

EDUCATION AMENDMENT

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EDUCATION AMENDMENT BILL, 2019

MEMORANDUM

The purpose of this Bill is to amend the Education Act [*Chapter 25:04*], to achieve the following principal objectives—

- the right to a basic State-funded education, including adult basic education, in respect of which the State is enjoined to take measures to progressively realise within the limits of the resources available to it (section 75 (1) (a) and (4) of the Constitution);
- the right to further education which the State is enjoined to make progressively available and accessible (section 75 (1)(b) of the Constitution);
- the importance of the best interests of the child (section 19 (1) of the Constitution), a child being a person under the age of 18 years (section 81 (1) of the Constitution);
- the rights of persons with disabilities to be provided with special facilities for their education and to State-funded education and training where necessary (section 83 (e) and (d) of the Constitution);
- the right to human dignity (section 51 of the Constitution);
- the right to freedom from physical or psychological torture or cruel or inhuman and degrading treatment or punishment (section 53 of the Constitution);
- the right to equality and non-discrimination (section 56 of the Constitution);
- the right to language and culture (section 63 of the Constitution) as read with section 6 of the Constitution which prescribes the officially recognised languages.

In brief therefore, the Bill amends various provisions of the Act so that it complies with these various provisions of the Constitution. It is essential to note that, because some of the rights are subject to the availability to the State of resources necessary to enable the enjoyment of the rights, the amendments have been couched so as to take this into account. Similarly, it is also essential to take account of section 86 of the Constitution with respect to what extent legislation may limit any rights.

In more detail the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause inserts or amends certain definitions of words and phrases to be used in the principal Act.

Clause 3

Sets out grounds for non-discrimination as provided in the Constitution of Zimbabwe in the provision of education in Zimbabwe.

Clause 4

This clause places the duty on the State to fund basic education within the limits of resources available. Where there are no resources parents or guardians should make sure that every child attains basic education.

Clause 5

This clause places the duty on every local authority in Zimbabwe to provide land for schools and relevant infrastructure.

Clause 6

This clause provides for the enrolment of learners at the nearest school from the place of residence. In case where the nearest school is fully enrolled a certificate given to the learner for purposes of enrolling at an alternative school should take into consideration the location and proximity of the schools.

Clause 7

This clause repeals section 11 of the Principal Act.

Clause 8

This clause provides that in prescribing fees at Government schools the Minister shall take into consideration the location and status of school.

Clause 9

This clause provides for the payment of a registration and annual fee by every registered school which is not a government or faith-based school.

Clause 10

This clause provides for every registered school to offer non formal education including adult education.

Clause 11

This clause provides that the National Education Advisory Board should meet quarterly, or any other shorter period as the Minister may fix, for the dispatch of its business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.

Clause 12

This clause provides that every school shall endeavour to teach every officially recognised language, ensure that the language of instruction shall be the language of instruction and use mother tongue as medium of instruction for early childhood education.

The clause also provides that every school curriculum shall also strive to reflect the culture of every language taught.

Clause 13

This clause provides for the appointment of sexual and reproductive health personnel in schools.

Clause 14

This clause gives the Minister the power to make regulations for the use of emerging technologies in education and the manner in which feeding schemes may be conducted at schools.

Clause 15

This clause sets out new sections to be inserted in the principal Act to deal with the following;

Pupil discipline

This will obligate every responsible authority to draw up a disciplinary policy for the school in accordance with the standard set out by the Minister.

Pupil with disability

This section will make it obligatory for every registered school to provide infrastructure, subject to availability of resources, suitable for use by learners with disabilities. For the purposes of fees approval every registered school shall submit a plan highlighting how the school shall advance the rights of learners with disabilities.

Basic education fund

This section will provide for a fund for the purposes of funding infrastructure and payment of fees for those who cannot genuinely afford. The activities of the fund shall be funded by monies appropriated by Parliament, donations, grants or bequests approved by the Minister and a building fund which may from time to time be levied on the approved school fees of every registered school.

Non exclusion of Pupils from school

This section provides that no pupil shall be excluded from school for non-payment of school fees or on the basis of pregnancy.

BILL

To amend the Education Act [*Chapter 25:04*]; and to provide for matters connected with or incidental the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

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PART I

PRELIMINARY

1 Short title

This Act may be cited as the Education Amendment Act, 2019.

2 Amendment of section 2 of Cap 25:04

10 Section 2 (“Interpretation”) of the Education Act [*Chapter 25:04*] (hereinafter called the “principal Act”) is amended—

(a) by the insertion of the following definitions—

“adult basic education” means any educational training for a person beyond the age of a child of school-going age”;

15 “basic education” means education from early childhood education up to the fourth form and any other category as may be declared as such by the Minister by Notice in the *Gazette* from time to time;

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“basic state funded education” means

- (a) education from early childhood education up to grade seven;
or
- (b) adult education up to grade seven; or
- (c) any other category as may be declared as such by the Minister by notice in the *Gazette* from time to time: 5

subject to the provisions of section 75 of the constitution.

“formal education” means education conducted in terms of the curriculum and procedures determined by the Secretary in accordance with the provisions of section 63; 10

“further education” means education from Advanced Level and all studies above that including vocational training, degree and diploma programmes across all subject disciplines;

“non-formal education” means educational instructions received by persons who are not in the formal education system including adult education; 15

“special needs education” means specially designed instructional arrangements which are designed to meet the unique needs of pupils with disability;

- (b) by the repeal of the definition of “Pre-school” and the substitution of the following— 20

“Early Childhood Development” means the physical, mental and social development of children between the ages of four and five years.”.

3 Amendment of section 4 of Cap 25:04

Section 4 (“Children’s fundamental right to education in Zimbabwe”) subsection (2)(b) of the principal Act is repealed and substituted with the following— 25

- “(b) be discriminated against by the imposition of onerous terms and conditions in regard to his or her admission to any school on the grounds of his or her nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.”. 30

4 New section substituted for section 5 of Cap 25:04

Section 5 (“Compulsory education”), of the principal Act is repealed and substituted with the following— 35

“5. Compulsory education

- (1) Every child shall be entitled to basic state funded education.”.

5 Amendment of section 8 of Cap 25:04

Section 8 (“General duty of local authorities”) is amended by the insertion of the following subsection— 40

- (2) Every local authority in Zimbabwe shall provide land for school infrastructure.

6 New section substituted for section 10 of Cap 25:04

Section 10 (“Children’s entitlement to enrolment at schools”) of the principal Act is repealed and substituted with the following— 45

“10 Enrolment at schools

(1) In this section “school” means government school.

5 (2) Every child of school going age shall be entitled to be enrolled at the primary or secondary school, as the case may be, nearest to the place where he or she is ordinarily resident, unless such primary or secondary school is fully enrolled.

10 (3) Where the primary or secondary school at which a child of school going age has sought enrolment in terms of subsection (2) is unable to enrol the child because the school is fully enrolled, the head of that school shall forthwith issue to the child a certificate in writing certifying that fact:

Provided that—

15 (i) the head of the school shall not issue such certificate where it is apparent that the enrolment of such child at the next nearest school is impossible due to the inaccessibility of such nearest school;

(ii) the head of the school shall enrol the child at such nearest school.

20 (4) Where a child who has been issued with a certificate in terms of subsection (3) applies for enrolment at the next nearest school and produces such certificate, it shall be *prima facie* evidence of the facts stated therein.”.

7 Repeal of section 11 of Cap 25:04

Section 11 of the Principal Act is repealed.

25 **8 Amendment of section 13 of Cap 25:04**

Section 13 (“Prescribing of fees at Government schools”) (4) of the principal Act is repealed and substituted with the following—

“(4) In prescribing fees in terms of subsection (1) the Minister shall take into consideration the location and status of school.”.

30 **9 Amendment of section 15 of Cap 25:04**

Section 15 (“Registration of non-Government schools”) of the principal Act is amended by the insertion after section (6) of the following section—

35 “(7) Every school other than a government or faith-based school shall pay a registration and an annual fee as may be prescribed from time to time by the Minister.”.

10 Amendment of section 25 of Cap 25:04

Section 25 (“Adult education”) of the principal Act is amended by the insertion after paragraph(b) of the following paragraph—

40 “(c) every school shall endeavour to offer non formal education including adult education.

11 Amendment of section 33 of Cap 25:04

Section 33 (“Meetings and Procedure of Board”) (1) of the principal Act is repealed and substituted with following section—

“(1) Subject to this section and to any directions given to it by the Minister, the Board shall meet quarterly, or any other shorter period as the Minister may fix, for the dispatch of its business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit.”.

12 Amendment of section 62 of Cap 25:04 5

Section 62(“Languages to be taught in schools”) of the principal Act is repealed and the following is substituted—

“62 Languages to be taught in public schools

- (1) Every school shall endeavour to—
 - (a) teach every officially recognised language; 10
 - (b) ensure that the language of instruction shall be the language of examination;
 - (c) ensure that the mother tongue is to be used as a medium of instruction at early childhood education.

(2) School curricula shall as far as possible reflect the culture of the people of every language used or taught in terms of this section. 15

(3) The use of any language in terms of subsections (1) and (2) shall be subject to—

- (a) the availability of resources to the State for giving effect to these provisions; and 20
- (b) the availability of teachers, examiners, textbooks and other educational materials necessary for instruction in and of any of the languages.”.

13 Amendment of section 64 of Cap 25:04

Section 64(“Health in schools”) of the principal Act is amended by the insertion after paragraph (j) of the following paragraph— 25

“(k) the appointment of sexual and reproductive health personnel.”.

14 Amendment of section 69 of Cap 25:04

Section 69(“Regulations”) of the principal Act is amended by the insertion after (n1) of the following paragraphs— 30

“(n2) the use of emerging technologies in education; or

(n3) the manner in which feeding schemes may be conducted at schools.”.

15 New sections inserted after section 68 of Cap 25:04

The Principal Act is amended by the insertion of the following sections after section 68— 35

“68A Pupil discipline

(1) The responsible authority of every school shall draw up a disciplinary policy for the school in accordance with standards set out in regulations prescribed by the Minister for the purpose.

(2) The regulations and any disciplinary policy shall— 40

- (a) not permit any treatment which—
 - (i) does not respect the human dignity of a pupil; or

(ii) amounts to physical or psychological torture, or to cruel, inhuman or degrading treatment or punishment;

(b) prescribe the manner in which any punishment may be administered.

5 (3) Disciplinary measures must be moderate, reasonable and proportionate in the light of the conduct, age, sex, health and circumstances of the pupil concerned and the best interests of the child shall be paramount.

(4) No pupil may be suspended from school without first being granted a reasonable opportunity, with the support of his or her parents, to make representations with respect to the proposed suspension.

10 (5) Under no circumstance is a teacher allowed to beat a child.

68B Pupil with disability

(1) Every registered school shall provide infrastructure, subject to availability of resources, suitable for use by pupils with disabilities.

15 (2) The Secretary shall monitor and enter premises of every registered school for the purposes of ascertaining whether the rights of pupils with disabilities are taken into account during teaching and learning.

(3) For the purposes of fees approval, the Secretary shall require every registered school to submit a plan highlighting how the school shall advance the rights of pupils with disabilities.

68C Basic Education Fund

(1) Subject to the Audit Office Act [*Chapter 22:18*] and the Public Finance Management Act [*Chapter 22:19*], the Minister shall establish a fund to be known as the Basic Education Fund for the purposes of funding—

- 25 (a) infrastructure;
(b) payment of fees for pupils who genuinely cannot afford.

(2) Activities of the Fund shall be funded by monies—

- (a) appropriated by Parliament; or
30 (b) donations, grants or bequests approved by the Minister.

68D Non exclusion of pupils from school

(1) No pupil shall be excluded from school for non-payment of school fees or on the basis of pregnancy.”.