

Statutory Instrument 447 of 1992.

Legal Practitioners (Council for Legal Education) Rules, 1992

SIs 447/1992, 48/1994, 218/1997, 278/2002

ARRANGEMENT OF RULES

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IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs in terms of section 32Q of the Legal Practitioners Act, 1981, has approved the following rules made by the Council for Legal Education:—

1. Title

These rules may be cited as the Legal Practitioners (Council for Legal Education) Rules, 1992.

2. Interpretation

(1) In these rules—

“Council” means the Council for Legal Education;

“designated legal qualification” means any degree, diploma or certificate which has been declared by the Council in terms of rules 6 to be a designated legal qualification;

“professional examinations” means examinations conducted by the Council in the subjects specified in the First Schedule;

“secretary” means the secretary of the Council.

(2) Where the Council has delegated any function to a committee in terms of section 321 of the Act, any reference to the Council in these rules shall be construed, in so far as it relates to that function, as a reference to the committee to which that function was delegated.

3. Qualifications for registration as a legal practitioner

The qualifications for registration as a legal practitioner for the purposes of subsection (1) of section 5 of the Act shall be—

(a) that the applicant has obtained a designated legal qualification and has passed or been exempted in terms of rule 7 from all or any of the professional examinations set out in Part I of the Schedule; or

(b) in the case of an applicant who is not normally resident in Zimbabwe or a reciprocating country, that he—

(i)

[Subparagraph repealed by s.i 218 of 1997]

(ii) holds a residential exemption certificate granted in terms of section 7 of the Act; or

(c) that the applicant, immediately before the 30 December, 1991, had obtained the necessary qualifications for registration as a legal practitioner as prescribed in the Legal Practitioners (General) Regulations, 1983, published in Statutory Instrument 124 of 1983:

Provided that the applicant shall not be required to have passed the papers on notarial practice and the law and practice of conveyancing prescribed in the Third Schedule to those regulations.

4. Qualifications for registration as notary public

The qualifications for registration as a notary public for the purposes of subsection (2) of section 5 of the Act shall be that the applicant-

- (a) has passed or been exempted in terms of rule 7 from the professional examinations set out in Part II of the Schedule; or
- (b) has passed an examination which, in the opinion of the Council, is of an equivalent standard to the professional examinations referred to in Part II of the Schedule: or
- (c) before the 30 December, 1991, had passed or been exempted from the paper on notarial practice prescribed in the Third Schedule to the Legal Practitioners (General) Regulations, 1983, published in Statutory Instrument 124 of 1983.

5. Qualifications for registration as conveyancer

The qualifications for registration as a conveyancer for the purposes of subsection (2) of section 5 of the Act shall be that the applicant-

- (a) has passed or been exempted in terms of rule 7 from the professional examinations set out in Part III of the Schedule; or
- (b) has passed an examination which, in the opinion of the Council, is of an equivalent standard to the professional examinations referred to in Part III of the Schedule: or
- (c) before the 30 December, 1991, had passed or been exempted from the paper on notarial practice prescribed in the Third Schedule to the Legal Practitioners (General) Regulations, 1983, published in Statutory Instrument 124 of 1983.

6. Designated legal qualifications

(1) Subject to this rule, the Council may, by notice in the *Gazette*, declare any law degree, diploma or certificate to be a designated legal qualification, if the Council is satisfied that holders of the degree, diploma or certificate, having passed or been exempted in terms of rule 7 from all or any of the professional examinations, will have adequate knowledge to practice law in Zimbabwe.

(2) If the Council is satisfied that a particular holder of a law degree, diploma or certificate, having passed or been exempted in terms of rule 7 from all or any of the professional examinations, will have adequate knowledge to practice law in Zimbabwe, whether because he has additional qualifications or experience or has exceptional ability or for some other special circumstances peculiar to him, the Council may, by notice in writing to that holder, declare that the degree, diploma or certificate to be a designated legal qualification, subject to such terms and conditions as the Council may specify in the notice, and thereupon, on relation to that particular holder and subject to those terms and conditions, the degree, diploma or certificate shall be a designated legal qualification.

(3) In determining, for the purposes of subrule (1) or (2), whether or not the holders of any law degree, diploma or certificate will have adequate knowledge to practise law in Zimbabwe, the Council shall take into account the following factors—

- (a) the extent to which the degree, diploma or certificate qualifies holders to practise law in the country where the degree, diploma or certificate is or was conferred, issued or granted; and
- (b) regarding the country where the degree, diploma or certificate is or was conferred, issued or granted—
 - (i) whether the common law is Roman-Dutch or English or based on and similar to either systems; and
 - (ii) the extent to which the law in that country is similar to the law of Zimbabwe ; and
 - (iii) whether English is an official language; and
- (c) any other factor which the Council considers relevant.

(4) If the council is satisfied that any degree, diploma or certificate designated in terms of subrule (1) should no longer be so designated, the Council may, by notice in the *Gazette*, withdraw the designation:

Provided that no such withdrawal shall have effect in relation to any application for registration filed with the High Court prior to the date on which the designation is withdrawn.

7. Exemptions from professional examinations

(1) The Council may exempt any person from writing one or more papers or subjects in the professional examinations if the Council is satisfied that the person has passed such other examinations and additionally, or alternatively, has such practical experience, as the Council considers justifies the grant of the exemption.

(2) A person who wishes to be exempted from one or more papers or subjects in the professional examinations shall apply in writing to the Secretary, and shall—

- (a) set out in his application the papers or subjects from which he seeks exemption, and the grounds on which he seeks exemption from them; and
- (b) submit with his application
 - (i) documentary evidence of any qualification or experience upon which he relies for the exemption; and
 - (ii) a fee of five thousand dollars, for each subject exempted, which shall be payable to the Council.

[Subparagraph inserted by s.i 278 of 2002]

(3) For the purpose of determining whether or not to grant any person an exemption in terms of subrule (1), the Council may—

- (a) require the person to provide such further evidence or information as the Council may reasonably require; and
- (b) interview the person and put questions to him in order to establish the extent of his knowledge of the subject or topic concerned.

[Paragraph inserted by s.i 48 of 1994]

(4) Whenever the Council exempts a person in terms of subrule (1), it shall provide him with a certificate to that effect, signed by the chairman or the secretary of the Council.

[Paragraph inserted by s.i 48 of 1994]

(5) If the Council is satisfied that any examination which holders of a designated legal qualification pass in the course of obtained that designated legal qualification is of the same or a higher standard than any equivalent paper in the professional examinations, the Council may, by notice in the *Gazette*, exempt the holders of that designated legal qualification from writing that paper in the professional examinations.

[Paragraph inserted by s.i 48 of 1994]

(6) If at any time the Council considers that any examination which is the subject of an exemption granted under subsection (5) is no longer of the same or a higher standard than the equivalent paper in the professional examinations, the Council may, by notice in the *Gazette*, withdraw the exemption:

Provided that no such withdrawal shall have effect in relation to any application for registration filed with the High Court prior to the date on which the designation is withdrawn..

[Paragraph inserted by s.i 48 of 1994]

8. *Examiners and panels of examiners*

(1) Subject to this rule, the Council may appoint an examiner or panel of two or more examiners for each paper or subject of the professional examinations.

(2) A person shall be qualified for appointment as an examiner or to a panel of examiners in terms of subrule (1) if he is or has been—

- (a) a judge of the Supreme Court of the High Court; or
- (b) a registered legal practitioner practising as such; or
- (c) a law officer employed in the office of the Attorney-General or in the Ministry for which the Minister is responsible; or
- (d) engaged full time in the teaching of law at an institution of higher learning;

Provided that—

- (i) the examiner or a member of the panel of examiners, as the case may be, appointed for the examination on book-keeping need not possess the qualifications specified in paragraph (a), (b), (c) or (d) if he is registered as a public accountant under the Accountants Act [*Chapter 215*];
- (ii) the examiner or at least one member of the panel of examiners, as the case may be, appointed for the notarial practice examination shall be a registered notary public;
- (iii) the examiner or at least one member of the panel of examiners, as the case may be, appointed for the conveyancing examination shall be a registered conveyancer.

(3) An examiner or a panel of examiners appointed in terms of subrule (1) for any subject in the professional examinations shall, subject to the directions of the Council—

- (a) set the examination paper for that subject; and
- (b) mark the papers in that subject; and
- (c) advise the Council of the results of the examination.

(4) Examiners or members of panels of examiners appointed in terms of subrule (1) may be paid such fees as the Council may fix from time to time.

(5) The final decision as to whether or not a person has passed or failed a paper or subject in the professional examinations shall rest with the Council.

9. Notification of intention to sit professional examinations

(1) A person who wishes to sit the professional examinations shall notify the secretary, in writing, of his intention to do so not later than three months before the date of commencement of the professional examinations concerned, and shall—

(a) set out in his notification his qualifications and, if he has been exempted from any paper or subjects in the professional examinations, the papers or subjects that he wishes to sit; and

(b) remit with his notification the appropriate fees fixed by the Council from time to time.

(2) For good cause shown, the Council may permit a person to write the professional examinations after giving less than the three months' notice specified in subrule (1).

10. Conduct of professional examinations

(1) The professional examinations shall be held at such times and places as the Council may fix from time to time.

(2) The Council shall cause a notice to be published in the *Gazette* setting out the dates, times and places at which the professional examinations are to be held, and the notices shall be published in sufficient time to enable persons who wish to sit the examinations to notify the secretary of their intention to do so;

Provided that a failure to publish such a notice shall not invalidate any examination subsequently held.

11. Notice of results of professional examinations

Where the Council—

(a) is satisfied that a candidate has passed any paper or subject of the professional examinations, the Council shall provide him with a certificate signed by the chairman or secretary of the Council and specifying the paper or subject in which the candidate has satisfied the Council;

(b) is not so satisfied, the Council shall advise the candidate that he has not passed the paper or subject.

12. Transitional provisions

Notwithstanding any other provision of these rules, any person who, before the 30 December, 1991, had passed or been exempted from any subject or paper of the Zimbabwean local examinations prescribed in the Third Schedule to the Legal Practitioners (General) Regulations, 1983, published in Statutory Instrument 124 of 1983, shall be deemed to have passed or been exempted from, as the case may be, the equivalent subject or paper in the professional examinations in terms of these rules.

SCHEDULE (Rule 2)

PROFESSIONAL EXAMINATIONS

PART I

EXAMINATIONS QUALIFYING FOR REGISTRATION AS LEGAL PRACTITIONER

1. Two three-hour papers on the common law of Zimbabwe, of which—

(a) one paper shall be on the law of persons, property and succession;

(b) one paper shall be on the principles of contract, the law of purchase and sale and the law of landlord and tenant.

2. One three-hour paper on civil practice and procedure and evidence covering the practice and procedure of the Supreme Court of Zimbabwe, the High Court of Zimbabwe, magistrates' courts and primary (local) courts. (Candidates may have rules of court and any other relevant enactments available when writing the examination).

3. One three-hour paper on criminal procedure covering the procedure in criminal cases in the Supreme Court of Zimbabwe, the High Court of Zimbabwe, and magistrates' courts. (Candidates may have the Criminal Procedure and Evidence Act [*Chapter 59*] and any other relevant enactments available when writing the examination).

4. One two-hour paper on the law of evidence, covering the law of evidence in civil and criminal proceedings in the Supreme Court of Zimbabwe, the High Court of Zimbabwe, magistrates' courts and primary (local) courts. (Candidates may have the Civil Evidence Act [*Chapter 11*] 1992 (No 15 of 1992), the Criminal Procedure and Evidence Act [*Chapter 59*] and any other relevant enactments available when writing the examination).

5. One three-hour paper on statutes law, covering the following enactments (candidates may have available the enactments in question when writing the examination)-

- (a) the Constitution of Zimbabwe;
- (b) the Interpretation Act [*Chapter 1*];
- (c) the Guardianship of Minors Act [*Chapter 34*];
- (d) the Maintenance Act [*Chapter 35*];
- (e) the Married Persons Property Act [*Chapter 38*];
- (f) the Contractual Penalties Act, 1992 (No. 13 of 1992);
- (g) the Law Reform (Contributory Negligence) Act [*Chapter 45*];
- (h) the Companies Act [*Chapter 90*];
- (i) the Administration of Estates Act [*Chapter 301*];
- (j) the Deceased Estates Succession Act [*Chapter 302*];
- (k) the Insolvency Act [*Chapter 303*];
- (l) the Prescription Act, 1975 (No. 31 of 1975);
- (m) the Shop Licences Act, 1976 (No. 40 of 1976);
- (n) the Legal Practitioners Act, 1981 (No. 15 of 1981) and the regulations and by laws made thereunder;
- (o) the Labour Relations Act, 1985 (No. 16 of 1985), and the regulations made thereunder;
- (p) the Matrimonial Causes Act, 1985 (No. 33 of 1985);
- (q) the Wills Act, 1987 (No. 13 of 1987).

6. One three-hour paper on book-keeping of a standard sufficient to enable a legal practitioner in practice on his own account to comply with the provisions of the Legal Practitioners Act, 1981, in relation to the keeping of books in a legal practitioner's office.

7. A viva voce examination on the practice, duties, functions and ethics of a legal practitioner.

PART II

EXAMINATIONS QUALIFYING FOR REGISTRATION AS A NOTARY PUBLIC

A three-hour paper on notarial practice, followed by a viva voce examination if the examiner or panel of examiners considers it necessary.

PART III

EXAMINATIONS QUALIFYING FOR REGISTRATION AS CONVEYANCER

A three-hour paper on the law and practice of conveyancing, followed by a viva voce examination if the examiner or panel of examiners consider it necessary.