

**EXTRACTS FROM CRIMINAL PROCEDURE AND EVIDENCE  
ACT**

with the provisions of

**THE NEW STATUTORY INSTRUMENT 37 OF 2004<sup>1</sup> CAP. 10:20 -  
"PRESIDENTIAL POWERS (TEMPORARY MEASURES)  
(AMENDMENT OF CRIMINAL PROCEDURE AND EVIDENCE  
ACT) REGULATIONS, 2004"**

as published in a Government Gazette Extraordinary of Friday 13th February,

inserted in the appropriate sections.

A. PROCEDURE AFTER ARREST

**32 Procedure after arrest without warrant**

(1) For the purposes of this section—

“court day” means any day except a Sunday or a public holiday.

(2) Subject to subsections (3) and (4), a person arrested without warrant shall as soon as possible be brought to a police station or charge office and, if not released by reason that no charge is to be brought against him, may be detained for a period not exceeding forty-eight hours unless he is brought before a judge or magistrate upon a charge of any offence and his further detention is ordered by that judge or magistrate or a warrant for his further detention is obtained in terms of section *thirty-three*:

Provided that if the person arrested without warrant is charged with any offence referred to in paragraph 10 or 11 of the Third Schedule—

- (a) the judge or magistrate before whom he is brought in terms of this section shall not decline to order his further detention or to issue a warrant for his further detention solely on the basis that there are no *prima facie* grounds for the charge, and no court shall admit such person to bail for a period of seven days from the date when an order or warrant for his further detention was issued in terms of this paragraph; or
- (b) and the judge or magistrate before whom he is brought in terms of this section is satisfied that there are *prima facie* grounds for the charge, the judge or magistrate shall order his further detention or issue a warrant for his further detention for a period of twenty-one days (unless the charge is earlier withdrawn), and no court shall admit such person to bail for a period of fourteen days from the date when an order or warrant for his further detention was issued in terms of this paragraph.

[Proviso substituted by Statutory Instrument 37/2004<sup>2</sup>.]

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<sup>1</sup> The new provisions are underlined; they are the proviso to section 32(2), section 121(8) and paragraph 11 of the Third Schedule.  
The explanatory note to Statutory Instrument 37/2004 explains that the amendments to the Act made the statutory instrument are intended to "facilitate the investigation and prosecution of crimes affecting the economic interests of Zimbabwe, such as corruption, the laundering of the proceeds of crime, the externalisation of foreign currency (whether directly or through transfer pricing), the smuggling of gold and precious stones and the illegal export of agricultural products controlled under the Grain Marketing Act [*Chapter 18:14*]".

<sup>2</sup> Previous wording of proviso was—

- (3) If the period referred to in subsection (2) expires—
- (a) on a day which is not a court day or on any court day after four o'clock in the afternoon, the said period shall be deemed to expire at four o'clock in the afternoon of the court day next succeeding that day; or
  - (b) on any court day before four o'clock in the afternoon, the said period shall be deemed to expire at four o'clock in the afternoon of that court day:

Provided that this subsection shall not in any case be construed as extending the period referred to in subsection (1) beyond a period of ninety-six hours.

(4) Nothing in subsection (2) shall be construed as derogating from any provision of this Act or of any other enactment whereby a person referred to in that subsection may be admitted to bail.

(5) When an arrest is made without warrant, the person arrested shall be informed forthwith by the person arresting him of the cause of the arrest.

#### B. *With warrant*

### **33 Warrant of arrest by judge, magistrate or justice**

(1) Any judge, magistrate or justice may issue a warrant for the arrest of any person or for the further detention of a person arrested without a warrant on written application subscribed by—

- (a) the Attorney-General; or
- (b) the local public prosecutor; or
- (c) a police officer who is of or above the rank of inspector; or
- (d) a police officer in charge of a police station who is of or above the rank of assistant inspector;

setting forth the offence alleged to have been committed, and that, from information available to him, he has reasonable grounds of suspicion against that person, or upon the information to the like effect of any person made on oath before the judge, magistrate or justice issuing the warrant:

Provided that it shall not be lawful for a magistrate or justice to issue any such warrant except when the offence charged has been committed within his area of jurisdiction or except when the person against whom the warrant is issued was, at the time when it was issued, known, or suspected on reasonable grounds, to be within the area of jurisdiction of the magistrate or justice.

(2) Any warrant referred to in subsection (1) may be issued on any day of the week, including Sunday.

(3) Subject to subsection (4), a warrant issued for the arrest of a person shall remain in force until it is cancelled by the person who issued it or until it is executed.

(4) Where a warrant is issued for the arrest of a person and such person is detained by virtue of an arrest without warrant, the warrant shall be deemed to have been cancelled and the provisions of this Act relating to the arrest of a person without warrant shall apply in respect of such person.

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"Provided that if the person arrested without warrant is charged with any offence referred to in paragraph 10 of the Third Schedule—

- (a) the judge or magistrate before whom he is brought in terms of this section shall not decline to order his further detention or to issue a warrant for his further detention solely on the basis that there are no *prima facie* grounds for the charge; and
- (b) no court shall admit such person to bail for a period of seven days from the date when an order or warrant for his further detention was issued in terms of paragraph (a)."

### 34 Execution of warrants

(1) Every peace officer is authorized and required to obey and execute any warrant issued in terms of section *thirty-three*.

(2) A peace officer or other person arresting any person by virtue of a warrant under this Act shall, upon demand of the person arrested, produce the warrant to him and notify him of the substance thereof.

(3) A person arrested by virtue of a warrant under this Act shall as soon as possible be brought to a police station or charge office, unless any other place is specially mentioned in the warrant as the place to which such person shall be brought, and he shall thereafter be brought as soon as possible before a judicial officer upon a charge of the offence mentioned in the warrant.

## B: BAIL

### 116 Power to admit to bail

(1) Subject to this section<sup>3</sup>, a person may be admitted to bail or have his conditions of bail altered—

(a) in respect of any offence, by a judge at any time after he has appeared in court on a charge and before sentence is imposed;

(b) in respect of any offence, except an offence specified in the Third Schedule, by a magistrate within whose area of jurisdiction the accused is in custody at any time after he has appeared in court on a charge and before sentence is imposed:

Provided that, with the consent of the Attorney-General, a magistrate may admit a person to bail or alter a person's conditions of bail in respect of any offence;

(c) if he is a person whose case is adjourned in terms of subsection (1) of section 55 of the Magistrates Court Act [*Chapter 7:10*] or in respect of whom an order has been made in terms of subsection (4) of section *three hundred and fifty-one*, by a judge or by any magistrate within whose area of jurisdiction he is in custody:

Provided that—

(i) the Attorney-General, in the case of any application to a judge in terms of this subsection, or the local public prosecutor, in the case of any application to a magistrate in terms of this subsection, shall be given reasonable notice of any such application;

(ii) where an application in terms of this subsection is determined by a judge or magistrate, a further application in terms of this subsection may only be made, whether to the judge or magistrate who has determined the previous application or to any other judge or magistrate, if such application is based on facts which were not placed before the judge or magistrate who determined the previous application and which have arisen or been discovered after that determination;

(iii) a magistrate shall not, without the consent of the Attorney-General, admit a person to bail or alter a person's conditions of bail in respect of an offence specified in the Third Schedule.

(2) Where a person has applied to a judge for bail in respect of an offence referred to in the Third Schedule, the Minister responsible for the administration of the Public Order and Security Act [*Chapter 11:17*] may issue a certificate stating—

(a) that in his opinion it is likely that public security would be prejudiced if the applicant were admitted to bail; and

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<sup>3</sup> And now, of course, the new proviso to section 32(2), as substituted by Statutory Instrument 37/2004; see page 1 above.

Remember, also, section 132 as read with the Fifth Schedule providing for admission to bail by police officers. See pages 7 and 8 below.

(b) the grounds on which he bases that opinion.

[Subsection amended by s. 44 of Act No. 1 of 2002.]

(3) Whenever it is practicable to do so, a copy of any certificate issued in terms of subsection (1) shall be served on the accused person concerned before the hearing of his application.

(4) Where a certificate issued in terms of subsection (2) is produced in any application to a judge for bail in respect of an offence referred to in the Third Schedule, the judge shall refuse bail unless the applicant satisfies him that, despite the grounds stated in the certificate, he should be admitted to bail.

(5) If the Minister responsible for the administration of the Extradition Act [*Chapter 9:08*], certifies in writing that a person who has applied for bail has been extradited to Zimbabwe from a foreign country and that the Minister has given an undertaking to the government or other responsible authority of that country—

(a) that the accused person will not be admitted to bail while he is in Zimbabwe, the judge or magistrate hearing the matter shall not admit the accused person to bail;

(b) that the accused person will not be admitted to bail while he is in Zimbabwe except on certain conditions which the Minister shall specify in his certificate, the judge or magistrate hearing the matter shall not admit the accused person to bail except on those conditions:

Provided that the judge or magistrate may fix further conditions, not inconsistent with the conditions specified by the Minister, on the grant of bail to the accused person.

(6) A document purporting to be a certificate issued by a Minister in terms of subsection (2) or (5) shall be admissible in any proceedings on its production by any person as *prima facie* evidence of its contents.

(7) Subject to subsection (4) of section 13 of the Constitution, in any case in which the judge or magistrate has power to admit the accused person to bail, he may refuse to admit such person to bail if he considers it likely that if such person were admitted to bail he would—

(a) not stand his trial or appear to undergo the preparatory examination or to receive sentence; or

(b) interfere with the evidence against him; or

(c) commit an offence;

but nothing in this subsection shall be construed as limiting in any way the power of the judge or magistrate to refuse to admit an accused person to bail for any other reason which to him seems good and sufficient.

## **121 Appeals against decisions regarding bail**

(1) Subject to this section and to subsection (5) of section 44 of the High Court Act [*Chapter 7:06*], where a judge or magistrate has admitted or refused to admit a person to bail—

(a) the Attorney-General or his representative, within seven days of the decision; or

(b) the person concerned, at any time;

may appeal against the admission or refusal or the amount fixed as bail or any conditions imposed in connection therewith.

(2) An appeal in terms of subsection (1) against a decision of—

(a) a judge of the High Court, shall be made to a judge of the Supreme Court;

(b) a magistrate, shall be made to a judge of the High Court.

(3) A decision by a judge or magistrate to admit a person to bail shall be suspended if, immediately after the decision, the judge or magistrate is notified that the Attorney-General or his representative wishes to appeal against the decision, and the decision shall thereupon be suspended and the person shall remain in custody until—

(a) if the Attorney-General or his representative does not appeal in terms of subsection (1)—

(i) he notifies the judge or magistrate that he has decided not to pursue the appeal; or

(ii) the expiry of seven days;

whichever is the sooner; or

(b) if the Attorney-General or his representative appeals in terms of subsection (1), the appeal is determined.

(4) An appeal in terms of subsection (1) by the person admitted to bail or refused admission to bail shall not suspend the decision appealed against.

(5) A judge who hears an appeal in terms of this section may make such order relating to bail or any condition in connection therewith as he considers should have been made by the judge or magistrate whose decision is the subject of the appeal.

(6) Subsections (2) to (6) of section *one hundred and sixteen* shall apply, *mutatis mutandis*, in relation to any appeal in terms of this section.

(7) Any order made by a judge in terms of subsection (5) shall be deemed to be the order made in terms of the appropriate section of this Part by the judge or magistrate whose decision was the subject of the appeal.

(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 to admit to bail of a person charged with any offence referred to in paragraph 10 or 11 of the Third Schedule, in which event subsections (3) to (7) shall apply to such appeal.

[Subsection substituted by Statutory Instrument 37/2004<sup>4</sup>.]

(9) This section shall apply in regard to a private prosecution as if references to the Attorney-General were references to the private party instituting the prosecution.

[Section as substituted by s. 2 of Act 8/1997.]

### **123 Power to admit to bail pending appeal or review**

(1) Subject to this section, a person may be admitted to bail or have his conditions of bail altered—

(a) in the case of a person who has been convicted and sentenced or sentenced by the High Court and who applies for bail—

(i) pending the determination by the Supreme Court of his appeal; or

(ii) pending the determination of an application for leave to appeal or for an extension of time within which to apply for such leave;

by a judge of the Supreme Court or the High Court;

(b) in the case of a person who has been convicted and sentenced by a magistrates court and who applies for bail—

(i) where the record of a case is required or permitted, in terms of section 57 or 58 of the Magistrates Court Act [*Chapter 7:10*], to be transmitted for review, pending the determination of the review; or

(ii) pending the determination by the High Court of his appeal; or

(iii) pending the determination of an application for leave to appeal or for an extension of time within which to apply for such leave;

by a judge of the High Court or by any magistrate within whose area of jurisdiction he is in custody:

[Paragraph amended by s. 10 of Act 9/1997.]

Provided that—

(i) the Attorney-General, in the case of any application to a judge in terms of this subsection, or the local public prosecutor, in the case of any application to a magistrate in terms of this subsection, shall be given reasonable notice of any such application;

(ii) where an application in terms of this subsection is determined by a judge or magistrate, a further application in terms of this subsection may only be made, whether to the judge or magistrate who has determined the previous application or any other judge or magistrate, if

<sup>4</sup> Previous wording of subsection was—

"(8) There shall be no appeal from a decision (or order) of a judge in terms of this section."

such application is based on facts which were not placed before the judge or magistrate who determined the previous application and which have arisen or been discovered after that determination.

(iii) a magistrate shall not, without the consent of the Attorney-General, admit a person to bail or alter a person's conditions of bail in respect of an offence specified in the Third Schedule.

(2) Where a person has applied to a judge for bail in respect of an offence referred to in the Third Schedule, the Minister responsible for the administration of the Public Order and Security Act [*Chapter 11:17*] may issue a certificate stating—

- (a) that in his opinion it is likely that public security would be prejudiced if the applicant were admitted to bail; and
- (b) the grounds on which he bases that opinion.

[Subsection amended by s. 44 of Act No. 1 of 2002.]

(3) Whenever it is practicable to do so, a copy of any certificate issued in terms of subsection (1) shall be served on the accused person concerned before the hearing of his application.

(4) Where a certificate issued in terms of subsection (2) is produced in any application to a judge for bail in respect of an offence referred to in the Third Schedule, the judge shall refuse bail unless the applicant satisfies him that despite the grounds stated in the certificate he should be admitted to bail.

(5) If the Minister responsible for the administration of the Extradition Act [*Chapter 9:08*] certifies in writing that a person who has applied for bail has been extradited to Zimbabwe from a foreign country and that the Minister has given an undertaking to the government or other responsible authority of that country—

- (a) that the applicant will not be admitted to bail while he is in Zimbabwe, the judge or magistrate hearing the matter shall not admit the applicant to bail;
- (b) that the applicant will not be admitted to bail while he is in Zimbabwe except on certain conditions which the Minister shall specify in his certificate, the judge or magistrate hearing the matter shall not admit the applicant to bail except on those conditions:

Provided that the judge or magistrate may fix further conditions, not inconsistent with the conditions specified by the Minister, on the grant of bail to the applicant.

(6) A document purporting to be a certificate issued by a Minister in terms of subsection (2) or (5) shall be admissible in any proceedings on its production by any person as *prima facie* evidence of its contents.

(7) If a judge or magistrate refuses an application for bail referred to in subsection (1), he may—

- (a) direct that the person be treated as an unconvicted prisoner pending the determination of his appeal, application or review, as the case may be; or
- (b) postpone the payment of any fine.

(8) The time during which a person, pending the determination of an appeal, application or review, is—

- (a) admitted to bail; or
- (b) subject to any direction which the Supreme Court or High Court may give to the contrary on any appeal or review, treated as an unconvicted prisoner in terms of this section;

shall not count as part of any term of imprisonment under his sentence.

(9) The term of imprisonment of a person shall be resumed or begin to run, as the case requires—

- (a) if such person is treated as an unconvicted prisoner in terms of this section, subject to any directions which the Supreme Court or the High Court may give to the contrary, as from the day on which the appeal, application or review is determined; or
- (b) if such person is admitted to bail in terms of this section, as from the day on which he is received into prison under his sentence.

(10) A recognizance shall be taken on the admission of a person to bail either from that person alone or from him and one or more sureties, in the discretion of the judge or magistrate

according to the nature and circumstances of the case, and it shall be a condition of such recognizance that the person shall, upon service on or for him at some place to be mentioned in the recognizance of a notice signed by the registrar of the High Court or, where the conviction or sentence appealed against took place in a magistrates court, by the clerk of that court informing that person of the decision of the High Court or the Supreme Court, as the case may be—

- (a) pay the fine, if any, due by him within such time and to such person as shall be specified in the notice; or
- (b) surrender himself within such time and to such person as shall be specified in the notice in order to undergo any other punishment which he is liable to undergo, and the judge or magistrate may add any or all of the conditions mentioned in subsection (3) of section *one hundred and eighteen* which he may think necessary or advisable to impose.

(11) The provisions of section *three hundred and eighty-two* shall apply, *mutatis mutandis*, to the service of a notice referred to in subsection (10).

(12) In granting bail in terms of subsection (1) the judge or magistrate may take bail also for the cost and charge of serving the notice referred to in subsection (10), which cost and charge shall be the same as that of serving a summons in a civil case in a magistrates court against the same person at the same place.

(13) When a person has been admitted to bail in terms of subsection (1), a judge, in the case where the conviction or sentence took place in the High Court, or a magistrate in any other case, may, upon the application of the Attorney-General or local public prosecutor, as the case may be, and upon information being made in writing and upon oath that default has been made in any condition of the recognizance taken from such person—

- (a) issue a warrant for the arrest of such person; and
- (b) issue an order calling upon him and his sureties, if any, to appear on a day and at a place specified in the order to show cause why the recognizance should not be declared forfeited; and
- (c) if cause to the satisfaction of the judge or magistrate, as the case may be, is not shown against any such declaration, declare the recognizance to be forfeited, and such declaration of forfeiture shall have the effect of a judgment on the recognizance for the amounts therein named against such person and his sureties, respectively.

### **132 Admission to bail by police**

(1) Except where the charge against an accused person is one of the offences specified in the Fifth Schedule, any police officer of or above the rank of assistant inspector, or a police officer of whatever rank in charge of a police station, may, at a police station and at such times as no judicial officer is available, admit to bail an accused person who makes or on whose behalf is made a deposit of such sum of money as such police officer may in the particular circumstances fix.

(2) The provisions of section *one hundred and thirty-one* as to conditions, forfeiture and remission of forfeited bail shall apply, *mutatis mutandis*, in respect of any deposit of money made under subsection (1).

- See Schedules on following pages -

### THIRD SCHEDULE (Sections 32, 116, 121 and 123<sup>5</sup>)

OFFENCES IN RESPECT OF WHICH POWER TO ADMIT PERSONS TO BAIL  
IS EXCLUDED OR QUALIFIED

1. Treason.
2. Murder.
3. Rape.
4. Robbery accompanied by the use of a firearm or lethal weapon.
5. Kidnapping.
6. Arson.
7. Theft of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*].
8. A conspiracy, incitement or attempt to commit any offence referred to in paragraph 5 or 6.
9. Any offence where the Attorney-General has notified a magistrate of his intention to indict the person concerned in terms of subsection (1) of section *one hundred and one* or subsection (1) of section *one hundred and ten*.
10. Contravening section 5, 6, 7, 8, 9, 10 or 11 of the Public Order and Security Act [*Chapter 11:17*].
11. Committing a serious economic offence, that is—
  - (a) contravening the Prevention of Corruption Act [*Chapter 9:16*];
  - (b) contravening section 63 ("Money-laundering") of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*];
  - (c) the sale, removal or disposal outside Zimbabwe of any controlled product in contravention of the Grain Marketing Act [*Chapter 18:14*];
  - (d) contravening subsection (1) of section 3 ("Prohibition of dealing in or possession of gold") or subsection (1), (2) or (3) of section 6 ("Disposal of gold by persons authorised to possess gold") of the Gold Trade Act [*Chapter 21:03*];
  - (e) contravening subsection (1) of section 3 ("Unlawful dealing in or possession of precious stones prohibited") or subsection (1) or (6) of section 6 ("Registers to be kept and returns to be made") of the Precious Stones Trade Act [*Chapter 21:06*];
  - (f) contravening subparagraph (i) of paragraph (a) of section 5 of the Exchange Control Act [*Chapter 22:05*] as read with—
    - (i) subsection (1) of section 10 of the Exchange Control Regulations, 1996, subparagraph and subparagraph (g) called "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 section of the Regulations;
    - (ii) 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;
    - (iii) 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;

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<sup>5</sup> Heading revised to reflect references to paragraphs 10 and 11 of this Schedule in section 32(2), proviso, and section 121(8) of the Act as substituted by Statutory Instrument 37/2004.



- (iv) 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;
- (g) 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;
- (h) a conspiracy, incitement or attempt to commit any offence referred to in subparagraphs (a) to (g).

[Paragraph 11 inserted by Statutory Instrument 37/2004.]

[Schedule substituted by s. 44 of Act No. 1 of 2002.]

### **FIFTH SCHEDULE (Section 132)**

OFFENCES IN CONNECTION WITH WHICH BAIL MAY NOT BE GRANTED IN TERMS OF SECTION 132 (1<sup>6</sup>)

1. Treason.
2. Sedition.
3. Murder.
4. Rape.
5. Robbery.
6. Assault in which a dangerous injury is inflicted.
7. Arson.
8. Breaking or entering any premises with intent to commit an offence, either at common law or in contravention of any enactment.
9. Theft, receiving any stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to be forged, if the amount or value involved in any such offence exceeds the equivalent of a fine of level six.  
[Paragraph amended by s. 4 of Act 22/2001.]
10. Any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones.
11. Any offence relating to the coinage.
12. Any conspiracy, incitement or attempt to commit an offence specified in paragraphs 1 to 11.

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<sup>6</sup> i.e. by a police officer of or above the rank of assistant inspector, or a police officer of whatever rank in charge of a police station