**PROPOSED DRAFT PUBLIC SERVICE AMENDMENT BILL**

 **MEMORANDUM**

*Clause 1*

This clause sets out the Bill’s short title

*Clause 2*

This clause defines the Labour Court

This clause seeks to delete reference to recognized association or organization and substitute it with registered trade union

This clause also seeks to introduce and define the term ‘Registrar’

*Clause 3*

This clause sets out to substitute reference to section 92 of the Constitution of Zimbabwe with section 162 of the Constitution of Zimbabwe

*Clause 4*

The clause seeks repeal section 19 of the Principal Act to introduce sections providing for the right to collective bargaining in line with the Constitution of Zimbabwe and Convention 98

*Clause 5*

This clause seeks to introduce sections providing for the right to strike and lock out

*Clause 6*

This clause seeks to repeal section 24 and introduce the right to organize in line with Convention 87

 PUBLIC SERVICE AMENDMENT BILL

 BILL

To amend the Public Service Act *[Chapter 16:04]*; and to provide for matters connected therewith or incidental thereto.

1. **Short title**

This Act may be cited as the Public Service Amendment Act, 2024

1. **Amendment of section 2 of Cap 16:04**

Section 2 of the Principal Act is amended-

By the deletion of ‘’Labour Act [Chapter 28:01]’’ and the substitution of ‘’the Constitution of Zimbabwe’’

 By the deletion of ‘’ “recognized association or organisation means an association or organisation declared to be a recognized association or recognized organisation, as the case may be, in terms of subsection (1) of section *twenty four’’* and the substitution of “trade union means any association or organization formed to represent or advance the interests of any employees or class thereof in respect of their employment’’

 By the insertion of the following definition-

 ‘’Registrar’’ means the Registrar of Labour and such number of Assistant Registrars of Labour as provided for in s 121 of the Labour Act

1. **Amendment of section 14 of Cap. 16:04**

Section 14 of the principal Act is amended-

In paragraph (a) by the deletion of ‘‘section 92’’ and the substitution of ‘’section 162’’

1. **Amendment of section 19 of Cap. 16:04**

 Section 19 is repealed and substituted with the following sections-

**19A Collective bargaining**

Establishment of Bargaining Council

1. A bargaining council for the civil service, to be known as the Public Service Bargaining Council hereinafter referred to as" the Council", shall be established and registered in terms of this Part.
2. As soon as practicable after the commencement of this Act, the representatives of the Government in its capacity as an employer and registered trade unions or Federations whose members are public officers to whom this Act applies, shall conclude an agreement on a Constitution for the Council.
3. The Constitution of the Council shall provide, amongst other things, for the following matters-

(a) the category or categories of employees to be covered by the Council;

(b) the appointment, number and method of selection of employer and employee

 representatives;

(c) the appointment, number and method of selection of a Chairperson and Deputy Chairperson of the Council;

(d) the appointment and method of selection of a Secretary of the Council;

(e) the procedure for the appointment of alternative members of the Council;

 (f) the number of members required to form a quorum;

(g) the procedure for the replacement of members;

(h) the term of office of members of the Council and office holders;

(i) the procedure to be followed in the event of a dispute or deadlock in the Council;

(j) the methods by which persons affected by any collective agreement made or amended by the Council shall be informed thereof; and

 (k) thresholds for the admission of trade union parties to the Council;

1. The Council shall consist of representatives of the Government in its capacity as employer, and representatives of trade unions admitted, in accordance with the Council's constitution.
2. The functions of the Council shall be to-

 (a) negotiate, conclude and enforce collective bargaining agreements between the employer and registered civil service trade unions or Federations in respect of any conditions of employment which are of mutual interest to the parties thereto including but not limited to—

 (*i*) rates of remuneration and minimum wages for different grades taking into consideration the needs of workers and their families, the general level of wages in the country, cost of living, social security benefits, and the relative living standards of other social groups as well as economic factors including but not limited to the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

 *(ii)* types of occupations;

 (*iii*) benefits for employees;

 (*iv*) deductions which an employer may make from employees’ wages, including deductions for membership fees and union dues, and deductions which an employer may be required or permitted by law or by order of any competent court to make;

 (*v*) methods of calculating, or factors for adjusting rates of pay, and the dates, times and modes of payment;

 (*vi*) all issues pertaining to overtime, piece-work, periods of vacation and vacation pay and constraints thereon;

 (*vii*) the demarcation of the appropriate categories and classes of employment and their respective functions;

 (*viii*) the conditions of employment for apprentices;

 (*ix*) the number of hours of work and the times of work with respect to all or some of the employees;

 (*x*) the requirements of occupational safety;

 (*xi*) the maintenance of, and access by the parties to, records of employment and pay;

 (*xii*) procedures for dealing with disputes within an undertaking or industry;

 (*xiii*) housing and transport facilities or in their absence, an allowance for the same;

 (*xiii*) measures to combat workplace violence and handling its aftermath.

(b) prevent and resolve labour disputes;

(c) facilitate cooperation between the employer and public officers regarding matters affecting the service in order to increase the efficiency of the service and well being of public officers;

(d) facilitate better relations between Government as employer, and trade unions, based on mutual trust and respect; and

(e) exercise any other power or duty that may be necessary or desirable to achieve the objectives of the Council.

**19B Bargaining councils in the civil service**

1. The Council may, by resolution, in terms of its constitution-

 (a) designate any sector of the civil service for the establishment of a sectoral bargaining council;

 (b) establish thresholds for the admission of any trade union party to a sectoral bargaining council;

 (c) designate the powers and functions of such sectoral bargaining councils; and

 (d) vary the designation of, or establish, amalgamate or dissolve any sectoral bargaining

 council so established.

1. The resolution referred to in subsection (1) shall accompany the application to register, vary the application of, or register the amalgamation of, a sectoral bargaining council.

 (3) A sectoral bargaining council shall be established in accordance with the constitution of the Council.

 **19C Jurisdiction of Sectoral Bargaining Councils**

 (1) A sectoral bargaining council shall have jurisdiction in respect of matters that are specific to that sector, and in respect of which Government, as employer, in that sector, may conclude collective agreements.

 (2) The decisions of a sectoral bargaining sector shall not be binding on the Council, but the decisions of the Council shall bind the sectoral bargaining councils.

 (3) Notwithstanding the provisions of subsection (2), the sectoral bargaining councils may make recommendations to the Council, which shall then make such decision, as it considers appropriate within the scope of its constitution.

 **19D Disputes sectoral bargaining councils**

 (1) If there is a dispute between two or more sectoral bargaining councils, any party to the dispute may refer the dispute in writing to the bargaining council.

(2) The party who refers the dispute to the council must satisfy the bargaining council that a copy of the referral has been served on all other bargaining councils that are parties to the dispute.

 (3) The bargaining council must attempt to resolve the dispute as soon as possible through conciliation.

1. **New sections substituted for section 20 of Cap. 16:04**

The principal Act is amended by the repeal of section 20 and the substitution of the following section-

 **20.Right to collective job action and recourse to lock out**

 (1) Every employee has the right to collective job action and employer has recourse to lock out if-

1. the issue in dispute has been referred to a bargaining council as required by this Act, and-
2. a certificate stating that the dispute remains unresolved has been issued; or
3. a period of 14 days, or any extension of that period agreed to between the parties to the dispute, has elapsed since the referral was received by the council; and after that-
4. in the case of a proposed strike, at least 48 hours' notice of the commencement of the strike, in writing, has been given to the employer, unless the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or

 (c) in the case of a proposed lock-out, at least 48 hours' notice of the commencement of the lock-out, in writing, has been given to any trade union that is a party to the dispute, or, if there is no such trade union, to the employees, unless the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or

 (2) The requirements of subsection (1) do not apply to a strike or a lock-out if-

(a) the parties to the dispute are members of a council, and the dispute has been dealt with by that council in accordance with its constitution;

(b) the strike or lock-out conforms with the procedures in a collective agreement;

(c) the employees strike in response to a lock-out by their employer that does not comply with the provisions of this Chapter;

(d) the employer locks out its employees in response to their taking part in a strike that does not conform with the provisions of this Chapter; or

(e) the employer fails to comply with the requirements of subsections (3) and (4).

(f) the strike is done in order to avoid any occupational hazard which is reasonably feared to pose an immediate threat to the health or safety of the persons concerned:

Provided that—

(i) the occupational hazard has not been deliberately caused by the persons resorting to the

 collective job action;

(ii) the collective job action resorted to shall remain proportional in scope and locality to the

 occupational hazard in question;

(iii) the collective job action shall diminish in proportion as such occupational hazard diminishes

(3) Any employee who or any trade union that refers a dispute about a unilateral change to terms and conditions of employment to a council in terms of subsection (1)(a) may, in the referral, and for the period referred to in subsection (1)(a)-

(a) require the employer not to implement unilaterally the change to terms and conditions of employment; or

(b) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change.

 (4) The employer must comply with a requirement in terms of subsection (3) within 48 hours of service of the referral on the employer.

**20A. Limitations on right to strike or recourse to lock-out**

(1) No person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if-

(a) that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute;

 (b) that person is engaged in an essential service

**20B. Strike or lock-out in compliance with this Act**

(1) In this Chapter, "protected strike" means a strike that complies with the provisions of this Chapter and "protected lock-out" means a lock-out that complies with the provisions of this Chapter.

(2) A person does not commit a defect or a breach of contract by taking part in-

 (a) a protected strike or a protected lock-out; or

 (b) any conduct in contemplation or in furtherance of a protected strike or a protected lock-out.

 (3) An employer may not dismiss an employee for participating in a protected strike or for any conduct in contemplation or in furtherance of a protected strike.

 (4) Civil legal proceedings may not be instituted against any person for-

 (a) participating in a protected strike or a protected lock-out; or

 (b) any conduct in contemplation or in furtherance of a protected strike or a protected lock-out.

(5) The failure by a registered trade union or a registered employers' organisation to comply with a provision in its constitution requiring it to conduct a ballot of those of its members in respect of whom it intends to call a strike or lock-out may not give rise to, or constitute a ground for, any litigation that will affect the legality of, and the protection conferred by this section on, the strike or lock-out.

(6) The provisions of subsections (2) and (6) do not apply to any act in contemplation or in furtherance of a strike or a lock-out, if that act is an offence.

**20C. Strike or lock-out not in compliance with this Act**

1. In the case of any strike or lock-out, or any conduct in contemplation or in furtherance of a strike or lock-out, that does not comply with the provisions of this Chapter, the Labour Court has exclusive jurisdiction-
2. to grant an interdict or restrain;

1. any person from participating in a strike or any conduct in contemplation or in furtherance of a strike; or
2. any person from participating in a lock-out or any conduct in contemplation or in furtherance of a lock-out;
3. The Labour Court may not grant any order in terms of subsection (1)(a) unless 48 hours' notice of the application has been given to the respondent. The Court may permit a shorter period of notice if-
4. the applicant has given written notice to the respondent of the applicant's intention to apply for the granting of an order;
5. the respondent has been given a reasonable opportunity to be heard before a decision concerning that application is taken; and
6. the applicant has shown good cause why a period shorter than 48 hours should be permitted.

 (3) Despite subsection (2), if written notice of the commencement of the proposed strike or lock-out was given to the applicant at least 10 days before the commencement of the proposed strike or lock-out, the applicant must give at least five days' notice to the respondent of an application for an order in terms of subsection (1)(a).

**20D. Picketing**

1. A registered trade union may authorize a picket by its members and supporters for the purposes of peacefully demonstrating-
2. in support of any protected strike; or
3. in opposition to any lockout.
4. Despite any law regulating the right of assembly, a picket authorized in terms of subsection (1), may be held-
5. in any place to which the public has access and or inside the employer’s premises;

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**20E Temporary replacement of labour**

1. An employer may not employ any person to perform the work of a worker participating in a lawful strike.
2. A worker has the right to refuse to do any work normally performed by the worker who is participating in a lawful strike except that the worker shall not refuse to perform the work if it is necessary to secure minimum maintenance services.
3. For the purposes of this section “minimum maintenance services” are those services in an undertaken the interruption of which would result in material damage to equipment and machinery and which by agreement should be maintained during strike or lockout.

**20F Essential services committee**

(1) The Bargaining Council , must establish an essential services committee and –

1. appoint to that committee, on any terms that it considers fit, persons who have knowledge and experience of labour law and labour relations; and
2. designate one of the members of the committee as its chairperson.

(2) The functions of the essential services committee are-

1. to conduct investigations as to whether or not the whole or a part of any service is an essential service, and then to decide whether or not to designate the whole or a part of that service as an essential service;
2. to determine disputes as to whether or not the whole or a part of any service is an essential service; and
3. to determine whether or not the whole or a part of any service is a maintenance service.
4. At the request of a bargaining council, the essential services committee must conduct an investigation in terms of subsection (2)(a).

**20G Designating a service as an essential service**

1. The essential services committee must give notice in the Government Gazette of any investigation that it is to conduct as to whether the whole or a part of a service is an essential service.
2. The notice must indicate the service or the part of a service that is to be the subject of the investigation and must invite interested parties, within a period stated in the notice-
3. to submit written representations; and
4. to indicate whether or not they require an opportunity to make oral representations.
5. Any interested party may inspect any written representations made pursuant to the notice, at the bargaining council’s offices.
6. The bargaining council must provide a certified copy of, or extract from, any written representations to any person who has paid the prescribed fee.
7. The essential services committee must advise parties who wish to make oral representations of the place and time at which they may be made.
8. Oral representations must be made in public.
9. After having considered any written and oral representations, the essential services committee must decide whether or not to designate the whole or a part of the service that was the subject of the investigation as an essential service.
10. If the essential services committee designates the whole or a part of a service as an essential service, the committee must publish a notice to that effect in the Government Gazette.
11. The essential services committee may vary or cancel the designation of the whole or a part of a service as an essential service, by following the provisions set out in subsections (1) to (8), read with the changes required by the context.

**20H. Minimum services**

The essential services committee may ratify any collective agreement that provides for the maintenance of minimum services in a service designated as an essential service, in which case-

(a) The agreed minimum services are to be regarded as an essential service in respect of the employer and its employees; and

(b) The provisions of section 20F do not apply.

**20I. Disputes about whether a service is an essential service**

(1) Any party to a dispute about either of the following issues may refer the dispute in writing to the essential services committee-

1. whether or not a service is an essential service; or
2. Whether or not an employee or employer is engaged in a service designated as an essential service.
3. The party who refers the dispute to the essential services committee must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
4. The essential services committee must determine the dispute within 30 days from the date of referral of the matter.

**20J Disputes in essential services**

1. In any industrial dispute that affects workers engaged in an essential service, the parties to the dispute shall endeavor to settle the dispute within three days of the occurrence of the dispute by negotiation.
2. If after the expiration of the three days, the dispute remains unresolved, the parties shall within twenty-four hours of the expiry of the three days, refer the dispute to an arbitrator for settlement.
3. The Arbitrator shall take immediate steps, but not later than three days after the dispute has been referred to him, to settle the dispute by arbitration.

**20K Prohibition of strike or lockout in respect of essential services**

 An employer carrying on or a worker engaged in, an essential service shall not resort to a lockout or strike in connection with or in furtherance of any industrial dispute involving the workers in the essential service.

1. **New sections substituted for section 24 of Cap. 16:04**

The principal Act is amended by the repeal of section 24 and the substitution of the following sections-

 **24 Freedom of Association**

1. Every worker has the right to form or join a trade union of his or her choice for the promotion and protection of the worker’s economic and social interests.
2. Notwithstanding subsection (1), a worker whose function is normally considered as

 a. policy making;

 b. decision making;

 c. managerial;

 d. performing duties that are of highly confidential nature; or

1. Subject to subsection (4), the classes of workers referred to in subsection (2) shall be determined by the bargaining council.
2. In determining whether a worker falls within the class of workers referred to in subsection (2), the parties shall consider the organizational structure, job descriptions or functions of the worker concerned and international best practices and standards

**24A Rights and privileges of a trade union**

1. Every trade union shall be entitled to have—
2. authorized representatives of the union granted access to the employer's premises for purposes of recruiting members, holding meetings or representing members;
3. trade union dues and levies deducted from employees’ wages on the written authorization of the employees; and
4. trade union representatives appointed by the union for purposes of representing members of the union in respect of-
5. grievances,
6. discipline, and
7. termination of employment.

 (3) An employee who authorizes a deduction of trade union dues and levies may withdraw

 That authorization in writing.

(4) If the Constitution of a trade union requires the election of trade union representatives at the workplace, the employer shall, subject to reasonable limitations as to place and time, permit the elections during working hours.

(5) Unless there is a collective agreement providing otherwise, any dispute concerning the

 provisions of this section shall be referred to the Council in accordance with the provisions of this Act, for mediation.

(6) If the dispute is not settled within 30 days of the referral, any party may refer the dispute to the Labour Court for determination.

**24B Formation of trade union or employers’ organization**

1. Thirty or more workers employed in the civil service may form a trade union

 (2) Every trade union has the right to;

1. draw up its constitution and rules, elect its officers and representatives;

 (b) organize its administration and activities and formulate its own

 programmes;

 (c) take part in the formulation, and become a member of any federation of

 trade unions and participate in its lawful

 activities; and

 (d) affiliate to and participate in the activities of, or join an international

 workers’ organizations.

(3) A trade union shall not be subject to the control of or be financially or materially aided by a political party or employer

(4) A trade union shall apply in writing to the Registrar to be registered

(5) An application for registration under subsection (5) shall be submitted with the constitution, rules, names of officers and office address of the trade union or employers’ organization.

(6) If, after considering the application, the Registrar is satisfied that;

1. there has been compliance with subsection (6);
2. the internal organization of the trade union or employers’ organization conforms to democratic principles;
3. the name of the trade union or employers’ organization does not closely resemble that of another registered trade union , so as to mislead or confuse the public;

The Registrar shall register the trade union

(7) A trade union registered shall be issued with a certificate of registration by the Registrar.

(8) The rules of a trade union shall include provisions in respect of the following matters:

1. the registered office to which correspondence and notices may be addressed;
2. the principal objects of the trade union
3. the qualifications for membership;
4. the grounds on which an officer or a member may be suspended or

 dismissed from office or membership;

 (e) the procedure for suspension or dismissal of an officer or a member;

 (f) the membership fees and other subscriptions payable;

 (g) the manner of dissolution of the trade union and disposal of its assets;

 (h) the manner of altering, amending or revoking its constitution or rules; and

1. the powers, functions and duties of officers of the trade union .

**24C Register of trade unions**

The Registrar shall keep and maintain a register of trade unions which shall be entered the prescribed particulars relating to them and any alterations or changes affecting them.

**24D Protection against discrimination**

1. A trade union shall not discriminate in its constitution or rules against any person on grounds of race, place of origin, political opinion, colour, religion, creed, gender, ethnicity or disability.
2. The Registrar shall not register a trade union which contravenes subsection (1), unless the trade union takes steps to rectify the defect in its constitution or rules within 60 days.

**24E Leave for trade union activities**

An employee who is an office-bearer of a trade union, or of a federation of trade unions to which the trade union is affiliated, is entitled to take reasonable leave during working hours for the purpose of performing the functions of that office.

**24F Effect of registration**

The rights and powers conferred on trade unions under this Act shall be exercised only if the trade unions are registered in accordance with this Part.

**24G Change of name**

1. A trade union may change its name in accordance with the requirements of its constitution or rules.
2. A change of name shall not affect any rights or obligations of the trade union or its member

**24H Amalgamation**

Any two or more trade unions may in accordance with the requirements of their constitutions or rules, amalgamate to form one trade union

**24I Registration of change of name and amalgamation**

1. A written notice concerning a change of name and minutes of the union’s resolution to change the name or amalgamate duly signed by officers of the trade union or the amalgamated trade union shall be registered with the Registrar within fourteen days after the change of name or amalgamation.
2. The Registrar shall direct the officer of a trade union which fails to comply with subsection (1) to do so within 60 days and the union shall comply with the direction failing which the change shall not be valid.

**24J Alteration of rules**

1. Any alteration of the rules of a trade union shall be registered with the Registrar by the trade union
2. The Registrar shall direct the trade union which fails to comply with subsection (1) to do so within 60 days , and the trade union shall comply with the direction.

**24K Federation**

A federation of trade unions shall be subject to all the provisions of this Act applicable to trade unions .

**24L Accounts and audit**

(1) A trade union registered under this Act

 Shall;

1. keep books and records of accounts of its income, expenditure,

 assets and liabilities; and

1. prepare annual financial statements consisting of all income and expenditure statements in respect of each financial year of the trade union and a balance sheet showing its assets, liabilities and financial position at the end of that financial year.

 (2) The books and records of accounts and financial statements shall be audited within six months after the end of its financial year by an auditor appointed by the trade union

**25M Audited financial statements**

 A trade union shall, within 90 days after the end of its financial year, submit to the Registrar a copy of its audited financial statement.

1. If a trade union fails to submit the audited financial statements, the Registrar shall summon such union to a hearing within 30 days. The Registrar shall make such decision to either suspend the trade union concerned or rescind its registration and shall publish such decision in the government gazette.

**25N** **Right of appeal**

 An applicant who is aggrieved by a decision of the Registrar—

1. to register a trade union or
2. not to register a trade union ; or
3. to vary, suspend or rescind the registration of a trade union or to decline such variation, suspension or rescission; or
4. may, appeal to the Labour Court.