



ZIMBABWE

ACT

To amend the Criminal Procedure and Evidence Act [*Chapter 9:07*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the Parliament of Zimbabwe.

**1 Title**

This Act may be cited as the Criminal Procedure and Evidence Amendment Act, 2004.

**2 Amendment of section 25 of Cap. 9:07**

Section 25 ("Arrest without warrant by peace officer or other officer") of the Criminal Procedure and Evidence Act [*Chapter 9:07*] (hereinafter called "the principal Act") is amended in subsection (1) by the repeal of paragraph (b) and the substitution of—

"(b) any person whom he or she has reasonable grounds to suspect of having committed any of the offences mentioned in the First Schedule or the Ninth Schedule:

Provided that if, in the case of an offence mentioned in the Ninth Schedule, the peace officer or other officer concerned has reason to believe that the offence is sufficiently serious to justify the issue by the Attorney-General of a certificate referred to in subsection (3b) of section *thirty-two*, the officer concerned shall not effect an arrest in terms of this paragraph—

- (i) unless he or she is a police officer who is of or above the rank of assistant inspector, or is given leave by such an officer to effect the arrest; and

- (ii) where the alleged offence is disclosed by an anonymous complainant, unless the officer concerned immediately (and in any case no later than the end of the day on which the complaint is received) records in writing the particulars, time and date of such complaint and the manner in which it was made;”

### 3 Amendment of section 32 of Cap. 9:07

Section 32 (“Procedure after arrest without warrant”) of the principal Act is amended—

- (a) in subsection (2)—
  - (i) by the deletion of “Subject to subsections (3) and (4)” and the substitution of “Subject to subsections (3a), (3b) and (3c)”;
  - (ii) by the repeal of the proviso;
- (b) by the insertion after subsection (3) of the following subsections—

“(3a) Where the person arrested without warrant is charged with any offence referred to in paragraph 10 of the Third Schedule and the judge or magistrate before whom the person is brought in terms of this section is satisfied that there is a reasonable suspicion that the person committed the offence, the judge or magistrate shall order that person’s further detention or issue a warrant for his or her further detention for a period of twenty-one days.

(3b) Where the person arrested without warrant is charged with any offence referred to in the Ninth Schedule and there is produced to the judge or magistrate before whom the person is brought in terms of this section—

- (a) a certificate issued by or on behalf of the Attorney-General stating that, in the Attorney-General’s opinion—
  - (i) the offence in question involves significant prejudice or significant potential prejudice to the economy or other national interest of Zimbabwe; and
  - (ii) the further detention of the person arrested for a period of up to twenty-one days is necessary for any one or more of the following reasons—
    - A. the complexity of the case; or
    - B. the difficulty of obtaining evidence relating to the offence in question; or
    - C. the likelihood that the person arrested will conceal or destroy the evidence relating to the offence in question or interfere with the investigation of the offence or both;

and

- (b) the following, where the arrest is made in the circumstances referred to in paragraph (b) of subsection (1) of section *twenty-five*—
  - (i) proof that the arresting officer was an officer of or above the rank of assistant inspector at the time of the arrest, or that the arresting officer made the arrest with the prior leave of such an officer; and

- (ii) where the alleged offence was disclosed through an anonymous complaint, a copy of the complaint as recorded in accordance with subparagraph (ii) of the proviso to paragraph (b) of subsection (1) of section *twenty-five*;

the judge or the magistrate shall, if satisfied that there is a reasonable suspicion that the person committed the offence, order that person's detention or issue a warrant for his or her further detention for a period of twenty-one days or the lesser period specified in the certificate.

(3c) A person referred to in subsection (3a) or (3b) shall, unless the charge or charges against him or her are earlier withdrawn, remain in detention for twenty-one days or the lesser period specified in a certificate mentioned in subsection (3b), as the case may be, from the date when an order or warrant for the person's further detention was issued in terms of the relevant subsection, and no court shall admit such person to bail during that period.

(3d) A person referred to in subsection (3a) or (3b) may continue to be detained after the expiry of the period referred to in subsection (3c) pending the outcome of investigations into the charge or charges against him or her if (without prejudice to the person's right to apply for bail) an order or warrant for that person's further detention is obtained from a judge or magistrate in terms of section *thirty-three* within forty-eight hours of the expiry of the period referred to in subsection (3c).";

- (c) by the repeal of subsection (4).

#### 4 Amendment of section 34 of Cap. 9:07

Section 34 ("Execution of warrants") of the principal Act is amended by the insertion after subsection (3) of the following subsections—

"(4) If a person arrested by virtue of a warrant is charged with any offence referred to in—

- (a) paragraph 10 of the Third Schedule, and the judicial officer before whom the person is brought in terms of this section is satisfied that there is a reasonable suspicion that the person committed the offence, the judicial officer shall order that person's continued detention for a period of twenty-one days; or
- (b) the Ninth Schedule and there is produced to the judicial officer before whom the person is brought in terms of this section a certificate issued by or on behalf of the Attorney-General in the same terms as those specified in subsection (3b) of section *thirty-two*, the judicial officer shall, if satisfied that there is a reasonable suspicion that the person committed the offence, order that person's continued detention for a period of twenty-one days or the lesser period specified in the Attorney-General's certificate.

(5) A person referred to in subsection (4) shall, unless the charge or charges against him or her are earlier withdrawn, remain in detention for twenty-one days or the lesser period specified in a certificate mentioned in paragraph (b) of subsection (4), as the case may be, from the date when an order for the person's further detention was issued in terms of that subsection, and no court shall admit such person to bail during that period.

(6) A person referred to in subsection (4) may continue to be detained after the expiry of the period referred to in subsection (5) pending the outcome of investigations

into the charge or charges against him or her if (without prejudice to the person's right to apply for bail) an order or warrant for that person's further detention is obtained from a judge or magistrate within forty-eight hours of the expiry of the period referred to in subsection (5)."

#### **5 Amendment of section 116 of Cap. 9:07**

Section 116 ("Power to admit to bail") of the principal Act is amended in subsection (1) by the deletion of "Subject to this section" and the substitution of "Subject to this section and sections *thirty-two* and *thirty-four*."

#### **6 Amendment of section 121 of Cap. 9:07**

Section 121 ("Appeals against decisions regarding bail") of the principal Act is amended by the repeal of subsection (8) and the substitution of—

"(8) There shall be no appeal to a judge of the Supreme Court from a decision or order of a judge of the High Court in terms of paragraph (b) of subsection (2), unless the decision or order relates to the admission or refusal of admission to bail of a person charged with any offence referred to in—

- (a) paragraph 10 of the Third Schedule; or
- (b) the Ninth Schedule in respect of which the Attorney-General has issued a certificate referred to in subsection (3b) of section *thirty-two*;

in which event subsections (3) to (7) shall apply to such appeal."

#### **7 New sections substituted for section 223 of Cap. 9:07**

Section 223 of the principal Act is repealed and the following sections are substituted—

##### **"223 Conviction for crime other than that charged**

Where a person is charged with an offence the essential elements of which include the essential elements of some other offence, he or she may be found guilty of such other offence, if such are the facts proved and if it is not proved that he or she committed the offence charged.

##### **223A Conviction for part of crime charged**

For the avoidance of doubt it is declared that where a court finds that part but not all of the facts of an offence charged have been proved, it shall nevertheless convict the accused of that offence if the facts that are proved disclose all the essential elements of that offence."

#### **8 Amendment of First Schedule to Cap. 9:07**

(1) The First Schedule ("Specified Offences in Relation to Powers of Arrest") of the principal Act is amended by the repeal of paragraph 2 and the substitution of—

"2. Any offence in terms of any enactment in respect of which a punishment of a period of imprisonment exceeding six months is provided and may be imposed without the option of a fine."

(2) The amendment made by subsection (1) is for the sole purpose of clarifying the meaning of the provision amended and does not affect the validity of anything done in connection with such provision before the date of commencement of the Criminal Procedure and Evidence Amendment Act, 2004."

### 9 Amendment of Fifth Schedule to Cap. 9:07

The Fifth Schedule ("Offences in Connection with Which Bail May not be Granted in terms of Section 132 (1)") of the principal Act is amended by the repeal of paragraphs 10, 11 and 12 and the substitution of—

- "10. Contravening section 5, 6, 7, 8, 9, 10 or 11 of the Public Order and Security Act [*Chapter 11:17*].
11. Any conspiracy, incitement or attempt to commit an offence specified in paragraphs 1 to 10.
12. Any offence referred to in the Ninth Schedule in respect of which the Attorney-General has issued a certificate referred to in subsection (3b) of section *thirty-two* or paragraph (a) of subsection (3c) of section *thirty-four*."

### 10 New Schedule added to Cap. 9:07

The principal Act is amended by the insertion after the Eighth Schedule of the following Schedule—

#### "NINTH SCHEDULE (Sections 25 (1) (b) and 32 (3b))

##### OFFENCES INVOLVING CORRUPTION, ORGANISED CRIME OR HARM TO THE NATIONAL ECONOMY

1. Contravening the Prevention of Corruption Act [*Chapter 9:16*].
2. Contravening section 63 ("Money-laundering") of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*].
3. The sale, removal or disposal outside Zimbabwe of any controlled product in contravention of the Grain Marketing Act [*Chapter 18:14*].
4. Any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones.
5. Any offence under any enactment relating to the unlawful dealing in habit-forming drugs.
6. Contravening section 42 ("Offences relating to banknotes") of the Reserve Bank Act [*Chapter 22:15*] or committing any offence relating to the coinage.
7. Contravening subparagraph (i) of paragraph (a) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] as read with—
  - (a) subsection (1) of section 4 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996 (in this paragraph and paragraph 8 called "the Exchange Control Regulations"), by dealing in any foreign currency in contravention of paragraph (a) or (b) of that provision of the Regulations without the permission of an exchange control authority;
  - (b) subsection (1) of section 10 of the Exchange Control Regulations, by unlawfully making any payment, placing any money or accepting any payment in contravention of paragraph (a), (b), (c) or (d) of that provision of the Regulations;
  - (c) paragraph (a) or (b) of subsection (1) of section 11 of the Exchange Control Regulations, by unlawfully making any payment outside Zimbabwe or incurring an obligation to make any payment outside Zimbabwe;
  - (d) paragraph (b), (e) or (f) of subsection (1) of section 20 of the Exchange Control Regulations, by unlawfully exporting any foreign currency, gold, silver or platinum, or any article manufactured from or containing gold, silver or platinum, or any precious or semi-precious stone or pearl from Zimbabwe;

- (e) subsection (2) of section 21 of the Exchange Control Regulations, by unlawfully exporting any goods from Zimbabwe in contravention of that provision of the Regulations.
8. Contravening paragraph (b) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] by making any false statement or producing any false document in connection with a contravention of subsection (2) of section 21 of the Exchange Control Regulations.
  9. Theft of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*].
  10. Theft or forgery of—
    - (a) a document issued to a person in terms of subsection (1) or (2) of section 7 of the National Registration Act [*Chapter 10:17*], or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or
    - (b) any visitors entry certificate or other certificate or permit issued to a person in terms of the Immigration Act [*Chapter 4:02*], or in terms of any enactment relating to refugees; or
    - (c) any passport, identity document or drivers licence issued by a foreign government; or
    - (d) a vehicle registration plate; or
    - (e) any documentation relating to the registration or insurance of a motor vehicle.
  11. Theft of a bovine or equine animal.
  12. A conspiracy, incitement or attempt to commit any offence referred to in paragraphs 1 to 11.”.