

CHAPTER 14:32

NATIONAL INCOMES AND PRICING COMMISSION ACT

Act 2/2007, 2/2008. SI 159A/2007.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.
- 2A. State to be bound.

PART II

NATIONAL INCOMES AND PRICING COMMISSION

3. Establishment of National Incomes and Pricing Commission.
4. Composition of Commission.
5. Functions of Commission.
6. Powers of Commission.
7. Policy directions.
8. Execution of contracts and instruments by Commission.
9. Reports of Commission and supply of information to Minister.

PART III

SECRETARIAT OF COMMISSION

10. Secretariat of Commission.
11. Chief Executive Officer.
12. Employees of Commission.

PART IV

FINANCIAL PROVISIONS

13. Funds of Commission.
14. Investment of moneys not immediately required by Commission.
15. Accounts of Commission.
16. Audit of Commission's accounts.
17. Powers of auditors.

PART IVA

CONTROL OF INCOMES, RENTALS AND SERVICE CHARGES

- 17A. Interpretation in Part IVA.
- 17B. Remuneration.
- 17C. Leases.
- 17D. Service charges.
- 17E. Commission may fix standard for rentals and service charges.
- 17F. Application of Part IVA to statutory bodies.
- 17G. Offences against Part IVA.

PART V

GENERAL

18. Power to obtain information.
19. Inspectors.
20. Powers of entry and inspection.
- 20A. Prices of goods.
- 20B. Commission may fix standard for prices of goods.

21. Refusal to sell goods.
22. Display of prices of goods on sale.
23. Conditional selling.
24. Preservation of secrecy.
25. Exemption of Commission from liability.
26. General offences and penalties.
27. Regulatory powers of the Commission.
28. Amendment of Cap. 14:05 and Statutory instrument 334 of 2001.

SCHEDULES

First Schedule: Provisions applicable to the Commission.

Second Schedule: Powers of Commission.

AN ACT to establish a National Incomes and Pricing Commission and to confer powers and functions on such a Commission in relation to incomes and pricing issues; to regulate the implementation of policies related to the determination of incomes and prices; to amend the Control of Goods Act [Chapter 14:05]; and to provide for matters connected therewith or incidental thereto.

[Date of commencement : 21st May, 2007.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the National Incomes and Pricing Commission Act [*Chapter 14:32*].

2 Interpretation

In this Act—

“chairperson” means the chairperson of the Commission designated in terms of paragraph 5 of the First Schedule and includes the deputy chairperson of the Commission when performing the chairperson’s functions;

“Commission” means the National Incomes and Pricing Commission established in terms of section 3;

“commissioner” means a member of the Commission, including the chairperson and deputy chairperson;

“consumer” includes any person who purchases or offers to purchase goods otherwise than for the purpose of resale, but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale;

“customer” means a person who purchases goods or services from another person;

“document” includes—

- (a) a book, plan, paper, parchment or other material on which there is writing or painting, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them;
- (b) a disc, tape, paper, or other device from which sounds or messages are capable of being reproduced; and
- (c) any other record of information;

“financial year”, in relation to the Commission, means the period of twelve months ending on the 31st December;

“goods” means articles or things of any kind whatsoever that are capable of being owned or possessed including—

- (a) anything capable of being imported or exported; and
- (b) any kind of manufactured or unmanufactured commodity; and
- (c) any kind of animal or plant life;

“inspector” means a person designated as an inspector in terms of section 19;

“local industry” means the persons who in Zimbabwe are engaged in the business of producing or providing, otherwise than by importation, goods or services for consumption in or export from Zimbabwe, and includes any class of such persons;

“Minister” means the Minister of Industry and International Trade or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“premises” includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

“price” includes—

- (a) a charge of any description; and

- (b) in relation to goods or services, any pecuniary benefit, whether direct or indirect, received by a person for or in connection with the supply by the person of the goods or services;
- “price monitored or controlled goods and services” means goods and services whose prices are monitored or controlled by the Control of Goods Act [*Chapter 14:05*] or any other enactment;
- “pricing violations” means violations of any enactment relating to price monitored or controlled goods and services;
- “regulatory authority” means an entity established in terms of an enactment responsible for regulating an industry;
- “respondent” means a person against whom a complaint of a prohibited practice has been initiated in terms of this Act;
- “sale” includes an agreement to sell or offer for sale and includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;
- “services” includes the rights or benefits provided under an agreement for the performance of work (otherwise than under a contract of service), whether with or without the supply of goods.

2A State to be bound

This Act shall bind the State.

[Section inserted by Act 2 of 2008]

PART II

NATIONAL INCOMES AND PRICING COMMISSION

3 Establishment of National Incomes and Pricing Commission

There is hereby establish a commission, to be known as the National Incomes and Pricing Commission, which 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 a body corporate may by law perform.

4 Composition of Commission

(1) Subject to subsection (2), the Commission shall consist of not less than nine or more than twelve commissioners appointed by the President.

[Subsection substituted by Act 2 of 2008]

(2) The provisions relating to the terms and conditions of office, vacation of office, filling of vacancies, meetings and procedures of the Commission and other related matters are set out in the First Schedule.

5 Functions of Commission

The functions of the Commission shall be to—

- (a) undertake research and maintain a comprehensive nationwide statistical database to be used in the analysis of pricing and production costs across all sectors of the economy and developing periodic pricing policy models, frameworks and strategies;
- (b) monitor price trends of goods and services through comprehensive surveys and inspections, producing periodic price monitoring reports and initiating corrective measures in cases of unscrupulous business practices affecting Zimbabwe’s pricing system;
- (c) consider, approve or determine, as the case may be—
 - (i) requests for price adjustments of price monitored or controlled goods and services and the impact thereof on the economy of such adjustments;
 - (ii) the major cost drivers in various industrial sectors;
 - (iii) prices and industry mark-ups and trade margins in relation to price monitored or controlled goods and services;
- (d) investigate pricing violations;
- (e) provide regular reviews and updates on capacity utilisation in various sectors of the economy, promote public understanding and disseminate information on matters related to prices and wages, compile regular reports on the status of incomes and conduct stakeholder training, education and awareness campaigns on pricing and incomes issues;
- (f) establish the determinants of wages and wage variations in all sectors of the economy and provide information on minimum wages for the purposes of wage and salary negotiations, carry out productivity studies and track productivity trends in the economy and assess the impact of remuneration packages on the prices of goods;
- (g) perform any other function that may be conferred or imposed upon the Commission by this Act or any other enactment.

6 Powers of Commission

Subject to this Act, for the better exercise of its functions, the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Second Schedule, either absolutely or conditionally and either solely or jointly with others.

7 Policy directions

(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 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 that the Commission has on it in terms of subsection (2) are set out in the Commission's annual report.

8 Execution of contracts and instruments by Commission

An agreement, contract or instrument approved by the Commission may be entered into or executed on the Commission's behalf by any person generally or specifically authorised by the Commission for that purpose.

9 Reports of Commission and supply of information to Minister

(1) As soon as practicable after the end of each financial year, the Commission shall prepare and submit to the Minister a report on all its activities during the previous financial year.

(2) In addition to the report referred to in subsection (1), the Commission—

(a) shall submit to the Minister such other reports as the Minister may require; and

(b) may submit to the Minister such other reports as the Commission considers desirable;

in regard to the operations and activities of the Commission.

PART III

SECRETARIAT OF COMMISSION

10 Secretariat of Commission

The secretariat of the Commission shall consist of the Chief Executive Officer and other employees of the Commission appointed in terms of this Act.

11 Chief Executive Officer

(1) Subject to this Act, the Commission shall appoint a person approved by the Minister to be the Chief Executive Officer of the Commission, on such terms and conditions as the Commission, with the approval of the Minister, may fix.

(2) No person shall be appointed as Chief Executive Officer and no person shall hold office as Chief Executive Officer if he or she is not a citizen of Zimbabwe.

(3) The Commission shall terminate the appointment of the Chief Executive Officer if he or she would be required in terms of paragraph 3(1)(b), (c) or (d) of the First Schedule to vacate his or her office had the provisions of that paragraph and of paragraph 1(b) and (c) of the First Schedule applied to him or her.

(4) Subject to the general control of the Commission, the Chief Executive Officer shall be responsible for—

(a) managing the operations and property of the Commission; and

(b) supervising and controlling the activities of the employees of the Commission in the course of their employment.

(5) The Commission may assign to the Chief Executive Officer such other functions as the Commission thinks fit:

Provided that the Commission shall not assign to the Chief Executive Officer any duty that has been assigned to the chairperson of the Commission.

(6) Any assignment of functions in terms of subsection (5) may be made either generally or specifically and subject to such reservations, restrictions, and exceptions as the Commission may determine, and may be revoked by the Commission at any time.

12 Employees of Commission

(1) The Commission may employ on such terms and conditions as it may determine employees who are necessary for the conduct of the business of the Commission and may suspend, discipline or discharge any such persons.

(2) The Commission may delegate its powers referred to in subsection (1) to the Chief Executive Officer.

- (3) The Commission may, with the approval of the Minister, make rules relating to staff development.

PART IV

FINANCIAL PROVISIONS RELATING TO COMMISSION

13 Funds of Commission

The funds of the Commission shall consist of—

- (a) moneys payable to the Commission from moneys appropriated for the purpose by Act of Parliament; and
- (b) any other moneys that may vest in or accrue to the Commission, whether in terms of this Act or otherwise; and
- (c) the proceeds of such share of the value of deposit fines collected by the Commission for pricing violations as is fixed by the Minister with the consent of the Minister of Finance.

14 Investment of moneys not immediately required by Commission

Moneys not immediately required by the Commission may be invested in such manner as the Commission in consultation with the Minister may approve.

15 Accounts of Commission

(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.

(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.

16 Audit of Commission's accounts

(1) The Commission shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] to audit the accounts of the Commission.

(2) The auditors appointed in terms of subsection (1) shall make a report to the Commission and to the Minister on the statement of accounts prepared in terms of section 15(2), and in their report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's financial affairs.

(3) In addition to the report referred to in subsection (2), the Minister may require the Commission to obtain from the auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the Commission's activities, funds and property as the Minister may consider expedient.

(4) If in the opinion of the auditors appointed in terms of subsection (1)—

- (a) they have not obtained the information and explanations they require; or
- (b) any accounts or records relating thereto have not been properly kept; or
- (c) the Commission has not complied with any provision of this Part;

the auditors shall include in their report made in terms of subsection (2) or (3), as the case may be, a statement to that effect.

(5) If in terms of the Audit and Exchequer Act [*Chapter 22:03*], the Commission's accounts are required to be audited by the Comptroller and Auditor-General, any reference in this section to auditors appointed in terms of subsection (1) shall be construed as a reference to the Comptroller and Auditor-General.

17 Powers of auditors

(1) The auditors appointed in terms of section 16 shall be entitled at all reasonable times to require to be produced to them all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any commissioner or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purpose of their audit.

(2) If the Chief Executive Officer or any commissioner or employee or agent of the Commission fails without just cause to comply with a requirement of an auditor in terms of subsection (1), he or she shall be guilty of an offence and liable to a fine not exceeding level ten or imprisonment for a period not exceeding two years or both such fine and imprisonment.

PART IVA

CONTROL OF INCOMES AND SERVICE CHARGES

[Part IVA, sections 17A to 17G inserted by Act 2 of 2008]

17A Interpretation in Part IVA

- (1) In this Part and section 20A—

“collective bargaining agreement” means an agreement entered into between any or all of the parties to a national employment council in terms of the Labour Act [*Chapter 28:01*];

“consumer price index” means an index of consumer or other prices issued by the Zimbabwe National Statistics Agency established under the Census and Statistics Act [*Chapter 10:29*] (No. 1 of 2007) or any other index indicating the level of prices of goods at any time or during any period compared with the prices of those goods at any other time or during any other period;

“employment contract” means a written or an oral contract of employment;

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

“remuneration” means any payment made or owing to any person which arises in any manner whatsoever out of employment, and includes a pension, gratuity or other similar benefit payable on or after the termination of an employment contract;

“rental” means any payment payable by a lessee or occupier of immovable property, including payment for water and electricity supplied to the premises or for any other service supplied;

“service charge” means a charge for any service whatsoever, including, without derogating from the generality of the foregoing—

- (a) medical, dental, legal, educational or other similar services;
- (b) repair services;
- (c) transportation and storage services;
- (d) entertainment;
- (e) hairdressing;
- (f) dry-cleaning, laundering and shoe-repairing;

“statutory body” means any body corporate established directly by or under any Act of Parliament for special purposes specified in that Act.

[Section inserted by Act 2 of 2008]

17B Remuneration

(1) Notwithstanding any other law to the contrary, no employer shall increase the remuneration of any employee—

- (a) solely on account of an increase in a consumer price index;
- (b) on account of an increase in any official or unofficial rate at which the Zimbabwe dollar may be exchanged for any other currency;
- (c) for the purpose of taking into account—
 - (i) an anticipated increase in a consumer price index;
 - (ii) an anticipated increase in any official or unofficial rate at which the Zimbabwe dollar may be exchanged for any other currency;
 - (iii) the level of any value added tax or excise duty;
- (d) to a level that would result in an increase of the remuneration equal to or in excess of that arrived at by applying any standard referred to in paragraph (a), (b) or (c) unless, in increasing the remuneration, he or she is able to justify the increase on grounds not related to those standards.

(2) Any provision of a collective bargaining agreement which provides for the remuneration of any employee to be increased or negotiated in a manner or for a reason, as the case may be, which is inconsistent with subsection (1) shall be void.

(3) For the purposes of this section, an employer who increases any remuneration to a level equal to or in excess of that arrived at by applying any standard referred to in subsection (1)(a), (b) or (c) shall bear the burden of establishing any lawful excuse for such increase referred to in subsection (1)(d).

[Section inserted by Act 2 of 2008]

17C Leases

(1) Notwithstanding any other law to the contrary, no person shall increase any rental—

- (a) solely on account of an increase in a consumer price index;
- (b) on account of an increase in any official or unofficial rate at which the Zimbabwe dollar may be exchanged for any other currency;
- (c) for the purpose of taking into account—
 - (i) an anticipated increase in a consumer price index;
 - (ii) an anticipated increase in any official or unofficial rate at which the Zimbabwe dollar may be exchanged for any other currency;
 - (iii) the level of any value added tax or excise duty;
- (d) to a level that would result in an increase of the rental equal to or in excess of that arrived at by applying any standard referred to in paragraph (a), (b) or (c) unless, in increasing the rental, he or she is able to justify the increase on grounds not related to those standards.

(2) Any term of a contract of lease which provides for an increase in rental or the renegotiation of rental in a manner or for a reason, as the case may be, which is inconsistent with subsection (1) shall be void.

(3) Nothing contained in this section shall preclude an increase in a rental as a result of an increase in—

(a) any expenditure specified in the definition of “recurrent expenditure” in section 3 of the Rent Regulations, 2007, published in Statutory Instrument 32 of 2007, or section 3 of the Commercial Premises (Rent) Regulations, 1983, published in Statutory Instrument 676 of 1983; or

(b) any similar expenditure incurred in respect of leased property.

(4) The parties to a contract of lease which contains a term which is void in terms of subsection (2) shall, if the lessor so requests and notwithstanding anything contrary contained in the contract of lease, renegotiate the increased rental to be paid in terms of the contract of lease.

(5) For the purposes of this section and section 17E(a), a person who increases any rental to a level equal to or in excess of that arrived at by applying any standard referred to in subsection (1)(a), (b) or (c) shall bear the burden of establishing any lawful excuse for such increase referred to in subsection (1)(d).

[Section inserted by Act 2 of 2008]

17D Service charges

(1) Notwithstanding any other law to the contrary, no person shall increase any service charge—

(a) solely on account of an increase in a consumer price index;

(b) on account of an increase in any official or unofficial rate at which the Zimbabwe dollar may be exchanged for any other currency;

(c) for the purpose of taking into account—

(i) an anticipated increase in a consumer price index;

(ii) an anticipated increase in any official or unofficial rate at which the Zimbabwe dollar may be exchanged for any other currency;

(iii) the level of any value added tax or excise duty;

(d) to a level that would result in an increase of the service charge equal to or in excess of that arrived at by applying any standard referred to in paragraph (a), (b) or (c), unless, in increasing the service charge, the person increasing it is able to justify the increase on grounds not related to those standards.

(2) Any provision of any contract which provides for an increase in a service charge or the renegotiation of service charge in a manner or for a reason, as the case may be, which is inconsistent with subsection (1) shall be void.

(3) For the purposes of this section and section 17E(a), a person who increases any service charge to a level equal to or in excess of that arrived at by applying any standard referred to in subsection (1)(a), (b) or (c) shall bear the burden of establishing any lawful excuse for such increase referred to in subsection (1)(d).

[Section inserted by Act 2 of 2008]

17E Commission may fix standard for rentals and service charges

(1) The Commission may, in each quarter, fix a standard by which any rental or service charge is to be determined or increased in consultation with—

(a) the Estate Agents Council established in terms of the Estate Agents [Chapter 27:17] and any organisations representing the interests of lessees, lodgers and boarders, for the purpose of fixing such a standard with respect to rentals; and

(b) such persons or bodies as, in its opinion, represent the interests of any providers of the services affected by section 17D, and any organisations representing the interests of consumers of those services, for the purpose of fixing such a standard with respect to service charges;

and in doing so may—

(c) fix quarterly as a temporary standard the levels of rentals and service charges for a particular class of immovable property, or a particular service, as at a specified base date in the quarter in question;

(d) permit account to be taken of an increase in the consumer price index as one of several other relevant factors to be taken into account when fixing the final standard by which any rental and service charge is to be determined or increased:

Provided that an increase in any rental or service charge that takes into account an increase in the consumer price index as one of several other relevant factors shall not be permitted to be effected more than once in any quarter.

(2) For the avoidance of doubt, it is declared that sections 18 and 19 shall apply to the exercise of the Commission's powers in terms of this Part.

[Section inserted by Act 2 of 2008]

17F Application of Part IVA to statutory bodies

(1) The following statutory bodies, namely—

(a) the Broadcasting Authority of Zimbabwe established in terms of the Broadcasting Services Act [Chapter 12:06] (No. 3 of 2001);

- (b) the Postal and Telecommunications Regulatory Authority of Zimbabwe established in terms of the Postal and Telecommunications Services Act [*Chapter 12:05*] (No 4 of 2000);
- (c) the Electricity Commission established in terms of the Electricity Act [*Chapter 13:19*] (No 4 of 2002);
- (d) the Reserve Bank of Zimbabwe established in terms the Reserve Bank of Zimbabwe Act [*Chapter 22:13*] (No 5 of 1999), with respect to the regulation of bank charges in terms of the Bank Use Promotion and Suppression of Money Laundering Act [*Chapter 24:24*] (No. 2 of 2004);
- (e) any other statutory body whatsoever, including a body established to regulate the conduct and discipline of members of a specific profession or calling, that is required by its parent Act approve the levels of fees and charges levied by members of any class of persons described in that Act;

shall, notwithstanding anything to the contrary contained in the Acts under which they are established or any other enactment not approve any tariff of fees and charges submitted to them for approval by any person required to do so in terms of those Acts, unless the tariffs are first referred to the Commission for approval.

(2) Notwithstanding that the statutory body or any Minister responsible for any of the Acts referred to in subsection (3) is empowered to give final approval for those tariffs, the decision of the Commission upon those tariffs shall be final and valid in every respect as if it had been made by the statutory body or the Minister concerned, as the case may be.

(3) Every statutory body (including every university or college established in terms of an Act of Parliament), and every department of the Government that levies fees or charges for services provided by it to members of the public, shall, notwithstanding anything to the contrary contained in the Acts under which they are established or any other enactment, not increase any tariffs, fees or charges, unless the proposal to increase such tariffs, fees or charges are first referred to the Commission for approval.

(4) Notwithstanding that any Minister responsible for any statutory body or department of the Government referred to in subsection (3) is empowered by any enactment or instrument having the force of law to give final approval for the tariffs, fees or charges there referred to, the decision of the Commission upon those tariffs, fees or charges shall be final and valid in every respect as if it had been made by the Minister in terms of the enactment or instrument concerned.

(5) Any company of which the State is the sole or the majority shareholder that was formed as a successor to any statutory body, including, but not limited to, the successors to the Central Mechanical Equipment Department, Government Printers and Stationers, the Government Medical Stores, the Roasting Plant and Air Zimbabwe, and any other company of which the State is the sole or the majority shareholder, including, but not limited to, the National Oil Company of Zimbabwe shall, notwithstanding anything to the contrary contained in the Acts under which they became companies or their memoranda or articles of association, not increase any tariffs, fees or charges to the State or members of the public, unless the proposal to increase such tariffs, fees or charges are first referred to the Commission for approval.

(6) Any increase of a tariff, fee or charge that is made in contravention of subsection (1), (3) and (5) shall be void.

(7) For the avoidance of doubt, it is declared that sections 18, 19, 17B, 17C and 17E shall apply to the statutory bodies and companies referred to in this section, and to the exercise of the Commission's powers in terms of this Part.

[Section inserted by Act 2 of 2008]

17G Offences against Part IVA

Any person who—

- (a) contravenes or fails to comply with sections 17B, 17C, 17D or 17F; or
- (b) increases any rental or service charge in contravention of a temporary or final standard fixed in terms of section 17E;

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or both such fine and imprisonment.

[Section inserted by Act 2 of 2008]

PART V

GENERAL

18 Power to obtain information

(1) The chairperson may, by notice in writing signed by him or her and served on a person, require the person—

- (a) to furnish to the Commission, in writing, such information in relation to the affairs of the person as is specified in the notice; or
- (b) to produce to the Commission, in accordance with the notice, such documents in relation to the affairs of the person as are specified in the notice;

being information that is, or documents that are, relevant to—

- (i) the consideration by the Commission of the matters contained in a notice given to the Commission by the person; or
 - (ii) an inquiry that is being held in relation to the person; or
 - (iii) a supply of goods or services by the person, being a supply of a kind in relation to which this Act applies.
- (2) Any person who—
- (a) without reasonable excuse, refuses or fails to comply with a notice under subsection (1); or
 - (b) in purported compliance with such a notice, knowingly furnishes information that is false or misleading;
- shall be guilty of an offence and liable to a fine not exceeding level ten or imprisonment for a period not exceeding two years or both such fine and imprisonment.

19 Inspectors

(1) The Commission may designate any of its employees to be inspectors for the purpose of this Act.

(2) Inspectors designated under subsection (1) shall also be inspectors for the purposes of the Control of Goods Act [*Chapter 14:05*].

(3) The Commission shall cause every inspector to be furnished with a certificate of appointment signed by the Chief Executive Officer, which the inspector shall exhibit on demand by any interested person before carrying out any functions under this Act or the Control of Goods Act [*Chapter 14:05*].

20 Powers of entry and inspection

(1) An inspector may at all reasonable times—

- (a) enter any premises in or on which he or she has reasonable cause to suspect that there are goods or documents relating to any pricing violations;
- (b) require any person upon the premises—
 - (i) to disclose any information at his or her disposal; and
 - (ii) to produce any book, record or document or extract therefrom that may relate in any way to any actual or suspected pricing violations;

and

- (c) make copies of or take extracts from any book, record or document referred to in paragraph (b).

20A Prices of goods

(1) Notwithstanding any other law to the contrary, but subject to the Control of Goods Act [*Chapter 14:05*], no person carrying on business in the course of which any goods are supplied shall increase the prices of such goods—

- (a) on account of an increase in a consumer price index;
- (b) on account of an increase in any official or unofficial rate at which the Zimbabwe dollar may be exchanged for any other currency;
- (c) for the purpose of taking into account—
 - (i) an anticipated increase in a consumer price index;
 - (ii) an anticipated increase in any official or unofficial rate at which the Zimbabwe dollar may be exchanged for any other currency;
 - (iii) the level of any value added tax or excise duty;
- (d) to a level that would result in an increase of the prices of the goods equal to or in excess of that arrived at by applying any standard referred to in paragraph (a), (b) or (c), unless, in increasing the prices of such goods, the person increasing them did not himself or herself apply any of those standards, and he or she is able to justify the increase on grounds not related to those standards.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or both such fine and imprisonment.

(3) For the purposes of this section, a person who increases the prices of any goods to a level equal to or in excess of that arrived at by applying any standard referred to in subsection (1)(a), (b) or (c) shall bear the burden of establishing any lawful excuse for such increase referred to in subsection (1)(d).

[Section inserted by Act 2 of 2008]

20B Commission may fix standard for prices of goods

(1) The Commission may, in each quarter, in consultation with such persons or bodies as, in its opinion, are representative of persons carrying on business in the course of which the goods in question are supplied, and any organisations representing the interests of consumers of those goods, fix a standard by which the prices of any specified goods or classes thereof are to be determined or increased, and in doing so may—

- (a) fix quarterly as a temporary standard the levels of the prices of the goods in question as at a specified base date in the quarter in question; and

- (b) permit account to be taken of an increase in the consumer price index as one of several other relevant factors to be taken into account when fixing the final standard by which the levels of the prices of the goods in question are to be determined or increased:

Provided that an increase in the levels of the prices of the goods in question that takes into account an increase in the consumer price index as one of several other relevant factors shall not be permitted to be effected more than once in any quarter.

(2) For the avoidance of doubt, it is declared that sections 18 and 19 shall apply to the exercise of the Commission's powers in terms of section 20A and this section.

(3) Any person who increases any prices of goods in contravention of a temporary or final standard fixed in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or both such fine and imprisonment

[Section inserted by Act 2 of 2008]

21 Refusal to sell goods

Any person carrying on business in the course of which any price monitored or controlled goods and services are supplied, and who has in his or her possession any quantity of the goods, and who—

- (a) falsely denies to an inspector that he or she has the goods in his or her possession; or
- (b) refuses or fails to supply to any customer the goods upon tender of immediate payment of the lawful maximum price thereof; or
- (c) refuses or fails to expose or offer for sale such goods continuously;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding five years or to both such fine and imprisonment.

22 Display of prices of goods on sale

(1) Every wholesaler and retailer shall display the prices of goods offered for sale.

(2) Any person who fails to display the prices of goods offered for sale shall be guilty of an offence and liable to a fine not exceeding level ten or imprisonment not exceeding two years or to both such fine and imprisonment.

23 Conditional selling

Any trader, manufacturer, producer, commission agent or retailer to whom an offer to buy price monitored or controlled goods has been made and who imposes any condition of sale other than a condition—

- (a) requiring immediate payment on delivery thereof; or
- (b) prescribing the terms upon which payment must be made or delivery taken; or
- (c) requiring a deposit in respect of any container of such goods;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding five years or to both such fine and imprisonment.

24 Preservation of secrecy

(1) Every person who—

- (a) is employed in carrying out the provisions of this Act; or
- (b) examines documents under the control or in the custody of the Commission;

shall, subject to subsection (2), keep secret, and aid in keeping secret, all information coming to his or her knowledge in the exercise of his or her functions.

(2) No person referred to in subsection (1) shall, except in the exercise of his or her functions under this Act or unless he or she is required to do so by order of a competent court—

- (a) communicate information coming to his or her knowledge in the exercise of his or her functions to any person who is not—
 - (i) the person to whom the information relates or by whom the information was furnished; or
 - (ii) the lawful representative of the person to whom the information relates or by whom the information was furnished; or
 - (iii) a person to whom the information is required to be communicated in terms of this Act or any enactment relating to the Public Service, the collection and safe custody of public moneys or the audit of public accounts;

or

- (b) allow any person who is not a person referred to in paragraph (a)(i), (ii) or (iii) to have access to any record, document or application under the control or in the custody of the Commission which contains information referred to in that paragraph.

(3) No person referred to in subsection (1) shall, for his or her personal gain, directly or otherwise, make use of any information which has come to his or her knowledge in the exercise of his or her functions in terms of this Act.

(4) Any person who contravenes any provision of this section shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

25 Exemption of Commission from liability

No liability shall attach to the Commission or to a commissioner or any committee or employee of the Commission for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Commission or a committee or employee of the Commission:

Provided that this section shall not be construed so as to prevent any person from recovering compensation for any loss or damage sustained by him or her which was caused by gross negligence or fraud.

26 General offences and penalties

(1) Any person who—

- (a) obstructs or hinders any person authorised under this Act to enter and inspect or search any premises or to stop and search any vehicle or to examine any books, accounts or documents or to seize any vehicle, goods or money; or
- (b) refuses or delays or fails to produce any books, accounts or other documents or certified copies or translations thereof relating to his or her business which he or she may be required under this Act to produce; or
- (c) refuses or delays or fails to furnish any information or, in purported compliance with any requirement of this Act, knowingly or without reasonable grounds for believing the same to be true furnishes information which is false or misleading in any material particular, whether upon demand being made by a person authorised under this Act to demand the same or otherwise; or
- (d) publishes or otherwise discloses any information in contravention of any provision of this Act; or
- (e) refuses or delays or fails to, comply with any order, prohibition, direction, demand, requirement or notice lawfully made, given, issued, served or published under this Act;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who offers for sale any goods or services at prices above the approved prices shall be guilty of an offence and liable to a fine not exceeding level fourteen or an amount equivalent to five times the amount of any profit or advantage unlawfully gained or acquired by the convicted person as a result of the offence, whichever is greater.

(3) Where any trader, manufacturer, producer, commission agent, clearing and forwarding agent, transporter or person rendering any services has been found guilty of any offence under this Act, the court may, in addition to any other penalty to which the convicted person may be liable, make such order, having effect during such period, as the court thinks fit, for preventing the offender from carrying on, or being concerned directly or indirectly in the carrying on of, the business in the course of which the transaction constituting the offence was effected, or any branch of that business, or in any business or branch of a business of a similar character.

(4) Where a person charged with any offence under this Act is a body corporate, every person who, at the time of the commission of the offence, was a director, manager or officer of the body corporate may be charged jointly in the same proceedings with such body corporate, and, where the body corporate is convicted of the offence, every such director, manager or officer shall be deemed to be guilty of that offence unless he or she proves that the offence was committed without his or her knowledge or that he or she exercised all due diligence to prevent the commission of the offence.

27 Regulatory powers of the Commission

(1) Subject to subsection (3), the Commission, may make by-laws providing for all matters which by this Act are required or permitted to be prescribed or which in its opinion, are necessary or convenient to be prescribed in order to carry out or give effect to this Act.

(2) By-laws made in terms of subsection (1) may provide for—

- (a) the manner in which inspections are to be conducted;
- (b) the manner in which investigations are to be carried out;
- (c) factors to be taken into consideration in the price determination of price monitored or controlled goods and services;
- (d) factors to be considered in incomes adjustments;
- (e) the listing of price monitored or controlled goods and services.

(3) By-laws made in terms of subsection (1) shall not have any effect until they have been approved by the Minister and published in a statutory instrument.

28 Amendment of Cap. 14:05 and Statutory Instrument 334 of 2001

(1) The Control of Goods Act [*Chapter 14:05*] is amended—

- (a) in section 2 (“Interpretation”) by the insertion of the following definition—

““Commission” means the National Incomes and Pricing Commission established in terms of section 4 of the National Incomes and Pricing Commission Act [Chapter 14:32];”;

(b) in section 3 (“Regulations for the control of goods”) by the insertion after “Whenever” of “on the recommendation of or in consultation with the Commission,”.

(2) The Control of Goods (Price Control) Regulations, 2001, published in Statutory Instrument 334 of 2001, is amended—

(a) in section 2 (“Interpretation”) by the repeal of the definition of “inspector” and the substitution of—

““inspector” means a person designated as an inspector in terms of section 19 of the National Incomes and Pricing Commission Act [Chapter 14:32];”;

(b) by the repeal of section 30.

FIRST SCHEDULE (Section 4(3))

PROVISIONS APPLICABLE TO THE COMMISSION

1. Disqualifications for appointment as commissioner.
2. Terms and conditions of service of commissioners.
3. Vacation and suspension of commissioners from office.
4. Filling of vacancies in Commission.
5. Chairperson and deputy chairperson of Commission.
6. Meetings and procedure of Commission.
7. Committees of Commission.
8. Remuneration and allowances of commissioners and members of committees.
9. Disclosure of interests by commissioners and members of committees.
10. Validity of decisions and acts of Commission and committees.
11. Minutes of proceedings of Commission and committees.

1. Disqualifications for appointment as commissioner

(1) A person shall not be appointed as a commissioner or be qualified to hold office as a commissioner if—

(a) he or she is not a citizen of or ordinarily resident in Zimbabwe; or

(b) in terms of a law in force in any country—

(i) he or she has been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) he or she has made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside;

or

(c) he or she has been convicted in Zimbabwe or in any country of an offence involving fraud or dishonesty and sentenced to a term of imprisonment imposed without the option of a fine, whether or not any portion of the sentence has been suspended, and he or she has not received a free pardon.

(2) A member of Parliament shall not be qualified for appointment as a commissioner.

(3) A person shall not be qualified for appointment as a commissioner if he or she is a member of two or more other statutory bodies.

(4) For the purposes of subparagraph (3)—

(a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;

(b) “statutory body” means—

(i) any commission established by the Constitution; or

(ii) 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 other statutory body or by a commission established by the Constitution.

2. Terms and conditions of service of commissioners

(1) Subject to this Part, a commissioner, other than the chairperson and deputy chairperson, shall hold office for such period, not exceeding three years, from the date of appointment, and upon the expiry of his or her term of office he or she shall be eligible for re-appointment as a commissioner.

(2) On the expiry of the period for which a commissioner has been appointed in terms of subparagraph (1), he or she shall continue to hold office for a period not exceeding six months, until he or she has been re-appointed or his or her successor has been appointed.

(3) Subject to this Schedule, a commissioner, other than the chairperson and deputy chairperson, shall hold office on such terms and conditions as the President may fix for commissioners generally.

3. *Vacation and suspension of commissioners from office*

- (1) A commissioner shall vacate his or her office and his or her office shall become vacant—
 - (a) one month after the date on which he or she gives notice to the President, through the Minister, of his or her intention to resign, or after the expiry of such other period of notice as he or she and the Minister may agree; or
 - (b) if he or she becomes a member of Parliament; or
 - (c) if he or she becomes disqualified in terms of paragraph 1(1)(a) or (b) or paragraph 1(2) or (3) to hold office as a commissioner; or
 - (d) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine in any country.
- (2) The President may require a commissioner to vacate his or her office if the commissioner—
 - (a) has been guilty of improper conduct as a commissioner or of conduct prejudicial to the interests or reputation of the Commission; or
 - (b) has failed to comply with any condition of his or her office fixed by the President in terms of paragraph 2(3) or paragraph 5(5); or
 - (c) is mentally or physically incapable of efficiently performing his or her functions as a commissioner.

(3) The President, on the recommendation of the Commission, may require a commissioner to vacate his or her office if the President is satisfied that the commissioner has been absent, without the permission of the Commission, from three consecutive meetings of the Commission of which the commissioner was given not less than seven days' notice, and that there was no just cause for the commissioner's absence.

- (4) The President—
 - (a) may suspend from office a commissioner against whom criminal proceedings have been instituted in respect of an offence for which a sentence of imprisonment without the option of a fine may be imposed;
 - (b) shall suspend from office a commissioner who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the commissioner is to vacate his or her office;
 - (c) may suspend from office a commissioner against whom misconduct charges have been preferred pending determination of the charges;

and while the commissioner is so suspended he or she shall not exercise any function or be entitled to any remuneration as a commissioner.

4. *Filling of vacancies in Commission*

On the death of, or the vacation of office by, a commissioner, the President shall appoint a person qualified to fill the vacancy.

5. *Chairperson and deputy chairperson of Commission*

(1) The President shall designate one of the commissioners to be the chairperson of the Commission and another commissioner to be the deputy chairperson.

(2) The chairperson and the deputy chairperson of the Commission shall hold office for such period as the President may fix:

Provided that the President may at any time for good cause terminate the appointment of the chairperson or deputy chairperson and designate another commissioner as chairperson or deputy chairperson, as the case may be.

(3) The deputy chairperson shall perform the chairperson's functions during any period that the chairperson is unable to perform them.

(4) On the expiry of the period for which the chairperson or deputy chairperson has been appointed in terms of subparagraph (2), he or she shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed.

(5) Subject to this Part, the chairperson and deputy chairperson shall hold office on such terms and conditions as the President may fix.

6. *Meetings and procedure of Commission*

(1) The Commission shall hold its first meeting at a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Commission will meet at least six times in each financial year.

- (2) The chairperson—
 - (a) may convene a special meeting of the Commission at any time; and
 - (b) shall convene a special meeting of the Commission on the written request of the Minister or of at least two commissioners, which meeting shall be convened on a date not sooner than seven days nor later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting to be convened in terms of subparagraph (2), specifying the business of the meeting, shall be sent to each commissioner not later than forty-eight hours before the meeting.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) where the meeting was convened by the chairperson in terms of paragraph (a) of that subparagraph; such business as he or she specifies; or
- (b) where the meeting was convened by the chairperson in terms of paragraph (b) of that subparagraph, such business for which the meeting was requested.

(5) The chairperson or, in his or her absence, the deputy chairperson shall preside at meetings of the Commission:

Provided that if the chairperson and the deputy chairperson of the Commission are both absent from any meeting of the Commission, the commissioners present may elect one of their member to preside at the meeting as chairperson.

(6) Five commissioners shall form a quorum at any meeting of the Commission.

[Paragraph amended by Act 2 of 2008]

(7) Subject to subparagraph (11), all acts, matters or things authorised or required to be done by the Commission shall be decided by consensus or a majority vote of the commissioners at a meeting of the Commission at which a quorum is present.

(8) With the Commission's approval, the chairperson may invite any person to attend a meeting of the Commission or a committee where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Commission at that meeting.

(9) A person invited to attend a meeting of the Commission or a committee in terms of subparagraph (8) may take part in the proceedings of the Commission or the committee as if he or she were a commissioner or member thereof, but shall not have a vote on any question before the Commission or committee.

(10) Subject to paragraph 9, at all meetings of the Commission each commissioner present shall have one vote on any question before the Commission and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

(11) Any proposal circulated among all commissioners and agreed to in writing by a majority of them shall have the same effect as a resolution passed by a duly constituted meeting of the Commission and shall be incorporated into the minutes of the next succeeding meeting of the Commission:

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

7. Committees of Commission

(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 considers appropriate:

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

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

- (a) shall appoint at least one commissioner to be a member of the committee and shall designate that commissioner or, if more than one commissioner is so appointed, one of those commissioners, as the case may be, to be the chairperson of the committee; and
- (b) may appoint as members of the committee, on such terms and conditions as the Commission may fix, persons who are not commissioners.

(3) Meetings of a committee may be convened at any time and any place by the chairperson of the Commission or the chairperson of the committee.

(4) Subject to subparagraph (3) and to paragraphs 9, and 11, the procedure to be followed at any meeting of a committee shall be as fixed by the Commission.

8. Remuneration and allowances of commissioners and members of committees

Every commissioners or member of a committee shall be paid from the Commission's funds—

- (a) such remuneration, if any, as the Minister may fix, generally; and
- (b) such allowances as the Minister may fix to meet any reasonable expenses incurred by a commissioner or member of a committee in connection with the business of the Commission or the committee, as the case may be.

9. Disclosure of interests by commissioners and members of committees

(1) If a commissioner or a member of a committee or a spouse of such commissioner or member—

- (a) knowingly acquires or holds a direct or indirect pecuniary interest in a company or association of persons whose conduct is the subject of an investigation under this Act; or
- (b) owns immovable property or a right in immovable property or a direct or indirect pecuniary interest in a company or association of persons which results in his or her private interests coming or appearing to

come into conflict with his or her functions as a commissioner or member of a committee, as the case may be;
the commissioner or member shall forthwith disclose the fact to the Commission or the committee, as the case may be.

(2) A commissioner or member referred to in subparagraph (1) 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 investigation, order, contract, right, immovable property or interest referred to in that subsection.

(3) A commissioner or member referred to in subparagraph (1) shall not—

(a) apply or negotiate for a contract with the Commission; or

(b) tender for or acquire or hold a direct or indirect pecuniary interest in a contract with the Commission.

(4) Any person who contravenes subparagraph (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

10. Validity of decisions and acts of Commission and committees

No decision or act of the Commission or committee and no act that is authorised by the Commission or committee shall be invalid solely because there was a vacancy in the membership of the Commission or the committee or because a disqualified person purported to act as a commissioner or member of the committee, as the case may be, at the time the decision was taken or the act was done or authorised.

11. Minutes of proceedings of Commission and committees

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

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

SECOND SCHEDULE (Section 6)

POWERS OF COMMISSION

1. To acquire by lease, purchase, or otherwise, immovable property and construct buildings thereon.
2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
3. To maintain, alter and improve property acquired by it.
4. To mortgage or pledge any assets or part of any assets and to sell, exchange, let, dispose of, 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 the Commission may, with the approval of the Minister, determine.
5. To open bank and building society and post office 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, bills of lading, 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 the Minister, to enter into, review, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Commission thinks desirable to obtain, and carry out, exercise and comply with such arrangements, rights, privileges and concessions.
8. To raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Minister.
9. To establish and administer such funds and reserves as the Commission may consider appropriate or necessary for the proper exercise of the functions of the Commission.
10. To provide terminal benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury.
11. Generally, to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the functions of the Commission in terms of this Act or any other enactment.