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THE NINE HUNDRED AND THIRTY-EIGHTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

GHANA AIDS COMMISSION ACT, 2016

AN ACT to establish the Ghana AIDS Commission and the National HIV and AIDS Fund, to provide for the management of the Fund, to prevent and control the HIV and AIDS epidemic, to promote and protect the rights of persons living with HIV or AIDS and to provide for related purposes.

DATE OF ASSENT: 30th December, 2016

PASSED by Parliament and assented to by the President.

Ghana AIDS Commission

Establishment of the Commission

1. (1) There is established by this Act a body corporate to be known as the Ghana AIDS Commission.

(2) For the performance of its functions, the Commission may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

(3) Where there is hindrance to the acquisition of property, the property may be acquired for the Commission under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Commission.

Object of the Commission

2. The object of the Commission is to formulate policy on the HIV and AIDS epidemic and to direct and co-ordinate activities in response to HIV and AIDS.

Functions of the Commission

3. To achieve the object under section 2, the Commission shall
- (a) formulate policies and strategies on HIV and AIDS and determine programme priorities;
 - (b) provide high level advocacy for HIV and AIDS prevention and control;
 - (c) provide leadership in national planning, supervision and support of the HIV and AIDS programme;
 - (d) plan and co-ordinate activities in relation to the national HIV and AIDS response;
 - (e) mobilise, control and manage resources available for the achievement of the object of the Commission and monitor the allocation and utilisation of the resources;
 - (f) foster linkages among stakeholders;
 - (g) generate strategic information to influence policy, strategies, planning and the use of resources;
 - (h) promote research and dissemination of information on HIV and AIDS and documentation of persons living with HIV or AIDS; and
 - (i) monitor and evaluate programmes of the national HIV and AIDS response.

Governing body of the Commission

4. (1) The governing body of the Commission is a Board consisting of
- (a) the President of the Republic as the chairperson;
 - (b) the Ministers responsible for
 - (i) Health;
 - (ii) Gender, Children and Social Protection; and
 - (iii) Local Government and Rural Development;
 - (c) the Director-General;

- (d) the Director-General of the Ghana Health Service;
- (e) the Executive Director of the National Population Council;
- (f) the Government Statistician;
- (g) the President of the Ghana HIV and AIDS Network;
- (h) the President of the Network of Associations of Persons Living with HIV;
- (i) two representatives of Parliament;
- (j) one representative each nominated by
 - (i) a Christian Group; and
 - (ii) the Federation of Muslim and Ahmadiyya Mission;
- (k) one representative of the National House of Chiefs;
- (l) one representative of the Ghana Employers Association;
- (m) one representative of a labour organisation; and
- (n) two persons with expertise on matters relating to HIV and AIDS, one of whom is a female.

(2) Members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The Board shall ensure the proper and effective performance of the functions of the Commission.

Tenure of office of members

5. (1) A member of the Board shall hold office for a term of not more than four years and is eligible for re-appointment for another term only.

(2) Subsection (1) does not apply to the Director-General of the Commission or any other person who is a member of the Board by virtue of office.

(3) A member of the Board, other than a person who is a member of the Board by virtue of office, may at any time resign from office in writing addressed to the chairperson of the Board.

(4) A member of the Board, other than a person who is a member of the Board by virtue of office, who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(5) The President may, by letter addressed to a member, revoke the appointment of that member.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the chairperson of the Board shall determine whether the inability would result in a declaration of a vacancy for the unexpired tenure of office of that member.

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(7) Where there is a vacancy

(a) under subsection (3), (4) or 7 (2), or

(b) as a result of a declaration under subsection (5), or

(c) by reason of the death of a member,

the President shall appoint a person to fill the vacancy.

Meetings of the Board

6. (1) The members of the Board shall meet at least once every three months for the dispatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall, at the request in writing of not less than one-third of the membership of the Board, convene an extraordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is nine members of the Board or a greater number determined by the Board in respect of an important matter.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, the Minister shall preside.

(5) In the absence of the Minister, another Minister determined by the Ministers present shall preside.

(6) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(7) The Board may co-opt a person to attend a meeting of the Board but that person shall not vote on a matter for decision at the meeting.

(8) The proceedings of the Board shall not be invalidated by reason of a vacancy in the membership of the Board or a defect in the appointment or qualification of a member.

(9) Subject to this section, the Board may determine the procedure for its meetings.

Disclosure of interest

7. (1) A member of the Board who has an interest in a matter for consideration shall

(a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) recuse himself or herself from the deliberations of the Board in respect of the matter.

(2) A member ceases to be a member of the Board, if that member has an interest in a matter before the Board and

(a) fails to disclose that interest; or

(b) participates in the deliberations on the matter.

Establishment of committees

8. (1) The Board may establish committees consisting of members of the Board or non-members or both to perform a function.

(2) A committee with one or more members of the Board shall be chaired by a member of the Board.

(3) Section 7 applies to a member of a committee of the Board.

(4) Without limiting subsection (1), the Board shall establish the following committees:

(a) Programmes Committee;

(b) Research, Monitoring and Evaluation Committee;

(c) Legal and Ethics Committee;

(d) Resource Mobilisation Committee; and

(e) HIV and AIDS Fund Management Committee.

(5) The Board shall determine the functions of a Committee specified in subsection (4).

Regional and district committees of the Commission

9. (1) The Board shall establish

(a) regional committees of the Commission in the regions determined by the Board, and

(b) district committees of the Commission in the districts determined by the Board.

(2) A regional committee of the Commission consists of

(a) the Regional Minister who is the chairperson;

(b) the Regional Director for Health Services;

(c) one representative of the Network of Associations of Persons Living With HIV;

(d) one representative of a civil society organisation that deals with HIV and AIDS;

- (e) one representative nominated by a Christian Group;
 - (f) one representative nominated by the Federation of Muslim and Ahmadiyya Mission;
 - (g) one representative from the Regional House of Chiefs;
 - (h) the Regional Director of Education; and
 - (i) the Regional Technical Coordinator.
- (3) A district committee of the Commission consists of
- (a) the Chief Executive of the Metropolitan, Municipal or District Assembly who is the chairperson;
 - (b) the District Director for Health;
 - (c) one representative of the Network of Associations of Persons Living with HIV;
 - (d) one representative of a civil society organisation that deals with HIV and AIDS;
 - (e) one representative nominated by a Christian Group;
 - (f) one representative nominated by the Federation of Muslim and Ahmadiyya Mission;
 - (g) one representative from the traditional council or authority;
 - (h) the District Director of Education; and
 - (i) the District HIV Focal Person.
- (4) The President shall in accordance with article 195 of the Constitution appoint members of
- (a) a regional committee of the Commission, and
 - (b) a district committee of the Commission.
- (5) A regional committee of the Commission and a district committee of the Commission shall perform the functions of the Commission as the Board may direct in writing.
- (6) A regional committee of the Commission and a district committee of the Commission shall regulate the procedure for their meetings.

Allowances

10. A member of the Board and a member of a committee of the Commission shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Executive oversight

11. (1) The Commission is responsible to the President.
- (2) The President, shall, in writing, designate a Minister to have oversight responsibility for the Commission.
- (3) The Minister designated under subsection (2) or any other person designated, shall carry out the directives of the President and shall report to the President at least once in every three months.

Administrative Provisions

Appointment of Director-General

12. (1) The Commission shall have a Director-General.
- (2) The President shall, in accordance with article 195 of the Constitution, appoint the Director-General.
- (3) The Director-General shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Director-General

13. (1) The Director-General
- (a) is responsible for the day to day administration and operations of the Secretariat of the Commission and is answerable to the Board in the performance of functions under this Act;
 - (b) is responsible for the implementation of the decisions of the Board;
 - (c) shall provide technical advice to the Board on the HIV and AIDS epidemic as may be required; and
 - (d) shall perform any other function determined by the Board.
- (2) The Director-General may delegate a function to an officer of the Commission but shall not be relieved from the ultimate responsibility for the performance of the delegated function.

Secretariat of the Commission

14. (1) The Commission shall have a Secretariat with divisions determined by the Board as necessary for the effective performance of the functions of the Commission.
- (2) Each division shall be headed by a Director who shall be appointed by the President in accordance with the advice of the Board given in consultation with the Public Services Commission.

(3) A Director shall perform the functions in relation to a division as the Board may determine.

Appointment of other staff

15. (1) The President shall, in accordance with article 195 of the Constitution, appoint other staff of the Commission that are necessary for the effective performance of the functions of the Commission.

(2) Other public officers may be transferred or seconded to the Commission or may otherwise give assistance to the Commission.

(3) The Board may on the advice of the Director-General engage the services of consultants and advisers as the Board considers necessary.

Co-operation by officer of a public agency

16. An officer of a public agency shall co-operate with officers of the Commission in the performance of the functions of the Commission under this Act.

Financial Provisions

Funds of the Commission

17. The sources of funds for the Commission include

- (a) moneys from the Fund;
- (b) moneys approved by Parliament;
- (c) loans contracted by the Commission and guaranteed by Government; and
- (d) donations and grants.

Accounts and audit

18. (1) The Board shall keep books of account and proper records in the form approved by the Auditor-General.

(2) The Board shall within three months after the end of the financial year submit the accounts of the Commission to the Auditor-General for audit.

(3) The Auditor-General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Board.

(4) The financial year of the Commission shall be the same as the financial year of the Government.

Annual report and other reports

19. (1) The Board shall within one month after the receipt of the audit report submit to the Minister an annual report covering the activities and the operations of the Commission for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other report which the Minister may require in writing.

National HIV and AIDS Fund

Establishment of the National HIV and AIDS Fund

20. There is established by this Act a National HIV and AIDS Fund.

Object of the Fund

21. (1) The object of the Fund is to provide financial resources for the national HIV and AIDS response to target, in particular, HIV prevention, including the reduction of mother-to-child transmission, stigma reduction, treatment and the care and support of persons living with HIV.

(2) To achieve the object of the Fund, moneys of the Fund shall be applied

- (a) for the treatment and care of persons living with HIV or AIDS;
- (b) for measures towards the elimination of HIV and AIDS;
- (c) for the increase in prevention, care and other support services;
- (d) for research relating to the HIV and AIDS epidemic; and
- (e) in respect of any other matter concerned with the HIV and AIDS epidemic.

Sources of money for the Fund

22. The sources of money for the Fund include

- (a) moneys approved by Parliament for the Fund;
- (b) grants, donations, gifts and other voluntary contributions;

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- (c) returns on investment of funds by the Commission;
- (d) moneys that the Minister responsible for Finance may determine with the approval of Parliament; and
- (e) other moneys or property that may become lawfully payable and vested in the Board for the Fund.

Bank account for the Fund

23. The moneys for the Fund shall be paid into bank accounts opened for the Fund with the approval of the Controller and Accountant-General.

Exemption from payment of tax

24. The Fund is exempt from the payment of tax.

National HIV and AIDS Fund Management Committee

25. (1) Without limiting section 8(1), there is established by this Act a National HIV and AIDS Fund Management Committee.

(2) The Fund Management Committee comprises of not more than five members of the Commission including a representative of the Controller and Accountant-General and one person from the private sector.

(3) The Fund Management Committee shall

- (a) manage the Fund;
- (b) make recommendations to the Board on matters concerned with financing the Fund ;
- (c) pursue policies to ensure the achievement of the object of the Fund;
- (d) liaise with public agencies to sustain funding to promote the best interest of persons living with HIV and AIDS;
- (e) prepare guidelines and procedures for the management and disbursements of moneys from the Fund; and
- (f) deal with any matter concerned with financing and sustaining the HIV and AIDS response.

(4) Members of the Fund Management Committee shall elect a member from among their number as the chairperson.

(5) Members of the Fund Management Committee shall regulate the procedure for their meetings.

Secretariat of the Fund

26. The Secretariat of the Commission shall provide administrative support for the Fund.

Accounts, audit and annual reports of the Fund Management Committee

27. The provisions on accounts and audit and submission of annual reports to Parliament specified in sections 18 and 19 apply to the Fund.

Human Rights of Persons Living with HIV or AIDS

Non-discrimination

28. (1) A person living with or affected by HIV or AIDS and a person highly at risk of HIV infection shall enjoy the fundamental human rights and freedoms enshrined in the Constitution.

(2) A person shall not directly or indirectly discriminate against a person infected or affected by HIV or AIDS based on the actual or perceived HIV status of that person or of a close associate of that person.

(3) A person who suffers an act of discrimination based on the actual or perceived HIV status of that person or of a close associate of that person may institute legal proceedings to claim damages against the person who carried out that act of discrimination.

(4) Legal proceedings on discrimination that involve a person living with HIV or AIDS or highly at risk of HIV infection, may, on the direction of the Court, be held in camera.

(5) A party to legal proceedings in subsection (4) may apply to the Court for the proceedings to be held in camera.

(6) Any report of the proceedings shall be made anonymously and facts identifying persons related to the case shall not be revealed.

(7) A person shall not deny burial for a deceased person who suffered from HIV or AIDS or was known, suspected or perceived to be an HIV or AIDS patient on the grounds of the actual or perceived HIV status of the deceased person.

Right to health

29. (1) A person living with HIV or AIDS has the right to a reasonable standard of health which includes access to health care services.

(2) A person shall not give medical treatment or carry out a medical research on a person living with HIV or AIDS without the consent of the person living with HIV or AIDS except where the person with HIV or AIDS is unable to give consent.

(3) Where a person living with HIV or AIDS is unable to give consent as provided for in subsection (2), a guardian of the person living with HIV or AIDS may give consent to the medical treatment or medical research in accordance with the Patients' Rights and Charter of the Ghana Health Service.

(4) A person living with HIV or AIDS who is unable to give consent to a medical treatment or a medical research to be carried out on that person shall not be deprived by another person of medical treatment, based on religious or other beliefs.

Right to privacy and confidentiality

30. (1) Every person shall enjoy a right to privacy and confidentiality as regards the HIV status of that person.

(2) A person shall not disclose any information that concerns the HIV status of another person to a third party without the written consent of the affected person.

(3) Subsection (2) does not apply

- (a) in the cases provided for under this Act or any other law;
- (b) to a health care provider who is directly involved in providing health care to that person where knowledge of the HIV status of the patient is necessary to make a clinical decision in the best interests of that patient;
- (c) for the purpose of an epidemiological study where anonymity is assured and the release of information cannot be expected to identify the person to whom it relates; and
- (d) upon an order of a court, where the information contained in the medical file of that person is directly relevant to the proceedings before the court.

(4) A person living with HIV shall not be compelled to disclose the HIV status of that person except as required under subsection (3).

Insurance benefits and other benefits

31. (1) The actual or perceived HIV status of a person shall not constitute a reason to deny or exclude that person from

- (a) the benefits of health insurance or terminate a health insurance contract;
- (b) entering into a life insurance contract; or
- (c) the enjoyment of any retirement benefit, social security or other right the person may claim.

(2) The protection under subsection (1) extends to any person affected by HIV or AIDS.

Right to work

32. (1) A person shall not discriminate against another person, the partner or close relative of the other person in the workplace on the sole account of the actual or perceived HIV status of that person.

(2) An employer shall initiate disciplinary procedures against an employee who discriminates against a co-worker on account of the actual or perceived HIV status of that co-worker.

(3) An employee who has suffered discrimination by the co-worker may institute legal proceedings against the co-worker.

(4) The HIV status of a person, the partner or close relative of that person shall not constitute a reason to

- (a) refuse employment, or
- (b) terminate the employment

of that person except where an employer can prove that the requirement of the employment in question is that an employee must be in a particular state of health or medical or clinical condition.

(5) The relevant standard in an employment related issue shall be the fitness for work of an employee.

(6) An applicant for employment shall not be tested to ascertain the HIV status of the applicant for the purpose of recruitment, promotion or any other reason.

(7) An employer, in consultation with the employee or the representative of the employee shall take measures to provide reasonable allowance for an employee with an HIV or AIDS related illness.

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(8) An employer shall enable an employee with an HIV or AIDS related illness to benefit from rights that pertain to an employee affected by a long-term illness when the employee is no longer able to discharge the duties for which the employee was engaged on account of poor health.

Right to education

33. (1) The actual or perceived HIV status of a person, the partner or close relative of that person shall not constitute an obstacle to access education and the right to education.

(2) A person shall not, on the basis of the actual or perceived HIV status of another person or the partner and close relative of that other person

- (a) isolate, exclude, suspend or deny the participation of a person in any educational event or activity; or
- (b) deny any educational benefits or services to that person.

Political rights

34. A person shall not be denied

- (a) the right to seek an election to a political office or any other public office, or
- (b) the right to vote

on the grounds of the actual, perceived or suspected HIV status of that person.

Freedom of movement

35. (1) The right of abode or access to a public place or freedom of movement of a person shall not be denied or restricted on the grounds of the actual or perceived HIV status of that person.

(2) A person shall not be quarantined, placed in isolation, refused lawful entry or deported from this country on the grounds of the actual, perceived or suspected HIV status or AIDS status of that person.

Sexual and reproductive health rights

36. (1) A person living with HIV, affected by HIV or highly at risk of an HIV infection

- (a) is entitled to sexual and reproductive health rights;
- (b) has the right to a family; and
- (c) has the right to marry and bear children.

(2) The HIV status of a person does not constitute a valid reason to oppose the marriage of that person.

Disclosure of confidential information

37. An authorised officer who receives information in the performance of functions under this Act shall not

- (a) disclose the information to an unauthorised person; or
 - (b) disclose the personal details of a person to a third party
- except by order of a Court.

*Enforcement of Rights***Legal proceedings**

38. (1) The rights created under sections 28 to 37 are enforceable in accordance with article 33 of the Constitution.

(2) A public agency or a non-governmental organisation may institute legal proceedings for and on behalf of a person living with or affected by HIV or AIDS for infringement of the rights referred to in sections 28 to 37.

*Miscellaneous Matters***Offences and penalties**

39. (1) A person who

- (a) discriminates against a person infected or affected by HIV or AIDS in contravention of section 28(2);
- (b) denies burial for a person suspected or perceived to be HIV positive in contravention of section 28(7);
- (c) unlawfully discloses information that concerns the HIV status of another person in contravention of section 30;
- (d) compels a person living with HIV or AIDS to disclose the status of that person in contravention of section 30 (4);
- (e) denies or excludes a person suspected or perceived to be HIV or AIDS positive from insurance, retirement, social security benefits or any other right the affected person may claim in contravention of section 31(1);
- (f) discriminates against an employee in contravention of section 32;
- (g) isolates or denies another person educational rights on the basis of the actual or perceived HIV status of that person in contravention of section 33;

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- (h) denies another person the right to be elected to a public office or the right to vote on account of the HIV status of that person in contravention of section 34;
- (i) denies another person freedom of movement or the right of residence in contravention of section 35;
- (j) denies another person sexual and reproductive health rights and the right to a family in contravention of section 36;

commits an offence and is liable on summary conviction to a fine of not less than two hundred penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than eighteen months and not more than three years or to both the fine and imprisonment.

(2) A public officer who refuses or fails without reasonable cause to co-operate with an authorised officer of the Commission, commits an offence and is liable on summary conviction to a fine of not less than fifty penalty units and not more than one hundred penalty units or to a term of imprisonment of not less than three months and not more than six months or to both the fine and imprisonment.

Regulations

40. (1) The Minister may, on the advice of the Board, by legislative instrument, make for the effective implementation of this Act.

(2) Without limiting the generality of subsection (1), the Regulations may provide for

- (a) the regulation of test facilities and test kits;
- (b) the regulation of prevention services;
- (c) the regulation of antiretroviral drugs and treatment services; and
- (d) matters relating to the Fund.

Interpretation

41. In this Act, unless the context otherwise requires,

“AIDS” means Acquired Immune Deficiency Syndrome;

“authorised officer” means an officer of the Commission or any public officer authorised by the Commission to ensure the validity of authority;

“Board” means the governing body of the Commission established under section 4 ;

“care and support” includes

- (a) institutional and home-based health services and palliative care;
- (b) psychosocial and financial assistance to undertake income generating activities; and
- (c) support for a comprehensive nutritional programme for persons living with HIV or AIDS and periodic HIV testing and counselling;

“Christian Group” means the Christian Council the Catholic Bishops Conference, the Ghana Pentecostal and Charismatic Council, the National Association of Charismatic Christian Churches and the Council of Independent Churches;

“Commission” means the Ghana AIDS Commission established under section 1;

“Court” means a court of competent jurisdiction;

“Director-General” means the Director-General appointed under section 12;

“discrimination” against a person living with HIV or AIDS or highly at risk of the infection means any distinction, exclusion, restriction or preference based on the actual or perceived HIV status or AIDS status of that person that affects, nullifies or impairs the recognition, enjoyment or exercise of the human rights and fundamental freedoms of the person in the political, economic, social, cultural or any other field of public life;

“district” includes a municipality and a metropolis;

“District Chief Executive” includes a Metropolitan and a Municipal Chief Executive;

“elimination of HIV or AIDS” includes the prevention of mother to child transmission;

“healthcare provider” includes a healthcare practitioner licensed to practise in Ghana in accordance with an enactment in force, a Social Welfare Practitioner or a Professional Counsellor;

“HIV” means Human Immunodeficiency Virus;

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“Minister” means the person designated by the President under section 11 (2) to have oversight responsibility for the Commission;

“non-governmental organisation” includes a civil society organisation, traditional authority, religious body or other benevolent association concerned with persons living with HIV or AIDS;

“public agency” means a body set up by the Government in the public interest with or without an Act of Parliament;

“public office” includes an office, the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Government and includes a public or statutory corporation funded directly or partly out of public funds;

“public officer” means a person who holds a public office;

“reasonable allowance for an employee with an HIV or AIDS related illness” means the rearrangement of working time, special equipment, opportunities for rest breaks and time off for medical appointments; and

“security services” means the Police Service, the Armed Forces, the Immigration Service, the Ghana National Fire Service, the Prisons Service and the Customs, Excise and Preventive Service Division of the Ghana Revenue Authority.

Repeal and savings

42. (1) The Ghana AIDS Commission Act, 2002 (Act 613) is repealed.

(2) Despite the repeal of Act 613, bye-laws, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactment and in force immediately before the commencement of this Act shall be considered to have been made or done under this Act with the necessary modification and shall continue to have effect until reviewed, cancelled or terminated.

Transitional provisions

43. (1) The assets, rights, obligations and liabilities of the Ghana AIDS Commission established under the Ghana AIDS Commission Act, 2002 (Act 613) and in force immediately before the coming into force of this Act, are transferred to the Commission.

(2) A person in the employment of the Ghana AIDS Commission immediately before the coming into force of this Act, shall on the coming into force of this Act be deemed to have been duly employed by the Commission established by this Act on terms and conditions which are not less in aggregate to terms and conditions attached to the post held by that person before the coming into force of this Act.

Date of *Gazette* notification: 30th December, 2016.

