is not reasonably free from ambiguity. 40
- (4) If the owner of land subject to a servitude fails to produce his or her copy of the title deed of the land for the purpose of registration, the Registrar of Deeds shall note the servitude on the title deed in the Deeds Registry and in the appropriate registers.
- (5) After making a note in terms of subsection (4), no other act of registration shall be made in respect of the piece of land concerned until the servitude has been registered on the title deed of the owner of the land. 45
- (6) If the title deed referred to in subsection (5) is for any reason lodged with the Registrar of Deeds he or she shall retain the title deed until the servitude concerned has been registered thereon.

(7) Whenever a formal or other minor alteration in the wording of a servitude awarded by the Commission is required for the purpose of registering the servitude, the alteration may be made under the signature of the chairperson of the Commission.

5 (8) For the purpose of registering a servitude which, in the opinion of the Registrar of Deeds, cannot adequately be defined by description, a diagram prepared in accordance with the Land Survey Act [*Chapter 20:12*] shall be submitted to him or her showing the land subject to, and the situation thereon of, the servitude.

51 Disputes in connection with statutory servitudes

- (1) An interested party who is aggrieved by—
- 10 (a) any act or omission of a designated officer or other interested party in connection with the exercise of the rights or obligations in connection with a statutory servitude after it has been created or varied, or by the interpretation of any provision of a statutory servitude protocol; or
- 15 (b) any act or omission of a designated officer or other person in connection with the application of section 49;

shall furnish to the Secretary (within thirty days of giving written notice of the dispute to the appropriate designated officer referred to in subsection (2)) the prescribed security for the costs of having the dispute determined by the Commission.

20 (2) If a designated officer responsible for the area on or over which the statutory servitude concerned in the dispute subsists, receives written confirmation from the Secretary that a disputant in relation to that servitude has furnished to the Secretary the prescribed security within the allowed period (or such longer period as the Secretary may for good and sufficient reason allow), the designated officer shall, through the Secretary, lodge with the Commission a written statement of the issues in dispute, and

25 thereafter—

- (a) the provisions of the Fifth Schedule and section 63 shall apply to the resolution of the dispute; and
- (b) section 47(2) applies to the rights, privileges and obligations of the disputants.

30 52 Registration of certain pre-existing servitudes or agreements for servitudes concluded before commencement of this Act

If a designated officer is satisfied that there subsists on or over any land in the area for which he or she is responsible—

- 35 (a) a pre-existing servitude that the lawful holders or occupiers of the land subject to the servitude are aware of, and have been exercising the rights and obligations deriving from, the servitude before the commencement of this Act;
- 40 (b) any rights or obligations in the nature of a servitude which, before the commencement of this Act, had been agreed between the lawful holders or occupiers of the land subject to the agreement, whether or not such agreement was brokered by any officer of the Ministry, and whether or not such agreement has been reduced to writing;

then the designated officer shall, notwithstanding anything in section 45 and 46, act in terms of section 46(4), (5), (6) and (7) to create the statutory servitude embodying

45 the pre-existing servitude or the agreement referred to in paragraph (b) as if there is no dispute about the creation of a statutory servitude or about any compensation to be payable therefor.

PART X

FINANCIAL PROVISIONS

53 Funds of Commission

- (1) The funds of the Commission shall consist of—
 - (a) moneys appropriated by Act of Parliament for the salaries and allowances payable to and in respect of members of the Commission and the recurrent administrative expenses of the Commission; and 5
 - (b) any other moneys that may be payable to the Commission from moneys appropriated for the purpose by Act of Parliament; and
 - (c) any donations, grants, bequests or loans made by any person or organisation or any government of any country to the Commission with the approval of the Minister; and 10
 - (d) any other moneys that may vest in or accrue to the Commission, whether in terms of this Act or otherwise.
- (2) The Commission shall apply its funds to the fulfilment of its functions. 15
- (3) Moneys not immediately required by the Commission may be invested in such a manner as the Commission, with the approval of the Minister and the Minister responsible for finance, considers appropriate.

54 Accounts of Commission and appointment of internal auditors

- (1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission’s activities, funds and property, including such particular accounts and records as the Minister may direct. 20
- (2) As soon as possible after the end of each financial year, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct. 25
- (3) The internal auditors of the Ministry appointed in terms of section 80 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009), shall perform the duties of internal auditors with respect to the funds Commission.

55 Audit of Accounts

- (1) The accounts of the Commission shall be audited by the Auditor-General, who for that purpose shall have the functions conferred on him or her by sections 7 and 8 of the Audit Office Act [*Chapter 22:18*] (No. 12 of 2009). 30
- (2) Any person under the authority or supervision of the Commission who refuses to provide the Auditor-General with an explanation or information required by him or her for the purposes of an audit or knowingly provides the Auditor-General with a false explanation or information, or an 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 six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment. 35
- (3) Notwithstanding anything contained in subsection (1), the Auditor-General may appoint a suitably qualified person to audit the accounts of the Commission and if he or she does so— 40
 - (a) subsections (1) and (2) shall apply in respect of the person so appointed as if he or she were the 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 XI

GENERAL

5 **56 Rentals payable by holders of partially alienated State land**

(1) The Minister, after consultation with the Minister of Finance, may, subject to subsection (2), charge monthly or annual rentals to be payable by holders of partially alienated State land, and in so doing may—

- 10 (a) fix the same rate of rental payable by all holders of partially alienated State land;
- (b) fix different rates of rental depending on whether the partially alienated State land is held under a permit, offer letter, ninety-nine year lease, lease with a purchase option or any other kind of lease.

15 (2) Subject to subsection (3), the rate of any rentals referred to in subsection (1) shall be fixed by the Finance Act [*Chapter 23:04*].

(3) The Minister may, by statutory instrument, prescribe the following in relation to the rentals payable by holders of partially alienated State land, which statutory instrument may, subject to subsection (4), take effect before the matters prescribed therein are fixed and enacted by the Finance Act [*Chapter 23:04*] —

- 20 (a) the persons responsible for the payment, collection and remittal of the rentals; and
- (b) the manner in which and the times at which the rentals shall be paid, collected and remitted; and
- (c) the basis upon which the rentals shall be calculated; and
- 25 (d) the date from which the rentals shall be collected:

Provided that such date shall not be earlier than the date of publication of the statutory instrument in the *Gazette*;

and

- 30 (e) the surcharge or interest, if any, to be paid by the persons referred to in paragraph (a) for failure to pay or remit the rentals timeously.

35 (4) If the matters prescribed in a statutory instrument made under subsection (3) are not fixed and enacted by an Act of Parliament amending the Finance Act [*Chapter 23:04*] within six months from the date of operation of the statutory instrument, the statutory instrument is deemed with effect from the expiry of that period to have been annulled, without, however, affecting the validity of anything done under it in the interval between the date when it came into operation and the date of its annulment

57 Minister may give policy directions to Commission, etc.

40 (1) Subject to subsection (2), the Minister may give the Commission such general directions relating to the policy the Commission is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest.

(2) Before giving the Commission a direction in terms of subsection (1), the Minister shall inform the Commission, in writing, of the proposed direction and the Commission shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal.

(3) The Commission shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(4) When any direction has been given to the Commission in terms of subsection (1), the Commission shall ensure that the direction and any views the Commission has expressed on it in terms of subsection (2) are set out in the Commission's annual report. 5

(5) Subject to subsection (6), where the Minister, after consultation with the President, is of the view on reasonable grounds that any decision or action of the Commission is not in the interests of—

- (a) the national defence, public safety or public order of Zimbabwe or is prejudicial to the general public or national interest; or 10
- (b) the interests of holders of partially alienated State land as a whole;

the Minister may direct the Commission in writing to reverse, suspend or rescind such decision or to reverse, suspend or rescind such action.

(6) Before making any direction in terms of subsection (5), the Minister shall inform the Commission in writing of his or her intention to do so, setting out the purport of the proposed direction and his or her grounds for making it, and the Commission may, within fourteen days of being so informed, make written representations to the Minister on the matter. 15

(7) The Commission shall, with due expedition or within a period that the Minister may direct in writing, comply with any direction given to it in terms of subsection (5). 20

58 Immunity

No legal proceedings shall lie against the Commission or any member of the Commission or the Executive Secretary or any person acting under the direction of the Commission in respect of anything which is done in good faith and without gross negligence in pursuance of this Act. 25

59 Provincial, district and other offices of Commission

The Commission shall endeavour to establish a principal office and offices at provincial, district and other administrative levels as it considers fit for the better performance of its functions. 30

60 Entry upon land

(1) The Minister or any person authorised thereto in writing by the Minister, may, for the purposes of Part IV, at all reasonable times, enter upon any land with such persons, animals, vehicles and appliances as may be necessary for the execution of his, her or their duties and may enter and inspect any such land and do all such things thereon as are necessary for surveys or investigations in connection with the carrying out of anything authorised to be done under Part IV. 35

(2) Any member of the Commission or a designated member of the staff of the Commission may, for the purposes of Part VI, at all reasonable times enter upon any farm which is the subject of an investigation under that Part or in respect of which an order has been given in terms of that Part, together with such persons, animals, vehicles and appliances as may be necessary for the purposes of conducting such investigation or for ascertaining whether or not the terms of the order are being complied with. 40

(3) Every member of the Commission or employee of the Commission authorised by the Commission, and every inspector or a person authorised by the Minister may, at all reasonable times, enter upon a holding with such other persons, 45

animals, vehicles and appliances as may be necessary for the purpose of examination of the holding or the farming operations being conducted thereon or ascertaining whether or not the permit holder, holder of the offer letter or lessee is complying with the terms and conditions of his or her permit or lease:

- 5 (4) Nothing in this section contained shall be construed as authorising entry into a dwelling-house.
- (5) Any person who—
- (a) obstructs, hinders or prevents entry upon land as is authorised by subsection (1); or
- 10 (b) obstructs, hinders or prevents entry upon a farm in terms of subsection (2); or
- (c) obstructs, hinders or prevents entry upon a holding in terms of subsection (3); or
- (d) obstructs or hinders any person in the lawful exercise of his or her powers or duties under this Act, whether in the course of an exercise of a power
- 15 of entry upon land in terms of this section or otherwise;

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.

20 **61 Appeals**

- (1) Subject to this section, any person who is aggrieved by—
- (a) the decision of, or action or lack of action on the part of, the Commission upon any dispute or complaint; or
- (b) such decision or action of the Commission as may be prescribed;

25 may, within twenty-eight days after being notified of the decision or action of the Commission concerned, appeal in writing to the Minister, submitting with his or her appeal such fee as may be prescribed, and such appeal shall suspend the operation of any decision issued by the Commission.

30 (2) For the purpose of determining an appeal the Minister may require the Commission to furnish him or her with the reasons for the decision or action that is the subject of the appeal and a copy of any evidence upon which the reasons are based.

 (3) The Minister, after due and expeditious inquiry, may make such order on any appeal as he or she considers just:

35 Provided that if the appeal involves any question of law, or any question of mixed law and fact, the Minister may consult with the Attorney-General and obtain in writing from the Attorney-General an opinion concerning the legal aspects of the appeal, and such opinion shall (subject to subsection (5)) be conclusive of the question of law.

40 (4) Without prejudice to the right of an aggrieved party to seek judicial review of any decision of the Minister on appeal affecting him or her, the decision of the Minister upon the appeal shall be final.

 (5) Upon any review of the Minister's decision in terms of subsection (4), the reviewing court shall do one of the following—

- (a) uphold the Minister's decision on appeal; or

- (b) refer the matter of the appeal back to the Minister for reconsideration, whether with or without directions on how the matter is to be reconsidered.

62 False statements in land applications

A person who, in connection with an application for a partially alienated State land right, makes a false statement, knowing it to be false or not having reasonable grounds for believing it 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. 5

63 Regulations

- (1) The Commission may make regulations — 10

- (a) prescribing anything which by this Act and its Constitutional mandate is required or permitted to be prescribed or which, in its opinion, is necessary or convenient to be prescribed for the carrying out or giving effect to this Act;

- (b) providing for the conditions of service of the Executive Secretary and the staff of the Commission; 15

- (c) the charging of any fee in connection with any service provided by the Commission;

- (d) providing for the conduct of the Commission’s audit, investigative and dispute settlement functions. 20

(2) Regulations made in terms of subsection (1) may create offences and provide for the imposition of penalties for the contravention thereof not exceeding level fourteen or, in default of payment, imprisonment for a period not exceeding six months.

- (3) The regulations of the Commission shall not have effect until —

- (a) the Minister has referred the regulations to Cabinet for its approval; and 25

- (b) they have been published (with such amendments as Cabinet may have made) by the Minister in the *Gazette*.

64 Repeal of Cap. 20:01 and Cap. 20:18; savings and transitional provisions

(1) Subject to this section, the Agricultural Land Settlement Act [*Chapter 20:01*] and Rural Land Act [*Chapter 20:18*] are repealed. 30

(2) Despite the repeal of the Agricultural Land Settlement Act [*Chapter 20:01*]—

- (a) any lease, permit, offer letter, agreement or transaction issued or entered into or deemed to have been issued or entered into under that Act, and in force immediately before the date of commencement of this Act, shall continue in force, and in the case of ninety-nine year lease or permit, be entered in the Register without compliance with the formalities for registration under Part VIII; 35

- (b) regulations made or deemed to have been made under that Act and in force immediately before the date of commencement of this Act, shall continue in force until amended, replaced or repealed in terms of this Act and shall be deemed to have been made in terms of this Act; 40

- (c) anything done, or commenced under that Act and which, immediately before the date of commencement of this Act, had or was capable of 45

acquiring legal effect, shall be deemed, on or after that date, to have been made, done or commenced under the appropriate provision of this Act and shall continue to have or to be capable of acquiring, as the case may be, the same legal effect;

- 5 (d) any dispute commenced or complaint lodged under that Act involving the terms or issuance of a lease, permit or offer letter to which the Agricultural Land Settlement Board or the Ministry was a party or of which it was an intermediary shall, if not resolved before the commencement of this Act,
10 be referred to the Commission for settlement as a dispute or complaint in accordance with this Act.

(3) Despite the repeal of the Rural Land Act [*Chapter 20:18*]

- 15 (a) an agreement or transaction entered into or deemed to have been entered into under that Act, and in force immediately before the date of commencement of this Act, shall continue in force;
- (b) regulations made or deemed to have been made under that Act and in force immediately before the date of commencement of this Act, shall continue in force until amended or repealed in terms of this Act and shall be deemed to have been made in terms of this Act;
- 20 (c) anything done, or commenced under that Act and which, immediately before the date of commencement of this Act, had or was capable of acquiring legal effect, shall be deemed, on or after that date, to have been made, done or commenced under the appropriate provision of this Act and shall continue to have or to be capable of acquiring, as the case may
25 be, the same legal effect.

65 Transfer of certain employees from Ministry to Commission

(1) In this section—

“transferred member” means a member who has been transferred to the service of the Commission in terms of subsection (3) or (4).

- 30 (2) Any person who immediately before the commencement of this Act was employed by the State as a member of the staff of the Ministry or the Agricultural Land Settlement Board and who, with the leave of the Secretary and Civil Service Commission, wishes to be employed as a member of the staff of the Commission, may become so employed without any diminution in his or her previously applicable
35 conditions of service.

(3) The assets and rights of the State which—

- 40 (a) before the fixed date, were used or otherwise connected with the Ministry responsible for the repealed Agricultural Land Settlement Act [*Chapter 20:01*] and the Agricultural Land Settlement Board constituted thereunder; 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 Commission exclusively; or
- (ii) to the Ministry exclusively; or
- 45 (iii) to the Ministry and the Commission jointly, 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.

(4) Any regulation, notice, circular or other document which, immediately before the commencement of this Act, 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 5
- (b) any persons who join the Commission after the commencement of this Act 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.

(5) If on the commencement of this Act— 10

- (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 commencement of this Act 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 Commission; 15
- (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 commencement of this Act 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 Commission at the equivalent grade or post; 20
- (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 commencement of this Act in all respects as if such transferred member is a member of the Civil Service. 25

66 Amendment of Cap. 20:10

The Land Acquisition Act [*Chapter 20:10*] is amended by the insertion in Part VI of the following section after section 39— 30

“39A Secretary may sit as observer in Derelict Land Board

The Secretary or his or her authorised delegate may, on written notice to the Chairperson of the Derelict Land Board, sit in at any meeting of the Board as an observer, that is to say, without participating in its deliberations (unless invited to do so by the Chairperson).” 35

FIRST SCHEDULE (Section 3(2))

PROVISIONS RELATING TO COMMISSION

Chairperson and deputy chairperson of Commission

1. (1) The chairperson and deputy chairperson of the Commission shall hold office as such for so long as they remain members, unless they earlier resign their offices. 40

(2) The deputy chairperson of the Commission shall perform the chairperson’s functions whenever the chairperson is unable to perform them or the office of chairperson is vacant.

Terms of office and conditions of service of members

2. (1) Subject to the Constitution, a member shall, subject to this Part, hold office for such period, not exceeding five years, as the President may fix on his or her appointment.

5 (2) A member shall hold office on such conditions as the President may in his or her case fix.

(3) A retiring member shall be eligible for re-appointment for one more consecutive term.

Disqualification for appointment as member

10 3. (1) In this paragraph—

“statutory body” means—

- (a) any commission established by the Constitution; or
- (b) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any statutory body or by a commission established by the Constitution.

15 (2) The President shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

- 20 (a) has in terms of a law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to or arrangement or composition with his or her creditors which has not been rescinded or set aside;
- 25 or
- (b) has within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—
 - (i) within Zimbabwe of a criminal offence; or
 - 30 (ii) outside Zimbabwe of an offence by whatever name called which, if committed within Zimbabwe, would have been a criminal offence; and sentenced by a court to imprisonment for a term of six months or more, without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon.

35 (3) Any person who is—

- (a) a Senator or member of the National Assembly; or
- (b) a member of two or more statutory bodies; or
- (c) in the full-time employment of the State or the Commission;

shall not be qualified to be appointed or to hold office as a member.

Vacation of office by member

40 4. A member shall vacate his or her office and his or her office shall become vacant—

- 45 (a) one month after the date he or she gives notice in writing to the President through the Minister of his or her intention to resign his or her office or after the expiry of such shorter period as he or she and the President may agree; or

- (b) thirty days after the date he or she is sentenced by a court to imprisonment referred to in paragraph 3(2)(b) after conviction of an offence referred to in that paragraph:

Provided that, if during the said period of thirty days an application for a free pardon is made or an appeal is filed, the question whether the member is to vacate his or her office shall not be determined until the final disposal of such application or appeal, whereupon the member shall forthwith vacate his or her office and his or her office shall become vacant unless he or she is granted a free pardon, his or her conviction is set aside, his or her sentence is reduced to a term of imprisonment of less than six months or a punishment other than imprisonment is substituted;

or

- (c) if he or she becomes disqualified in terms of paragraph 3(2)(a) or in terms of subparagraph (3) of that paragraph to hold office as a member; or
- (d) if he or she is required in terms of section 320 of the Constitution paragraph 3 of this Schedule to vacate his or her office.

President may suspend member

5. (1) The President may, pending the determination of the question of a member’s continuance in office by a tribunal referred to in section 187 of the Constitution, suspend a member from his or her office if the President is satisfied that the member—

- (a) has been guilty of improper conduct as a member;
- (b) has failed to comply with the conditions of his or her office fixed by the President in terms of paragraph 2(2); or
- (c) was absent without the permission of the Commission from three consecutive meetings of the Commission or of any committee of the Commission of which he or she is a member and of which he or she has had notice; or
- (d) is mentally or physically incapable of efficiently performing his or her duties as a member.

(2) The President may suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed and, whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration as a member.

Filling of vacancies

6. On the death of, or vacation of office by, a member the President may appoint a person to fill the vacancy until the expiry of the period during which the member would, but for his or her death or the vacation of his or her office, have continued in office.

Meetings and decisions of Commission

7. (1) The Commission shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit.

5 (2) The chairperson of the Commission may himself or herself at any time, and shall at the request in writing of not less than two members, convene a special meeting of the Commission, which meeting in the latter case shall be convened for a date not less than seven days or more than thirty days after the receipt of such request.

(3) The chairperson or, in his or her absence, the deputy chairperson shall preside at all meetings of the Commission at which he or she is present.

10 (4) If neither the chairperson nor the deputy chairperson of the Commission are present at any meeting of the Commission, the members present shall elect one of their number to preside as chairperson at that meeting.

(5) Half the members shall form a quorum at any meeting of the Commission.

15 (6) All acts, matters or things authorised or required to be done by the Commission may be decided by a majority vote at a meeting of the Commission at which a quorum is present.

20 (7) At all meetings of the Commission each member present shall have one vote on a question before the Commission and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.

25 (8) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same effect as a resolution passed at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that, if a member requires that such a proposal be placed before a meeting of the Commission, this subsection shall not apply to such proposal.

Electronic meetings of Commission

30 8. (1) In addition to meeting with members physically present, the Commission may hold or continue a meeting by the use of any means of communication by which all the members at the meeting can hear and be heard at the same time (hereinafter referred to as an “electronic meeting”).

35 (2) A member who participates in an electronic meeting is taken for all purposes to have been present at the meeting.

(3) The Commission may establish procedures for electronic meetings (including recording the minutes of such meetings).

Committees of Commission

40 9. (1) For the better exercise of its functions the Commission may establish one or more committees in which it may vest such of its functions as it thinks fit:

45 Provided that the vesting of any such functions in a committee shall not divest the Commission of the functions, and the Commission may amend or rescind any decision of the committee in the exercise of its functions.

(2) The chairperson of the Commission or of a committee may at any time and at any place convene a meeting of that committee.

(3) The procedure of any committee shall be fixed by the Commission.

(4) On the establishment of a committee in terms of subparagraph (1) the Commission—

- (a) shall appoint to that committee at least one member of the Commission who shall be the chairperson of that committee; 5
- (b) may appoint to that committee persons who are not members of the Commission.

Minutes of proceedings of Commission and committees

10. (1) The Commission shall cause minutes of all proceedings and decisions taken at every meeting of the Commission or of a committee of the Commission to be entered in books kept for the purpose. 10

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting of the Commission or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned. 15

(3) The Commission shall cause copies of all minutes that have been signed as provided in subparagraph (2) to be sent without delay to the Minister for his or her information. 20

Members of Commission and committees to disclose certain connections and interests

11. (1) In this paragraph—

“relative”, in relation to a member of the Commission or a committee, means the member’s spouse, child, parent, brother or sister. 25

(2) Subject to subparagraph (4)—

- (a) if a member of the Commission or of a committee—
 - (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission or the committee; or 30
 - (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his or her functions as a member; or 35
 - (iii) knows or has reason to believe that a relative of his or hers—
 - A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission or the committee; or 40
 - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his or her functions as a member; 45

or

- (b) if for any reason the private interests of a member of the Commission or of a committee come into conflict with his or functions as a member;

the member shall forthwith disclose the fact to the Commission or to the committee, as the case may be.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission or the committee, as the case may be, which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) Any person who contravenes subparagraph (2) or (3) 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.

Validity of decisions and acts of Commission

12. No decision or act of the Commission or act done under the authority of the Commission shall be invalid by reason solely because—

- (a) the Commission consisted of less than the minimum number of members for which provision is made in section 296 of the Constitution; or
- (b) a person disqualified in terms of paragraph 3 acted as a member of the Commission at the time the decision was taken or the act was done or authorised.

SECOND SCHEDULE (Section 3(3))

ANCILLARY POWERS OF COMMISSION

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and any interest therein and any rights, concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets, or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose or turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To open bank accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. With the approval of Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Commission considers appropriate or necessary for the proper exercise of its functions.

8. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to members of the staff of the Commission as it considers fit.
9. To provide pecuniary benefits for members of the Commission on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, provident funds or make such other provision as may be necessary to secure for its members and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
10. To purchase, take on lease or in exchange or otherwise acquire land for residential purposes or dwelling-houses for use or occupation by members of the staff of the Commission.
11. To construct dwellings, outbuildings or improvements for use or occupation by members of the staff of the Commission.
12. To provide security in respect of loans by the deposit of securities, in which the Commission may invest such money as it may consider necessary for the purpose.
13. Subject to any conditions that may be imposed by the Commission from time to time, to provide loans to any members of the staff of the Commission—
 - (a) for the purpose of purchasing vehicles, tools or other equipment to be used by the members in carrying out their duties; or
 - (b) not exceeding six months' salary or wages payable to the members concerned, for any purpose and on such security as the Commission thinks adequate.
14. To do anything for the purpose of improving the skill, knowledge or usefulness of members of the staff of the Commission, and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training.
15. To provide such services as the Commission considers appropriate and to charge for such services such fees as the Commission, may from time to time determine.
16. To engage in any activity, either alone or in conjunction with other organisations or international agencies, to promote better understanding of land tenure issues.
17. Generally to do all such things that are conducive to the performance of the functions of the Commission in terms of this Act or any other enactment.

THIRD SCHEDULE (Section 20(A))

MATTERS IN REGARD TO WHICH MINISTER SHALL GIVE CONSIDERATION

1. The size of the land units proposed in any development in relation to the nature of the development contemplated and the facilities proposed to be provided for its occupation and development.

2. The suitability of the land for the type of development proposed in relation to existing development in adjacent areas and having regard to the area, position, soil, aspect and climatic conditions.

3. The pattern of development in the area and the amenities available to the community likely to arise therefrom.

4. The conditions proposed to be attached to the sale or lease of any land.

5. The availability of access roads, existing or proposed to be provided, the permanent water supplies existing or proposed to be provided, and any other improvements such as buildings, cattle dipping facilities, irrigation works or fencing, whether in existence or proposed to be provided.

6. Any other matter which may be prescribed by regulation under section 21.

FOURTH SCHEDULE (Section 29(1))

PROVISIONS APPLICABLE TO LEASES WITH OPTION TO PURCHASE

Interpretation in Fourth Schedule

1. In this Schedule—

“Compensation Fund” means the Fund that was established under section 18 of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009) for the payment of compensation for land or improvements on land compulsorily acquired by the Ministry on behalf of the State;

“leasehold” means a leasehold to which this Schedule applies, that is, land subject to a lease with a purchase option that was concluded before the commencement of this Act.

Grant of title

2. (1) Where a lease contains an option to purchase and such option has accrued and has been exercised, the lessee shall be entitled to a grant of title in respect of his or her leasehold, if—

- (a) the whole of the purchase price in respect of the leasehold has been paid or has been guaranteed to the satisfaction of the Minister; and
- (b) all rates and taxes due in respect of the leasehold to a rural district council have been paid; and
- (c) the lessee has complied in all respects with this Act as applicable to him or her and with the terms and conditions of his or her lease; and
- (d) in relation to a lease that commenced on or before the 30th September, 1975, in the case of an individual, the lessee is a citizen of Zimbabwe or, in the case of a company, the majority of the directors thereof are citizens of Zimbabwe; and
- (e) in relation to a lease that commenced on or after the 1st October, 1975, in the case of an individual, the lessee is a citizen of Zimbabwe or, in the case of a company, the controlling interest therein is held by a person who is or by persons who are, citizens of Zimbabwe.

(2) The President may in special circumstances approve the grant of title to a lessee in respect of his or her leasehold notwithstanding the fact that—

- (a) subparagraph (1)(c) has not been complied with; or
 - (b) an option to purchase has not yet accrued to the lessee; or
 - (c) in the case of a company, the majority of the directors thereof are not citizens, or the controlling interest therein is not held by a person who is or by persons who are, citizens of Zimbabwe. 5
- (3) A grant of title referred to in subparagraph (1) or (2) shall be subject to—
- (a) the payment by the lessee of any title registration fee and land grant stamp duty;
 - (b) any servitudes which are registrable against the leasehold; 10
 - (c) the registration or noting against the title of a debt which in terms of any law must be so registered or noted;
 - (d) the right in terms of this Act of the President to retake the land or any portion thereof;
 - (e) any special conditions upon which the leasehold was leased. 15
- (4) Until the grant of title the lessee shall, notwithstanding that all moneys due from him or her to the State have been paid, continue in possession of the leasehold under the terms and conditions of his or her lease, including those under which the lease may be terminated or cancelled, and subject to this Act. 20
- (5) For the purposes of this paragraph, no person or persons shall be regarded as having controlling interest in a company unless such person has or such persons have the power to carry resolutions binding the company in all its affairs, by reason of leasehold shares in the company, and the power to appoint and dismiss the majority of its directors. 25

Insolvency of lessee

3. (1) If the estate of a lessee is sequestrated or assigned under the laws relating to insolvency, the trustee or assignee, as the case may be, of his or her estate may cede the lease to a person approved by the Minister in writing and upon such terms and conditions as may be imposed by the Minister. 30
- (2) If the trustee or assignee, as the case may be, fails within six months, or such longer period as the Minister may in writing approve, after the date of his or her appointment to cede the lease, the lease shall terminate.
- (3) If a lessee which is a company is wound up, the provisions of this paragraph relating to a trustee or assignee shall apply to the liquidator of such company. 35

Death or insanity of lessee

4. (1) If a lessee dies or is detained as a mentally disordered or defective person under the laws relating to mental disorders or is, by order of a competent court, declared incapable of managing his or her own affairs, the legal representative of the lessee, including any person empowered by law to administer or to give directions as to the administration of his or her estate, may, subject to this paragraph, cede the lease to a person approved by the Minister or continue the lease on behalf of the estate upon such terms and conditions as may be imposed by the Minister. 40 45

(2) Until the lease is ceded or during the period the legal representative continues the lease on behalf of the estate, as the case may be, the provisions of this Act applicable thereto and the conditions of the lease shall be fulfilled by the legal representative of the estate or on his or her behalf by a person nominated by him or her and approved in writing by the Minister.

(3) If the legal representative of the estate—

(a) gives not less than three months' notice to the Minister of his or her intention to terminate the lease; or

(b) fails within twelve months, or such longer period as the Minister may approve, of the date of the death of the lessee or of the date of the issue of the order of court directing that the lessee be detained as a mentally disordered or defective person or of the date of issue of the order of court declaring the lessee incapable of managing his or her own affairs, to notify the Minister in writing that he or she intends to cede or to continue the lease; or

(c) having notified the Minister of his or her intention to cede the lease, fails to cede it within such period as may be fixed by the Minister;

the lease shall terminate.

Termination or cancellation of lease

5. (1) A lessee may terminate his or her lease by giving not less than three months' written notice of his or her intention to do so.

(2) If a lessee fails to comply with any term or condition of his or her lease, the Minister may cancel the lease.

Rights and duties on termination or cancellation of lease

6. (1) Upon the termination or cancellation of a lease in terms of paragraph 3, 4 or 5, the Minister shall have the right to retake possession of and, subject to paragraph 7, occupy the leasehold with all improvements thereon.

(2) The termination or cancellation of a lease in terms of paragraph 3, 4 or 5 shall not extinguish any debt due from the lessee to the State in terms of the lease.

Improvements

7. (1) Where the lease has been terminated or cancelled in terms of paragraph 3, 4 or 5, compensation shall be payable from the Compensation Fund to the lessee or his or her trustee, assignee or legal representative, as the case may be, for improvements effected on or to the leasehold.

(2) In lieu of the payment referred to in subparagraph (1) the Minister may permit the lessee or his or her trustee, assignee or legal representative, within three months of the termination or cancellation of his or her lease in terms of paragraph 5, to remove any improvements effected by him or her or on his or her behalf on or to the leasehold:

Provided that—

(i) any rent due in respect of the leasehold, any amount due to the State in respect of any improvement on the

leasehold and any amount outstanding on any loan made to the lessee in respect of the leasehold or his or her farming operations on the leasehold by the State or the Corporation as defined in section 2 of the Agricultural Finance Corporation Act [*Chapter 18:02*] is paid or repaid, as the case may be, before such removal; 5

(ii) such removal is effected without injury to the land.

FIFTH SCHEDULE (Section 36(2)(A))

RULES RELATING TO APPEALS AND DETERMINATION OF DISPUTES BY COMMISSION 10

Costs

1. The costs of appeal or dispute that is determined by the Commission shall be borne by each party to the appeal or dispute, unless the Commission is of the opinion that a disputant or his or her legal practitioner was being vexatious, frivolous or dilatory in the pursuit of his or her claim, in which event the Commission shall award costs against the disputant or *de bonis propriis* against the representative, as the case may be. 15

Legal representation

2. A party to an appeal or dispute that is to be determined by the Commission may be represented by a legal practitioner: 20

Provided that the legal practitioner shall not recover any costs exceeding the amount of the costs which he or she would have recovered had he or she instituted the proceedings in a magistrates court.

Penalisation of dilatory conduct

3. The Commission may order a legal practitioner representing a party to an appeal or dispute that is being determined by the Commission to pay a civil penalty not exceeding level two (ten United States dollars) for every day by which a sitting of the Commission has had to be postponed because of the absence at that sitting of the legal practitioner, if the legal practitioner has been given due notice of the date of the sitting, and the Commission is of the opinion that his or her absence was due to negligence or intentionally dilatory conduct on his or her part. 25 30

Condonation of delays

4. The Commission may extend any of the times and periods set out in these rules on good cause being shown or by agreement of the parties. 35

Rules for appeals

5. (1) When any person has given notice of an appeal he or she shall state the grounds of his or her appeal and set forth in writing all the facts which he or she considers material and relevant and the contentions in law based thereon. 40

Such statement shall be called the “appellant’s case” and shall be lodged with the Commission in duplicate within sixty days of the date on which notice of appeal is given to the Secretary or other person against whom the appeal is made (“the respondent”).

(2) Should the statement of facts in the appellant’s case be admitted by the respondent to be sufficient and correct, the respondent shall within 45

fourteen days of the lodging of the appellant's case draw up and submit to the appellant a document embodying the admitted statement of facts, the contentions in law of the appellant and the contentions in law of the respondent. Such document shall be called an "agreed case".

5 (3) The appellant and the respondent may agree to a statement of facts, each setting out his or her respective contention in law based on such facts, in the form of an agreed case.

(4) The agreed case shall be transmitted to the Commission by the respondent within fourteen days of submitting the agreed case to the appellant in terms of subrule (2), and the arguments on appeal and the decision of the Commission shall be confined to the facts admitted.

10 (5) Should the respondent not admit the statement of facts in the appellant's case to be correct or sufficient, or should he or she not come to an agreement with the appellant on a statement of facts, the respondent shall within thirty days of the receipt of the appellant's case lodge with the appellant a statement setting out which of the allegations he or she admits as correct and which he or she denies, and shall set out all such other facts which he or she considers relevant and material to the determination of the appeal. The respondent shall also state his or her contentions in law. Such statement shall be called the "respondent's case".

15 (6) Should the appellant and the respondent not agree in regard to the statement of facts, the respondent shall transmit to the Commission the appellant's case and the respondent's case within thirty days of the lodgement of the respondent's case with the appellant.

20 (7) The Commission shall, after consultation with the parties, notify them of a day, time and place for the hearing of the appeal, such day being not less than thirty days after the receipt of the agreed case or of the appellant's and respondent's cases, and shall give notice to the Commissioner of the appointed day.

25 (8) If any facts are in dispute either the appellant or the respondent may call such evidence and produce such documents at the hearing of the appeal as may be deemed material and relevant.

30 (9) If neither the appellant nor anyone authorised to appear on his or her behalf appears before the Commission at the time and place appointed for the purpose then the Commission, upon the request of the respondent and upon proof that the prescribed notice of the sitting of the Commission has been given to the appellant, shall uphold the respondent's case, unless any question of law arises, in which case the Commission may, before giving its decision, call upon the respondent for argument in support of his or her case.

Rules for disputes

35 6. (1) The Commission shall appoint a legally qualified member of the staff of the Commission or (unless the State or the Secretary is a party to the dispute) may avail itself of the services of any legally qualified employee of the Ministry or of the Ministry responsible for justice to be an intermediary between the parties to any dispute to be determined by it.

40 (2) The intermediary shall assist the parties to the dispute to state the grounds upon which they base their contentions, setting forth in writing

all the facts which each of them considers material and relevant and the contentions in law based thereon.

The statements so prepared shall be lodged with the Commission in duplicate within sixty days of the date on which notice of the dispute is given to the Commission.

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(2) Should the statement of facts in the disputants' statements be admitted by each of them to be sufficient and correct, the intermediary shall within fourteen days of the lodging of the disputants' statements draw up and submit to each of them a document embodying the admitted statement of facts, and the contentions in law of the disputants. Such document shall be called an "agreed case".

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(3) The agreed case shall without delay be transmitted to the Commission by the intermediary, and the arguments on the dispute and the decision of the Commission shall be confined to the facts admitted.

(4) Should the disputants not admit the statement of facts in each of their statements to be correct or sufficient, or should they not come to an agreement with each other on a statement of facts, the intermediary shall without delay after completing their statements lodge with each of them a statement setting out which of the allegations the disputants admit as correct and which they deny, and shall set out all such other facts which the intermediary considers relevant and material to the determination of the dispute.

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(5) Should the disputants not agree in regard to the statement of facts, the intermediary shall without delay transmit to the Commission the respective statements of the disputants.

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(6) The Commission shall, after consultation with the disputants, notify them through the intermediary of a day, time and place for the hearing of the dispute, such day being not less than thirty days after the receipt of the agreed case or of the disputants' statements.

(7) If any facts are in dispute any of the disputants may call such evidence and produce such documents at the hearing of the dispute as may be deemed material and relevant.

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(8) If any party to a dispute or anyone authorised to appear on his or her behalf does not appear before the Commission at the time and place appointed for the purpose then the Commission, upon the request of the other disputant and upon proof that the prescribed notice of the sitting of the Commission has been given to the absent disputant, shall uphold the other disputant's case, unless any question of law arises, in which case the Commission may, before giving its decision, call upon the disputant who is present to present argument in support of his or her case.

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