

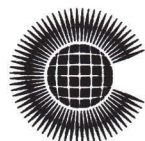


# Compendium of Election Laws, Practices and Cases of Selected Commonwealth Countries

Volume 1, Part 1

Prepared and presented by Carl W Dundas

Commonwealth



Secretariat

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by Carl W Dundas

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**COMPENDIUM OF ELECTION LAWS, PRACTICES AND CASES OF  
SELECTED COMMONWEALTH COUNTRIES**

Volume 1 – Part 1

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The views expressed in this compendium do not necessarily reflect the opinion or policy of the Commonwealth Secretariat.

## **NOTE ABOUT THE AUTHOR**

Carl W Dundas, of Gray's Inn, Barrister-at-Law, LL.M (London), is a former Director of Elections in Jamaica and is a senior member of the staff of the Commonwealth Secretariat with the Economic and Legal Advisory Services Division. He has led and served with election observers in Tanzania, Malawi, Mozambique, South Africa, Pakistan, Kenya, Guyana, Zambia, Malaysia and Namibia. Mr Dundas has also advised on election organisation in Kenya, Malawi, Mozambique, Sierra Leone, South Africa and Zambia.

## **OTHER WORKS BY THE AUTHOR**

*Practical Steps in Negotiating Maritime Boundary Agreements: A Guide to Small States* Commonwealth Secretariat (1991)

*Organising Free and Fair Elections at Cost-Effective Levels* Commonwealth Secretariat (1993)

*Dimensions of Free and Fair Elections: Frameworks, Integrity, Transparency, Attributes and Monitoring* Commonwealth Secretariat (1994)

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# PREFACE

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There is a growing realisation among members of the Commonwealth of Nations that the holding of free and fair elections is the centrepiece of democratisation. This has caused many Commonwealth countries in the recent past to review their Constitution and election laws. Some countries are in the process of so doing, while others are expected to do so soon. It is believed that this process of reviewing the relevant constitutional provisions relating to elections and the election laws by individual countries of the Commonwealth can be assisted by presenting the current relevant constitutional provisions and election laws of a number of selected Commonwealth countries in a user-friendly format that will facilitate wider discussion as to the means of improving the legislative options available.

It was this thought which triggered this compilation of 37 Commonwealth countries' constitutional provisions dealing with elections and their election laws. These countries were selected at random from geographical regions as follows –

## Part 1

### *Africa –*

**east** (Kenya);  
**west** (Ghana);  
**southern** (Botswana, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe);  
**oceanic** (Mauritius and Seychelles);

### *Asia –*

**south** (India, Pakistan and Sri Lanka);  
**south-east** (Malaysia and Singapore);

### *Europe –*

Malta and United Kingdom.

## Part 2

### *Australia and the South Pacific –*

(Australia, Nauru, New Zealand, Papua New Guinea, Solomon Islands, Tonga and Western Samoa);

### *Canada and the Caribbean –*

(Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, St Lucia, St Vincent and the Grenadines, and Trinidad and Tobago).

In order to facilitate comparative analyses, each legislative scheme is presented in a common format (to the extent possible), thereby highlighting those features which are considered to be a part of the essential framework of that scheme. The compendium is thus not a mere collection of the election laws concerned.

The form of the presentation of each legislative scheme (which at times takes account of procedures and practice guidelines) focuses on the organisation and conduct of elections for the National Assembly (by whatever name called in the country concerned). In a few cases presidential elections and elections to the Upper House are presented where the procedures therefor are considered appropriate for noting.

The process of change towards deepening the democratic institutions has set in motion an almost continuous review and modification of election laws in some countries. Despite such developments, the basic framework of each legislative scheme and procedure is presented as it stood on 1 January 1995.

The compendium aims to cover two volumes, Volume 1 deals with election laws and practices and Volume 2 will cover election cases.

CWD

January 1996

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# INTRODUCTION

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The framework for election law and practice of the 37 Commonwealth countries presented in this compilation offers a useful insight into the democratisation process in the member countries of the association. A number of issues can readily be identified by even a cursory examination of the various election schemes presented herein, some of which are mentioned below in order to stimulate the interest of election officials.

The presentation of the election framework focuses on a range of issues – varying from eight to 12, depending on the nature of the particular country’s scheme. In addition, the presentation itself throws light on some related issues, for example, common practice or otherwise with respect to the approach to elections in the Commonwealth. There is also the matter of whether or not there is an emergence of such a factor as Commonwealth “best practice” at the present time.

## **Constitutional Provisions**

The presentation shows clearly that the majority of the countries of the Commonwealth with a written Constitution provide for a basic framework for election of members to the National Assembly (by whatever name called) in the Constitution. In many cases, the relevant constitutional provisions contain the fundamentals of the legislative framework for election to the National Assembly of the country concerned.

There is a trend in the newer Constitutions to provide for an independent electoral management body whose functions, where appropriate, include the demarcation of the boundaries of constituencies or electoral districts. It does remain the case that many Constitutions create a separate body to deal specifically with the demarcation of the boundaries of constituencies or electoral districts, and one to deal with the organisation and conduct of elections.

Some constitutional provisions deal with the electoral system which is to be implemented, the secrecy of the vote and the formation and registration of political parties.

## **Election Management and Administration**

Many of the election frameworks presented herein provide for an independent management body to oversee the organisation and conduct of elections. The United Kingdom has a decentralised system of election management which resides essentially in the structures established by the various local government bodies.

The quest to achieve an independent electoral management body, that is to say, independent of the control of the ruling party, the government of the day and any other authority, has attracted more than 20 formulae among the 37 Commonwealth countries included in this compilation. These formulae range from entities whose members are independent of political parties, for example, Australia, Canada, India, Pakistan and South Africa (transition – first democratic elections) to entities with some or all of whose members are political party nominees, for example, Guyana, Jamaica, Malawi and Mozambique. Other interesting formulae may be observed in respect of the Bahamas, Barbados, Malta and Solomon Islands. Experience has shown that no single formula is the right one, and some of the formulae presented are less likely than others to contribute to the organisation of free and fair elections. Some formulae which are capable of enabling independent managerial operation are tarnished by the behaviour of the appointees to the management body. Sometimes the standing of a management body is undermined by incompetence and poor judgment.

There is a trend to confer competence on the electoral management body with respect to all matters relevant to the organisation and conduct of any election of members to the National Assembly, including the demarcation of constituencies or electoral district boundaries. However, there remain many cases where different aspects of election organisation are not only governed by separate legislative enactments, but are also administered by separate authorities, for example, boundaries commissions being separate entities from the principal electoral management body; national registration authorities being separate from registration of electors entities; registration of political parties being done by entities different from the electoral management body; appointment of electoral officers being done by some entities other than the electoral management body; election regulations being issued by some entity other than, and without prior consultation with, the electoral management body, and so on.

### **Registration of Voters**

Voters' registers (sometimes called voters' roll or official list) often become a controversial feature of many elections. An attempt has been made herein, wherever possible, to present registration schemes in as complete a form as possible. Upon an examination of the various schemes presented certain features will no doubt attract attention.

Voluntary schemes are the most common ones to be found in the presentation, but quasi-compulsory schemes, such that of the United Kingdom's, and compulsory schemes such as those of Australia, Papua New Guinea and Singapore, are presented. Some countries, such as Kenya, Pakistan and Zambia, have a national registration system separate from that of the registration of electors, as did Guyana until recently. Experience has shown that when the registration of voters is dependent on the otherwise qualified person having a national registration card as a condition precedent for registration as a voter, it is easy for large numbers of persons who did not possess a national registration card to lose the franchise. Similarly, where a voter is required to produce both a national registration card and a voter's card, unnecessary difficulties often arise with the loss of one or both cards.

States with a federal system or a provincial and central government system sometimes have difficulties adopting a central voters' register. Australia has been tackling this problem with success, Canada perhaps with less success at the time of writing, while South Africa, at the time of writing, was contemplating the way to go.

The compilation of the voters' register under a voluntary scheme of registration is achieved by employing various methods. Some schemes require a house-to-house visit to take place, others require the prospective voter to visit a designated centre or office to be registered. Many voter-registration schemes require voter registration to be done during a stipulated period, after which claims and objections are allowed within a specified period. This process is facilitated by a period for public inspection of the list. Aggrieved claimants are often able to appeal in accordance with a prescribed procedure. Some voter-registration schemes provide for annual revision and new registration every five years or so. In addition, a growing number of Commonwealth countries have established methods for purging their voters' registers of the names of deceased persons, persons who have become demented, persons who have become incapable of registering because of conviction of election offences which carry such a consequence and persons who have been convicted and given long-term sentences for very serious crimes.

Even voter-registration schemes which contain most or all the foregoing elements seem often to fail to produce a voters' register satisfactory to the general public.

The Namibian general election of 1994 and the first democratic elections in South Africa earlier the same year were conducted without the use of voters' registers at the polling stations.

### **Political Parties**

Many Constitutions and election laws in the Commonwealth give modest recognition to the role of political parties in elections. Malta, in 1991 focused on this matter as one in need of attention then and in their new election law sought to give greater prominence to the role of political parties.

Commonwealth countries, such as Kenya, Malawi, Seychelles, Zambia and Mozambique who have experienced the transition from a one-party to a multi-party system of government were required either to amend their Constitution or to adopt a new Constitution which enabled political parties, in addition to the then ruling political parties, to be formed and to operate freely. Similar action was taken in South Africa to enable the African National Congress (ANC) and other banned political parties and political movements to campaign for the first democratic elections.

Some legislative schemes set conditions to be met before a political party may be registered and require a party when registered to continue to meet such conditions failing which the party is struck from the list of registered parties. Usually the senior officials, leader, chairman or secretary, of the party, are required to file the relevant documents for the registration of a political party and to ensure that the party adheres to the rules of registration.

## **Nomination of Candidates**

Nomination procedures vary according to the electoral system which is in place. Thus in a proportional representation system, where a list of candidates is required to be submitted by each political party contesting the election in question, a political party will satisfy the nomination requirements by the submission of party lists within the time prescribed; a single-constituency representation system will require the nomination of one candidate each by the political parties wishing to contest the election in the constituency concerned; some schemes allow multi-representation in each constituency, in which case each party may put up for nomination as many candidates as are permitted for the constituency concerned; in Sri Lanka, entities, called independent groups, may put up candidates, and in many countries (though not in Kenya) independent persons may seek nomination to contest elections in a constituency.

There is a trend in Commonwealth countries to lengthen the nomination period from a matter of a few hours, for example, in Jamaica and Kenya, to days, as in Pakistan and Trinidad and Tobago. This trend is in the right direction since it removes the technicality of prospective candidates being prevented from being nominated through lack of time and, even more important, it reduces considerably the incidence of forcible prevention of prospective candidates from handing nomination papers at a particular time on a stipulated day. The movement towards giving more time for nomination not only offers more time to correct defective nomination papers, but also may permit appeal to the courts by an aggrieved prospective candidate – see Malawi, Malta, Pakistan, and Trinidad and Tobago.

## **Preparation for Polling**

The presentation deals with the framework for the preparation for the poll in some detail in every case, but it is appreciated that in this context more than any other, managerial competence and judgment play a large role, since many of the administrative details are not contained in the legislative schemes or even in the practice notes. Some of these hidden details that may impact on the proper organisation and conduct of an election include the training of election officers, the costing of the election concerned, the quantity of materials and supplies required, the timing of the purchase and storage of such materials and supplies, and the distribution of supplies and materials for polling day or days. It is possible to stipulate by regulations (as South Africa has done for local government elections) when supplies and materials must be delivered to presiding officers.

In the context of preparation for the poll, recent experience has shown that, in the implementation of the provisions of election legislation and practice instructions, more creativity in general needs to be given to the logistics of dealing with the movement and distribution of supplies, equipment and materials on a timely basis. Similarly, in some cases more attention should be given to the quality of election services delivered on polling day/days, particularly through establishing, where possible, more polling centres and less voters per polling station.

## **Polling Proceedings**

The presentation places emphasis on the polling proceedings, wherever polling takes place – at local polling stations, through postal voting, voting at polling stations in foreign countries or voting by proxy.

Despite the fact that most of the schemes presented herein have firm opening and closing rules for the polls, late opening of the polls is a frequent occurrence in many cases and in turn this event often leads to failure to observe the procedures for the opening of the poll.

Many countries in the Commonwealth permit postal voting as well as voting in foreign countries in which polling stations are established. In these cases the procedures, safeguards and polling dates need to be carefully worked out to prevent election manipulation or late return of the ballot papers or the results of the ballot.

Some countries allow proxy voting to facilitate the old, persons who may be absent from home during polling, persons who may be working in essential services or persons who are ill. Most of these proxy voting schemes have in-built procedures which protect them against election fraud.

A few schemes permit military and police personnel to vote a few days before general voting, in order presumably to free the members of these forces for service, if required, on the general polling day. These measures apart, none of the schemes appears to purport to deal clearly with the relationship of the security forces and the electoral management body, although the election legislative scheme of a few countries, for example Pakistan, allows the electoral management body to request the services of public entities, including the army, for assistance in the organisation and conduct of elections.

## **The Count and Announcement of Results**

The presentation has revealed that in the first-past-the-post systems the counting of the votes is done either at the polling stations, or at specially designated counting centres, or at both the polling stations (usually called preliminary count) and at counting centres (sometimes called the final count). Counting the votes at the polling stations is believed to reduce the risk of ballot-tampering between the close of the poll and the commencement of the count.

At the heart of the counting procedure is the reconciliation of election materials supplied to each polling station – and in particular the ballot papers. Every ballot paper supplied to a presiding officer at every polling station must be accounted for – whether used, unused or spoiled. Sometimes the procedure in the legislative scheme proves difficult to implement, as was the case with respect to the April 1994 elections in South Africa where, for a variety of reasons, ballot papers issued to polling stations could not be reconciled. One of the difficulties in this case was caused by the absence of any voters' register at the polling stations.

In the case of proportional representation voting systems, there is a tendency to count at counting centres – particularly where the voters' registers are not used. However, there are

cases where counting at polling stations has taken place, for example in Guyana in 1992, although in this case the voters' register was used at the polling stations.

In the first-past-the-post system, the count at the polling stations, when it is a final and not a preliminary count, or at the counting centre for a constituency or polling district, allows a swift indication of the winning candidate, but in the case of a proportional representation system, the results may have to be computed over a period and seats allocated according to the prescribed formula – see Malta, Mozambique and South Africa within. The counting method of Malta has been presented in some detail to illustrate this point.

### **Temporary Legal Structures**

Some Commonwealth countries have, in recent times, shown an impressive measure of creativity in the establishment of new and/or temporary legal structures to ensure the organisation and conduct of free and fair elections according to acceptable international norms. This achievement often takes place under considerable local and international pressure. These new or temporary structures, frequently include a new or amended Constitution, new or amended election laws and an independent electoral management body with complete control over the organisation and conduct of elections. Examples of countries which have in the recent past introduced these temporary legal structures are Guyana, Malawi, Seychelles and South Africa (prior to its Commonwealth membership). Many other Commonwealth countries, such as Ghana, Kenya, Lesotho and Zambia, also created new but more permanent legal structures to facilitate the holding of free and fair elections according to norms acceptable to the local population and international community.

In an operational sense, many of the temporary or new structures above-mentioned were aimed at making possible the creation of opposition political parties to the then ruling party in the countries concerned, and to establish a “level playing field” between political parties contesting the first multi-party election to be held in many years or at all.

### **Observers**

A clear trend has been discerned in the legislative scheme of many countries towards providing for observers at elections. Countries which have provided for observers in their legislation include Guyana, Kenya, Malawi and South Africa. In some cases local observers are not encouraged but in practice local observers are allowed to operate in several countries, for example, in Kenya, Namibia, Pakistan and Zambia.

### **Minorities**

A few of the election laws contain provisions to ensure adequate representation of minority groups in a constituency or an area or in the country as a whole – see, for example, New Zealand, Pakistan and Singapore.

### **Commonwealth Common And ‘Best Practice’**

The 37 Commonwealth countries whose laws for the National Assembly elections have been presented herein disclose a rich variety of provisions and procedures. Each scheme has

as its goal the organisation and conduct of free and fair elections, and each aspires to confer some measure of independence on the management body for elections. In some specific areas, for example, the definition of certain offences which constitute corrupt practices – bribery, personation, undue influence and treating – and the requirement to maintain the secrecy of the ballot, there is a large measure of convergence in the actual definition of these offences in most of the schemes presented herein.

The presentation in the compendium was designed to facilitate comparative methods. The identification of “best practice” in the Commonwealth cannot readily be discovered by an examination of the provisions and procedures which are written down, for often sound provisions and procedures are badly implemented. Nevertheless, where an election is pronounced to have been satisfactorily held by opposition parties, the general public and the international community, it is reasonable to take recognizance of the ability of the scheme concerned to deliver free and fair elections and then to look further at particular election tasks and functions which may serve as models. The criteria therefore against which Commonwealth “best practice” may be assessed will have to evolve over a period as the process of democratisation takes firm roots in the association.

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## INTRODUCTION

The restoration of multi-party elections in Kenya in 1992 after many years of one-party rule saw important changes to the Constitution and the National Assembly and Presidential Elections Act.

Various constitutional amendments enacted during 1991 and 1992 not only did away with the existence of a sole legal political party system but also laid the foundation for a multi-party system to develop.

In particular the amended Constitution addressed the role and status of the Electoral Commission which is the body responsible for the conduct of free and fair elections.

The National Assembly and Presidential Elections Act was amended to bring it in line with election laws which are consistent with the holding of free and fair multi-party elections.

### — *Section 1* —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### **1.01 Electoral Commission**

The Constitution provides for the establishment of an Electoral Commission which consists of a chairman and not less than four other members appointed by the President. The Commission is required to elect a vice-chairman from among its members.

A person is not qualified to be appointed a member of the Commission if he is a member of the National Assembly or if he holds or is acting in any office in the public service or in the armed forces of the Republic.

The office of a member of the Commission becomes vacant –

- (a) at the expiration of five years from the date of his appointment; or
- (b) if circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified to be appointed as such.

A member of the Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with this provision.

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A member of the Commission must be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under these provisions and the tribunal has recommended to the President that he ought to be removed from office for inability or for misbehaviour.

If the President considers that the question of removing a member of the Commission ought to be investigated, then –

- (a) the President must appoint a tribunal, which consists of a chairman and four other members selected by the President from among persons –
  - (i) who hold or have held the office of judge of the High Court or judge of appeal; or
  - (ii) who are qualified to be appointed as judges of the High Court; or
  - (iii) upon whom the President has conferred the rank of Senior Counsel; and
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed.

If the question of removing a member of the Commission has been referred to a tribunal, the President may suspend that member from the exercise of the functions of his office, and any such suspension may at any time be revoked by the President, and must in any case cease to have effect if the tribunal recommends to the President that the member should not be removed.

In the exercise of its functions under the Constitution the Commission is not subject to the direction of any other person or authority.

The Commission may, by rules or otherwise, regulate its own procedure, and with the consent of the President may confer powers or impose duties on any public officer or authority for the purpose of the discharge of its functions.

The Commission may act notwithstanding a vacancy in its membership or the absence of a member, and its proceedings shall not be invalidated by the presence or participation of a person not entitled to be present at or to participate in those proceedings; provided that any decision of the Commission shall require the concurrence of a majority of all its members.<sup>1</sup>

## **1.02 Constituencies**

Kenya is divided into such number of constituencies having such boundaries and names as may be prescribed by order made by the Electoral Commission.

Parliament may prescribe the minimum number of constituencies into which Kenya is to be divided (which must not be less than 188) or the maximum number of constituencies (which shall exceed the minimum number by at least twenty), and until Parliament has so prescribed the minimum number of constituencies shall be 188 and the maximum shall be 210.

All constituencies must contain as nearly equal numbers of inhabitants as appears to the Electoral Commission to be reasonably practicable, but the Commission may depart

from this principle to the extent that it considers expedient in order to take account of –

- (a) the density of population, and in particular the need to ensure adequate representation of urban and sparsely populated rural areas;
  - (b) population trends;
  - (c) the means of communication;
  - (d) geographical features;
  - (e) community of interest; and
  - (f) the boundaries of existing administrative areas,
- and the number of inhabitants of any part of Kenya must be ascertained by reference to the latest census of the population.

At intervals of not less than eight and not more than ten years, and whenever directed by Act of Parliament, the Commission must review the number, the boundaries and the names of the constituencies into which Kenya is divided, and may, by order, alter the number, the boundaries or the names to the extent that it considers desirable in the light of the review.

Whenever a census of the population has been held in or whenever a variation has been made in the boundary of an existing administrative area, the Commission may carry out a review and make an alteration to the extent which it considers desirable in consequence of that census or variation.

Every order made by the Commission under these provisions is required to be published in the Kenya Gazette and take effect upon the next dissolution of Parliament after it is made.<sup>2</sup>

### **1.03 Conduct of Elections**

The Electoral Commission is responsible for –

- (a) the registration of voters and the maintenance and revision of the register of voters;
- (b) directing and supervising the presidential, national assembly and local government elections; and
- (c) such other functions as may be prescribed by law.<sup>3</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 Staff of Electoral Commission**

As seen above, the Constitution established the Electoral Commission with responsibility to organise and conduct elections. The National Assembly and Presidential Elections Act provides for the appointment of a Director of Elections and other staff of the Commission. The Commission is required to appoint a Director of Elections, a Deputy Director of Elections and such other officers as it may deem necessary to assist the Commission in the

discharge of its functions. The officers may, subject to the general or special directions given by the Commission, exercise any or all of the duties and powers conferred or imposed upon it by the Constitution and the Act.

The term “officer” includes the Director of Elections, a Deputy Director of Elections, a returning officer, a presiding officer, a bill clerk and any other person employed in the holding of an election.<sup>4</sup>

## **2.02 Returning Officers**

The Electoral Commission is required to appoint a returning officer for each constituency and may appoint such deputy returning officers for the constituencies as it may consider necessary. Every appointment must be published in the Gazette and in such other manner, if any, as the Electoral Commission may deem necessary in order to bring it to the attention of persons who may be affected thereby.

A deputy returning officer has, subject to the general direction and control of the returning officer to whom he is a deputy, all the power, and may perform all the duties, of the returning officer.<sup>5</sup>

## **2.03 Presiding Officers and Agents**

Whenever an election is to be held in a constituency, the returning officer, in consultation with the Electoral Commission, must appoint a presiding officer to preside at each polling station, and such deputy presiding officers as he may consider necessary; but no person must be so appointed if he has been employed by or on behalf of, or has in any manner whatsoever assisted, any candidate in or about that election.

A returning officer may preside at a polling station and in that case he is deemed to be the presiding officer of that station.

A deputy presiding officer may perform any act (including the asking of any question) which his presiding officer is required or authorised to perform; but no deputy presiding officer has power to order the arrest of any person, or the exclusion or removal of any person from a polling station.

The returning officer must require every presiding officer, deputy presiding officer, clerk, interpreter and agent authorised to attend at a polling station, as soon as he has made the oath of secrecy, to make before the returning officer a declaration that the officer making the declaration understands that he must not prompt any elector whom he is empowered to assist, and must strictly follow the provisions of the regulations, and any instructions which may lawfully be given to him, relating to the election concerned.

Every agent appointed by a candidate must at all times during the performance of the duties authorised by the candidate wear the official badge or uniform of the political party sponsoring the candidature of the candidate at the election.<sup>6</sup>

— *Section 3* —

**REGISTRATION OF ELECTORS**

**3.01 Register of Electors**

The Electoral Commission may, after consultation with the Minister, by order, direct that a register of electors is to be prepared in the prescribed manner in respect of all constituencies or in respect of such constituency or constituencies as may be specified in the order.<sup>7</sup>

**3.02 Prohibition of Multiple Registration**

No person shall at any time be registered as an elector in more than one constituency and no person shall be registered as a elector more than once in any register of electors.

A person who –

- (a) being registered as an elector in a register of electors, applies to be registered as an elector –
  - (i) in any register of electors, otherwise than in substitution for his subsisting registration; or
  - (ii) in the same register of electors; or
- (b) having made an application to be registered in a register of electors which has not been either granted or rejected, applies to be registered in the same register of electors or in another register of electors; or
- (c) makes simultaneously two or more applications to be registered as an elector, is guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings or to both.<sup>8</sup>

**3.03 Qualifications and Disqualifications for Registration as a Voter**

A person is qualified to be registered as a voter in elections to the National Assembly and in elections of a President if, at the date of his application to be registered he –

- (a) is a citizen of Kenya who has attained the age of eighteen years; and
- (b) has been ordinarily resident in Kenya either –
  - (i) for a period of not less than one year immediately preceding that date; or
  - (ii) for a period of, or periods amounting in the aggregate to, not less than four years in the eight years immediately preceding that date; and
- (c) has, for a period of, or periods amounting in the aggregate to, not less than five months in the twelve months immediately preceding that date, been ordinarily resident in the constituency in which he applies to be registered, or has for such a period or periods carried on business there, or has for such a period or periods been employed there or has for such a period or periods lawfully possessed land or residential buildings there.

No person is qualified to be registered as a voter –

- 
- (a) if, under any law in force in Kenya, he is adjudged or otherwise declared to be of unsound mind; or
  - (b) if he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt;
  - (c) if he is detained in lawful custody; or
  - (d) if he is disqualified therefrom by Act of Parliament on grounds of his having been convicted of an offence connected with elections or on the grounds of his having been reported guilty of the offence by the court trying an election petition.

Where a person is qualified to be registered in more than one place as a voter in elections, he must register only in the first of those places in which he applies to be so registered, and Parliament may provide for the punishment of a person who, being already registered in one place as a voter in the elections or having applied to be so registered there and not having had that application finally rejected, applies to be registered in another place as a voter.<sup>9</sup>

### **3.04 Additional Disqualification for Registration**

A person is disqualified for registration as an elector if he has within the preceding five years been convicted of an election offence or been reported guilty of an election offence (defined to mean a corrupt practice, an illegal practice or any offence under section 3 or 4 of the Election Offences Act) by the election court.<sup>10</sup>

### **3.05 Appeal against Disqualification**

Where a person has been adjudged or declared to be of unsound mind, sentenced to death or imprisonment, adjudged or declared bankrupt or convicted of an election offence, and he is thereby disqualified from being registered as an elector, then, if it is open to him to appeal against the decision (either with the leave of a court or other authority or without leave), that person must not be thereby disqualified for being so registered until the expiry of thirty days after the date of the decision or such further period as the Minister in his discretion may, at the request of the person, direct in order to enable the person to appeal against the decision.<sup>11</sup>

### **3.06 Registration Officers**

The Electoral Commission is required to appoint suitable persons to be registration officers, each for a registration unit, and may appoint as many suitable persons to be assistant registration officers as it considers necessary. The same person may be appointed for more than one registration unit.

An assistant registration officer has all the powers and duties of the registration officer whom he is appointed to assist, and any reference to a registration officer, unless the context otherwise requires, includes a reference to an assistant registration officer.<sup>12</sup>

### **3.07 Procedure for Registration of Electors**

To set the registration process in action, the Electoral Commission is required to publish in the Gazette a notice in the prescribed form calling upon all persons qualified to be registered

as electors and who wish to be registered to make application for registration within a specified period, which period shall not be less than thirty days.

Instead of publishing in the Gazette one notice in respect of the whole of Kenya, as provided above, the Electoral Commission, may publish in the Gazette a number of notices, each for one or a number of registration units, and each specifying the same or different periods within which application for registration may be made.

The Electoral Commission may at any time, by notice in the Gazette, amend a notice given and published under these provisions, by substituting a later date for the specified date appearing in the notice or in any other manner.

Every application by an individual must be in the prescribed form, and the declaration in the prescribed form shall be made before the registration officer.

A registration officer may receive an application at a place other than one of the places of registration appointed in the notice.

A registration officer may close a place of registration before the last date appointed in the notice for the receipt of applications at that place, if he considers that the volume of applications does not warrant keeping the place of registration open, but if he does so he shall exhibit thereon a notice saying at what other place of registration in the same division applicants may attend.

For the purpose of satisfying himself as to the qualifications of an applicant to be registered as an elector, a registration officer may require of the applicants such further information, and may make such inquiries, and may take such advice as he may deem necessary.

Every registration officer must, as soon as practicable after the latest closing date in any registration unit has passed, prepare a register of electors, in such form as the Electoral Commission may direct, for the registration unit for which he is appointed.

In preparing the register of electors, the registration officer must register therein, in such manner as the Electoral Commission may direct, the name and address of every person from whom an application has been received and who appears to him to be entitled to be registered therein as an elector.

The names of the persons registered in the register of electors must be arranged in such order, and shall be numbered in such manner, as the Electoral Commission may direct.

The registration officer for a registration unit shall, when a person applies to be registered as an elector for that registration unit, and if he is satisfied that person is entitled to be so registered, issue to that person an elector's card in the prescribed form.

Where a person who has been registered in a register of electors loses his elector's card, or where his elector's card becomes unserviceable, the registration officer of the registration unit in which he is registered may, upon application to him and upon such proof as he may

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require, issue a duplicate elector's card to that person; but no duplicate elector's card must be issued on a day fixed for polling in the registration unit.

On the completion of the register of electors for his registration unit, the registration officer must publish the register by –

- (a) making it available for inspection at the office of the District Officer within whose division the registration unit lies;
- (b) publishing, at the District Officer's Office, a notice that the register is so available and specifying the times when it is so available, and specifying the manner in which and the time within which claims and objections may be made.<sup>13</sup>

### **3.08 Claims**

A person who has duly applied to be registered and whose name is not included in the appropriate register of electors may submit a claim to the registration officer in the prescribed form and manner and within the prescribed time.

A claim is determined by the registration officer in the prescribed manner, and an appeal shall lie, in the prescribed manner, to the High Court.

Every claim must be in the prescribed form and is required to be delivered, together with a fresh application for registration in the prescribed form, to the registration officer within a period of fourteen days after the date of publication of the notice published in respect of the registration unit.

At the end of seven days after the expiration of the period of fourteen days, the registration officer shall publish, at the office of the District Officer within whose division the registration unit lies, a notice of the names and addresses of all persons who have made to him a claim and shall thereafter consider and determine every claim.

The registration officer when considering a claim may require the attendance of the claimant.

Every appeal to the court must be in writing and signed by the appellant. It must state briefly the grounds of appeal and be delivered to the registration officer, together with the prescribed fee, within ten days from the date of the decision appealed against.

The registration officer must forthwith forward the appeal to the court, which shall cause the parties to be given not less than four clear days' written notice of the date, time and place of the hearing of the appeal, and at the hearing, may hear additional evidence.<sup>14</sup>

### **3.09 Objections**

A person who is registered in a register of electors may, in the prescribed manner, object to –

- (a) his registration; or
- (b) the registration in that register of electors of any other person; or

- (c) the registration in that register of electors of a person who has made a claim to a court.

The objection is determined by the court, and no appeal lies from the decision of the court. "Court" means a subordinate court of the first class having jurisdiction in the constituency.

Every objection must be in the prescribed form and be delivered, together with the prescribed fee, to the registration officer of the registration unit, and must be so delivered within a period of one month after the date of publication of the notice published in respect of the registration unit, or, in the case of an objection to the registration of a person who has made a claim, within fifteen days after the day on which the notice of the names and addresses of claimants is published in respect of the registration unit.

Whenever the registration officer receives an objection, he must as soon as practicable thereafter send to the person in regard to whom it is made, notice of the objection in the prescribed form and at the same time forward the objection to the court.

The court is required to determine, as soon as practicable all objections which have been sent to it, causing each objector and each person in regard to whom objection has been made to be given not less than seven days' notice.

If an objection is made, and is disallowed by the court, and in the court's opinion the objection was made without reasonable cause, the court may order the objector to pay to the person in regard to whom objection was made such sum, not exceeding (100 shillings), as it considers will compensate the person for any loss of time or inconvenience the person has incurred by reason of the objection, and a decree for the payment of the money must be drawn up and approved by the court and is deemed to be a decree for the purposes of the Civil Procedure Act.<sup>15</sup>

### **3.10 Amendment of Register**

When the court has determined the appeals which have been lodged with respect to claims, and all the objections, it shall cause to be forwarded to the registration officer a statement containing the particulars of the persons who it has decided must be registered in the register of electors and of the persons who it has decided ought not to be so registered, and the registration officer must amend the register of electors accordingly.<sup>16</sup>

## **— Section 4 —**

### **HOLDING OF ELECTIONS**

#### **4.01 Issue of Writs**

For the purposes of a parliamentary election –

- (a) consequent upon a dissolution of the National Assembly; or
- (b) to supply a vacancy arising from any cause other than the dissolution of the National Assembly,

the Speaker is required to issue a writ under his hand in the prescribed form addressed to the returning officer of each constituency in which an elected member is to be returned.

The Speaker must issue the writs –

- (a) in the case of an election consequent upon the dissolution of the National Assembly, within fourteen days after dissolution;
- (b) in the case of an election consequent upon a determination by the election court, within one month after the determination; and
- (c) in any other case, within four months after the occurrence of the vacancy.

The Speaker may, after consultation with the Minister, by notice in the Gazette, extend the periods specified in sub-paragraphs (b) and (c) to facilitate the proper organisation and holding of the ensuing elections.

Every writ must be delivered to the Electoral Commission which must, within ten days after receiving it –

- (a) transmit the writ to the returning officer to whom it is addressed; and
- (b) cause to be published in the Gazette a notice in the prescribed form which must specify –
  - (i) the day or days upon which each political party is required to nominate candidates to contest parliamentary elections in accordance with its constitution or rules which shall not be **more than** twenty-one days after the date of publication of such notice.<sup>17</sup>
  - (ii) the day or days on which the poll is to be taken for the parliamentary election, if it be necessary, which must not be less than fourteen days after the day fixed for nomination. Where more than one writ is issued a composite notice may be published.<sup>18</sup>

#### **4.02 Holding of Elections**

After receiving a writ with respect to a parliamentary election, the returning officer to whom it is addressed is required to proceed to hold the election according to the terms of the published election notice.<sup>19</sup>

### **— Section 5 —**

## **PREPARATIONS FOR PARLIAMENTARY ELECTIONS**

#### **5.01 Nomination by a Political Party**

Independent candidates who do not belong to a political party cannot contest a parliamentary seat.<sup>20</sup>

A person is deemed to be nominated by a political party for election as a member of the National Assembly if he is selected in the manner provided for in the constitution or rules of

the political party concerned relating to members of that party who wish to contest parliamentary elections.

No person can be nominated by a political party unless he is qualified in all respects to be an elected member of the National Assembly.

Each political party must bear the expenses relating to the nomination of candidates for contesting parliamentary elections.

Regulation 14 (which seems to be at variance with the above-mentioned provision of the Act but see note 17) requires the Electoral Commission to specify the day for the nomination of candidates by each political party taking part in the parliamentary elections which must not be less than twenty-one days before the date fixed by such notice for the holding of the parliamentary elections.<sup>21</sup>

### **5.02 Nomination of Candidates**

For the purposes of nomination of candidates at a parliamentary election every candidate must be:

- (a) proposed and seconded and supported by not less than seven and not more than 18 persons other than the proposer and seconder; and
- (b) nominated by the delivery by the candidate or his duly appointed agent to the returning officer of the constituency between the hours of eight o'clock in the morning and one o'clock in the afternoon of the nomination day for election of a nomination paper in the prescribed form.

There must be delivered to the returning officer together with the nomination paper a statutory declaration in the prescribed form made not earlier than one month before the nomination day.

The subscribers to a nomination paper must all be persons who are registered as electors for the constituency concerned and who are members of the political party whose endorsement the candidate is seeking.

Every application for nomination for candidature at a parliamentary election must be accompanied by a nomination fee (of five thousand shillings) in cash or banker's draft, which fee shall be refunded to the candidate –

- (a) where the returning officer holds a nomination paper invalid; or
  - (b) where the candidate withdraws his candidature,
- but not otherwise.

If a person stands nominated as a candidate in more than one constituency all nominations of that candidate are void.<sup>22</sup>

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### 5.03 Nomination Papers and Procedures

A nomination paper is required to:

- (a) contain such description of the candidate as is sufficient to adequately identify the candidate; and
- (b) show the electoral number of each of the subscribers thereto.

Where the nomination paper bears the signatures of more than the required or permitted number of persons as proposing, seconding or supporting the candidate, the signature or signatures, up to the required or permitted number, appearing first on the paper in each category must be taken into account to the exclusion of all others in that category.

No person is to be a subscriber to more than one nomination paper in respect of the same parliamentary elections and if any person subscribes to more than one such paper his subscription is inoperable on all such papers. This provision does not apply to the subscription of a person by reason only of his having subscribed a nomination paper of a candidate who has died or who has withdrawn his candidature before a second nomination paper subscribed by that person has been delivered to the returning officer.

When a nomination paper has been delivered to a returning officer no further nomination papers can be accepted in respect of the same candidate unless the first paper has been declared invalid.

A returning officer is required to supply free of charge to any elector of his constituency a form of nomination paper upon a request made in that behalf at such place and time as is specified in a notification, but it is not necessary for a nomination form to be on a form so supplied as long as it otherwise complies with the requirements of the Regulations.

Except for the purpose of assisting the returning officer, and at his request, no person is allowed to attend the proceedings taking place during the time fixed for the delivery of nomination papers unless he is a candidate or the agent or the proposer or seconder of a candidate; but only two such persons are entitled to so attend at any one time in respect of any one candidate, whether one of those two is the candidate himself or not.

A person entitled to attend the proceedings is also entitled to inspect, and to object to the validity of, any nomination paper delivered in his presence.

Nothing contained in this provision prevents the Electoral Commission from authorising observers duly approved or accredited by the Electoral Commission from attending the nomination proceedings.

Where an application has been made for nomination then, unless the returning officer holds a nomination paper invalid, or the candidate withdraws his candidature, the candidate named therein stands validly nominated.

A returning officer is entitled to hold a nomination paper invalid on any of the following grounds, but not otherwise:

- (a) that the particulars of the candidate or subscribers contained in the paper are not as required by the Regulations;
- (b) that the paper is not subscribed as required by the Regulations;
- (c) that the candidate is not qualified, or is disqualified by law from being nominated, or for being elected as an elected member of the National Assembly; or
- (d) that the proposer or seconder, or so many of the supporters as would reduce the number of qualified supporters to less than seven, are not qualified to be subscribers.

A returning officer must give his decision immediately on an objection to a nomination paper.

Where a returning officer decides that a nomination paper is invalid he must immediately record that decision and the reasons therefor on the paper and add his signature thereto.<sup>23</sup>

#### **5.04 Withdrawal of Candidature**

At any time before the close of nominations, but not later, a candidate whose nomination paper has been delivered to the returning officer may, by notice in writing signed by him and delivered to the returning officer, withdraw his candidature.<sup>24</sup>

#### **5.05 Close of Nomination**

If, after the close of nominations, no person stands validly nominated, the returning officer is required to –

- (a) certify accordingly to the Electoral Commission in the prescribed form;
- (b) publish a statement countermanding the holding of the election concerned.

If, after the close of nominations, only one candidate stands validly nominated, the returning officer shall –

- (a) declare the candidate to be elected; and
- (b) certify accordingly to the Electoral Commission in the prescribed form.

Upon receipt of a certificate under the foregoing provisions, the Electoral Commission must publish a notice in the Gazette in appropriate terms and, where two or more certificates are received at substantially the same time, such notice may be a composite one.

If, after the close of nominations, two or more candidates stand validly nominated, the returning officer must publish a statement in the Gazette and in such other manner as the Electoral Commission may deem necessary, stating:

- (a) the names, in alphabetical order of surnames, addresses and occupations or descriptions of such candidates as given in their nomination papers;

- 
- (b) the names of the subscribers to the nomination papers;
  - (c) the day or days upon which, and hours during which, the poll will be taken; and
  - (d) the situation of each polling station and the description of the electors entitled to vote at each polling station.<sup>25</sup>

### **5.06 Election Procedure**

Every election is required to be by ballot wherein the votes of electors consist of ballot papers. No person is allowed to vote in a constituency other than that in respect of which he is registered as an elector.

No person is permitted to cast more than one vote at any particular election.<sup>26</sup>

### **5.07 Polling Station Materials and Equipment**

The returning officer is required to provide each presiding officer with such number of ballot boxes and ballot papers as the returning officer considers necessary for the effective carrying out of the provisions of the Regulations relating to the election concerned, and in the case of a joint election shall ensure that the ballot boxes relating to the presidential election and the parliamentary election are separately and clearly identified and placed as far away as possible from each other.

Every ballot box shall be constructed:

- (a) with an aperture which is large enough to receive a ballot paper but which is no larger; and
- (b) so as to be capable of being sealed so that ballot papers cannot be taken out of the box so long as the seal is unbroken.

The returning officer must provide each polling station with:

- (a) materials to enable electors to mark their ballot papers in elections where marking is necessary;
- (b) instruments for stamping the official mark on ballot papers;
- (c) a bottle or container of indelible ink;
- (d) a seal of the Electoral Commission;
- (e) a copy of the register of electors or such part thereof as contains the names of the electors entitled to vote at that polling station; and
- (f) a sufficient number of compartments in which electors can mark their votes screened from observation.<sup>27</sup>

### **5.08 Keeping Order at Polling Station**

It is the duty of the presiding officer to keep order at his polling station. If a person misconducts himself in a polling station, or fails to obey the lawful instructions or orders of the presiding officer, he may immediately be removed, by order of the presiding officer, from the polling station by a police officer, and a person so removed must not re-enter the

polling station during the continuance of the poll without the permission of the presiding officer.

A person removed from the polling station may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody for an offence by a police officer without a warrant.

The presiding officer may order the dispersal of any gathering of persons which appears to him to be intimidating or interfering with electors, and any such order is sufficient authority for a police officer, or any other person authorised by the order, to effect the dispersal.

The powers conferred by these provisions must not be exercised so as to prevent an elector who is entitled to vote at the polling station from having an opportunity of peaceably voting thereat.<sup>28</sup>

### **5.09 General Procedure at the Polling Station**

Immediately before the commencement of the poll, the presiding officer must show the ballot box or ballot boxes to those persons lawfully present in the polling station, and allow those of the candidates and their agents as may wish to do so to ascertain that the box or boxes are empty, and must thereupon close the box or boxes so that they may not be opened without breaking the seal.

After a ballot box is sealed, the presiding officer must cause it to be so placed in the polling station that it can at all times be in the view of himself or a deputy presiding officer and of the candidates or their agents.

On the adjournment of the poll in a polling station to another day, or on the close of the poll at one station with a view to transferring a ballot box to another station, and at any other time when a ballot box is not in use for the purpose of receiving ballot papers, the presiding officer must close up the aperture used for the insertion of the ballot papers into the box and place his seal on it in such a manner as to prevent the insertion of ballot papers without breaking the seal.

After a box has been sealed the seal must not be broken or the aperture opened until broken and opened in the presence of those persons lawfully present in the polling station where polling is about to recommence.

Where a presiding officer affixes his seal on a ballot box or aperture thereof, he must permit any candidate or agent of a candidate who so wishes to affix his seal on the box or aperture.

A presiding officer may postpone or adjourn the proceedings at his polling station where they are interrupted by a riot, open violence, flood, natural catastrophe or other cause, but when he does so he must start or restart the proceedings at the earliest practicable moment. These powers of a presiding officer include a power to transfer the proceedings to another polling station in the same constituency, and where he does so –

- 
- (a) he must advise the fact in such manner as he thinks sufficient to bring it to the notice of electors; and
  - (b) the polling area for the polling station from which the proceedings are transferred is deemed to be part of the polling area of the polling station to which the proceedings are transferred.

A presiding officer may extend the hours of polling at his polling station where polling has been interrupted or for good cause, and must, where polling in that station has started late, extend the hours of polling by the amount of time which was lost in so starting late.

Before the delivery of a ballot paper to an elector –

- (a) the ballot paper must be stamped with the official mark of the Electoral Commission;
- (b) the number and name of the elector as stated in the copy register must be called out;
- (c) the electoral number of the elector must be marked on the counterfoil of the ballot paper;
- (d) a mark must be placed in the copy register against the electoral number of the elector to denote that a ballot paper has been delivered but without showing any particulars of the paper; and
- (e) the elector's card of the elector must be stamped to show that a ballot paper has been delivered to him.

Upon receiving a ballot paper, an elector is required to –

- (a) submit to having a particular one of his fingers immersed or dipped in ink of a distinctive colour which, so far as is possible, is sufficiently indelible to leave a mark for the period of the election; and
- (b) submit his identity card to be impressed with the seal of the Electoral Commission leaving a permanent impression on the card.

After receiving a ballot paper an elector is required to cast his vote without undue delay and then immediately leave the polling station.<sup>29</sup>

### **5.10 Method of Voting**

An elector must, upon receiving a ballot paper, go immediately into one of the compartments of the polling station and there secretly mark his ballot paper and fold it up so as to conceal his vote, and must then put the ballot paper into the ballot box in the presence of the presiding officer.

A presiding officer, on the application at the polling station of –

- (a) an elector who is incapacitated by blindness or other physical cause from voting in accordance with the normal procedure; or
  - (b) an elector who declares orally that he is unable to read or otherwise requests the assistance of the presiding officer,
- may, with the assent of the elector, cause the vote of the elector to be cast on his behalf and

as he may direct, and must thereupon record in the copy register, by means of a symbol placed opposite the name of the elector, the fact that the vote was so cast and the reason therefor; and the presiding officer must allow one representative of each candidate to witness the marking of the vote.

An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering it to the presiding officer and proving to the satisfaction of such officer the fact of the inadvertence, obtain another ballot paper in the place of the paper so delivered, and the spoilt ballot paper must immediately be cancelled and the counterfoil thereof marked accordingly.

A presiding officer shall require a person applying for a ballot paper to produce his identity card issued under the Registration of Persons Act and the elector's card issued by the Electoral Commission.

If a person representing himself to be a particular elector applies for a ballot paper and produces an elector's card purporting to be issued in his name which has not been stamped and either –

- (a) some other person has already been issued with a ballot paper in the name of that elector and the person so applying produces satisfactory evidence of his identity as that elector; or
- (b) the presiding officer is satisfied that the person duly applied for registration as an elector and was qualified for registration but that his name was omitted from the register of electors by mistake; or
- (c) that person does not produce to the presiding officer evidence satisfactory to the officer of his identity when so requested, but produces a written declaration, in a form acceptable to the presiding officer, as to his identity,

the presiding officer must allow that person to vote, but must record a statement of the particulars of the case.<sup>30</sup>

### **5.11 Close of Poll**

Immediately after the close of the poll at his polling station the presiding officer must make a written statement of –

- (a) the number of ballot papers issued to him;
- (b) the number of ballot papers, other than spoilt ballot papers, issued;
- (c) the number of spoilt ballot papers; and
- (d) the number of ballot papers remaining unused.

Immediately after the completion of this statement, the presiding officer, in the presence of those candidates or their agents as are then present with him, must make up into separate packets –

- (a) the spoilt ballot papers, if any;
- (b) the marked copy register;

- 
- (c) the counterfoils of the used ballot papers; and
  - (d) the aforesaid statement and any other statement required to be recorded,
- and must seal with his own seal each of the packets, and must so seal each of the ballot boxes in use at the polling station in such a manner as to prevent the introduction of any matter into the boxes or the opening thereof, and must allow any candidate or agent who may so desire to affix his seal to the packet or box.

The presiding officer must, as soon as practicable, deliver the ballot boxes, with keys (if any) attached, and the sealed packets to the returning officer who must take charge thereof, and the presiding officer must permit candidates or their agents to accompany the ballot boxes and sealed packets in the course of delivery to the returning officer.<sup>31</sup>

### 5.12 Counting the Votes

At the counting of votes at an election any ballot paper –

- (a) which does not bear the official mark; or
- (b) on which votes are given for more than one candidate; or
- (c) on which anything is written or so marked as to be uncertain for whom the vote has been cast,

is void and cannot be counted.

A ballot paper on which a vote is marked –

- (a) elsewhere than in the proper place; or
- (b) otherwise than by means of a cross; or
- (c) by more than one mark,

is not by that reason only thereof void if an intention that the vote is for one or other of the candidates clearly appears, and the manner in which the paper is marked does not itself identify the elector and it is not shown that the elector can be identified thereby.

A returning officer must, so far as practicable, proceed continuously with the counting of votes.

A returning officer must not commence to count the votes unless he is of the opinion that he can conveniently complete the count, and any recount if it appears to him to be likely, without a break, but having commenced the count, he may if he considers it desirable and after consultation with such of the candidates or their counting agents as are present, exclude the hours between seven o'clock in the evening and nine o'clock of the following morning.

The counting of votes shall be carried out at the constituency level and the returning officer shall ensure that votes from the polling stations in the constituency are counted separately.

During any recess in the counting proceedings, the returning officer must place the ballot papers and other documents relating to the election under his own seal and the seals of those

of the candidates and their counting agents as may desire to affix their seals, and must otherwise take all due and proper precautions for the security of such papers and documents.<sup>32</sup>

### **5.13 Recount**

A candidate or counting agent, if lawfully present when the counting or any recount of votes is completed, may require the returning officer to have the votes rechecked and recounted or again recounted, or the returning officer may, on his own initiative, have the votes recounted or again recounted.

No steps must be taken on the completion of a count or recount of votes until the candidates and counting agents present at the completion have been given a reasonable opportunity to exercise this right.<sup>33</sup>

### **5.14 Rejected Ballot Papers**

Every rejected ballot paper must be marked with the word “rejected” by the returning officer, and, if an objection is made by a candidate or counting agent to the rejection, the returning officer is required to add the words “rejection objected to”.

After the counting of votes is finally concluded, the returning officer must draw up a statement showing the number of rejected ballot papers under the following heads of rejection as may be applicable –

- (a) want of official mark;
- (b) voting for more than one candidate;
- (c) writing or mark by which the elector might be identified;
- (d) unmarked or void for uncertainty,

and any candidate or counting agent must, if he so desires, be allowed to copy that statement.

Upon the completion of a count (including any recount), the returning officer must seal up in separate packets –

- (a) the counted ballot papers; and
- (b) the rejected ballot papers together with the statement relating thereto.<sup>34</sup>

### **5.15 Returns of Persons Elected**

When the count, including any recount, of votes at an election is completed, the returning officer must announce the result to the persons then present and must, as soon as practicable, forward to the Electoral Commission –

- (a) in the case of a presidential election, whether or not forming part of a joint election, a certificate in the prescribed form showing the total number of votes cast for each candidate;

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- (b) in the case of a parliamentary election, whether or not forming part of a joint election, a certificate in the prescribed form showing the name of the candidate who was elected.

Upon receipt of a certificate showing the name of the candidate who was elected, the Electoral Commission must –

- (a) in the case of a presidential election, whether or not forming part of a joint election, hold the certificate until the results of that election in every constituency have been received and thereafter publish a notice in the Gazette declaring the person who has received the greatest number of votes in the election, and has complied with the provisions of the Constitution, to have been elected President; and
- (b) in the case of a parliamentary election, whether or not forming part of a joint election, publish a notice in the Gazette, which may form part of a composite notice, showing the name or names of the person or persons elected.

Where an election results in a tie, the Electoral Commission must notify the Speaker accordingly and the Speaker shall issue the appropriate notice or writ for a fresh election.<sup>35</sup>

## — Section 6 —

### PETITIONS

#### 6.01 Election Court

An application to the High Court under the Constitution to hear and determine a question whether –

- (a) a person has been validly elected as President; or
- (b) a person has been validly elected as a member of the National Assembly; or
- (c) the seat in the National Assembly of a member thereof has become vacant, must be made by way of petition and must be tried by an election court consisting of three judges.<sup>36</sup>

#### 6.02 Presentation of Petition

A petition –

- (a) to question the validity of an election, must be presented within twenty-eight days after the date of publication of the result of the election in the Gazette;
- (b) to seek a declaration that a seat in the National Assembly has not become vacant, must be presented within twenty-eight days after the date of publication of the notice that the seat has become vacant;
- (c) to seek a declaration that a seat in the National Assembly has become vacant, may be presented at any time,

provided that –

- (i) a petition questioning a return or an election upon the ground of a corrupt

practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of that person or with the privity of that person or his election agent may, so far as respects the corrupt practice, be presented at any time within twenty-eight days after the date of the alleged payment or act;

- (ii) a petition questioning a return or an election upon an allegation of an illegal practice and alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned, or by an agent of that person, or with the privity of that person, or his election agent, in pursuance or in furtherance of the illegal practice alleged in the petition, may, so far as respects the illegal practice, be presented at any time within twenty-eight days after the date of the alleged payment or act;
- (iii) a petition questioning a return or an election upon an allegation of an illegal practice in relation to a return of expenses may, unless a condoning order excusing what would otherwise be an illegal practice has already been obtained, so far as respects the illegal practice, be presented at any time within twenty-eight days of the notice of reception of the return having been exhibited by the returning officer.

A petition presented in due time may, for the purpose of questioning a return or an election upon an allegation of an election offence, be amended with leave of the election court within the time which the petition questioning the return or the election upon that ground may be presented.<sup>37</sup>

### **6.03 Security for Costs**

Not more than three days after the presentation of a petition, the petitioner must give security for the payment of all costs that may become payable by the petitioner.

The amount of security is (fifty thousand shillings) and must be given by deposit of money.

If no security is given as required, or if an objection is allowed and not removed, no further proceedings are possible on the petition, and the respondent may apply to the election court for an order directing the dismissal of the petition and for the payment of the respondent's costs; and the costs of hearing and deciding that application shall be paid as ordered by the election court, or if no order is made, shall form part of the general costs of the petition.<sup>38</sup>

### **6.04 Procedure of Election Court**

Upon receipt of a petition the election court is required to peruse the petition and –

- (a) if it considers that no sufficient ground for granting the relief claimed is disclosed therein may reject the petition summarily; or
- (b) fix a date for the trial of the petition.

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In the exercise by an election court of its jurisdiction –

- (a) witnesses must be summoned and sworn in the same manner or as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and must be subject to the same penalties for the giving of false evidence;
- (b) the election court may compel the attendance of any person as a witness who appears to the court to have been concerned in the election or in the circumstances of the vacancy or alleged vacancy, and a person refusing to obey the order is guilty of a contempt of court;
- (c) the election court may examine a witness so compelled to attend or any person in court, although the witness is not called and examined by a party to the petition; and after examination the witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them;
- (d) the election court must decide all matters that come before it without undue regard to technicalities.

Unless otherwise ordered by the Chief Justice, all interlocutory matters in connection with a petition may be dealt with and decided by any judge.<sup>39</sup>

#### **6.05 Attorney-General to Attend Trial of Petition**

Where the Attorney-General is not the petitioner or the respondent in a petition, he or a person appointed by him must attend the trial of the petition for the purpose of ascertaining whether an election offence has been committed and for any other purpose he thinks fit.

Where the Attorney-General or a person appointed by him attends the trial of a petition, he has the same power to call witnesses, and to examine or cross-examine witnesses, called by parties to the petition, as those parties have.<sup>40</sup>

#### **6.06 Prohibition of Disclosure of Vote**

No elector who has voted at an election must, in proceedings to question the election, be required to state for whom he has voted.<sup>41</sup>

#### **6.07 Votes to be Struck Off at Scrutiny**

On a scrutiny of votes at the trial of a petition, the following votes only must be struck off –

- (a) the vote of a person whose name was not on the register or list of electors assigned to the polling station at which the vote was recorded or who had not been authorised to vote at that station;
- (b) the vote of a person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of a person who committed or procured the commission of personation at the election;
- (d) the vote of a person proved to have voted in more than one constituency;

- (e) the vote of a person who, by reason of conviction for an election offence or by reason of the report of the election court, was disqualified from voting at the election;
- (f) votes given for a disqualified candidate by voters knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification, or when the disqualification or the facts causing it were notorious.

The vote of a registered elector must not be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register or list of electors.<sup>42</sup>

### **6.08 Non-compliance with Law**

No election shall be declared to be void by reason of a non-compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in that written law, or that the non-compliance did not affect the result of the election.<sup>43</sup>

### **6.09 Costs**

An election court may, in its discretion, award against the petitioner the costs of and incidental to a petition which is dismissed or rejected.<sup>44</sup>

### **6.10 Certificate of Court**

At the conclusion of the trial of a petition, the election court must determine the question raised in the petition and must certify its determination to the Speaker.

Upon receipt of a certificate, the Speaker is required to give the necessary directions for altering or confirming the return, and must issue any writs which may be necessary.<sup>45</sup>

### **6.11 Report of Court as to Election Offences**

At the conclusion of the trial of a petition, the election court must also report in writing to the Speaker whether an election offence has or has not been proved to have been committed by any person and descriptions of the persons, if any, who have been proved at the trial to have been guilty of an election offence.

Before a person, not being a party to an election petition or a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court, the election court must give that person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

The Speaker must cause a copy of any report to be published in the Gazette, and every registration officer must forthwith peruse the report and delete from the register of electors the name of every person who is thereby disqualified for being registered in that register of electors.<sup>46</sup>

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### **6.12 Procedure to be Followed in Presenting Petition**

The presentation of an election petition must be made by delivering it at the office of the Registrar, and the Registrar or the officer of his department to whom the petition is delivered must give a receipt therefor in the prescribed form.

An election petition must contain the following statements –

- (a) it shall state whether the petitioner is entitled to petition;
- (b) it shall state the holding and results of the election, and shall briefly state the facts and grounds relied on to sustain the petition.

The petition shall be divided into paragraphs, each of which must be confined, as nearly as is practicable, to a distinct portion of the subject, and every paragraph must be numbered consecutively, and no costs must be allowed for drawing or copying any petition not substantially in compliance with the rule, unless otherwise ordered by the election court.

The petition shall conclude with a prayer as, for instance that some specified person should be declared duly elected or nominated, or that the election should be declared void, and shall be signed by all the petitioners.

Evidence need not be stated in the petition, but the election court may, upon application in writing by a respondent, order such particulars as may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual trial, upon such terms as to costs and otherwise as may be ordered.

Where more petitions than one are presented relating to the same election or nomination, all such petitions shall be dealt with as one petition, so far as the inquiry into the election or nomination is concerned.<sup>47</sup>

### **6.13 Where Seat or Nomination Claimed by Unsuccessful Candidate**

When a petitioner claims the seat or the nomination for an unsuccessful candidate, alleging that he has a majority of lawful votes, the party complaining of or defending the election shall, seven days before the day appointed for trial, deliver to the Registrar, and also at the address (if any) given by the petitioner and respondent, as the case may be, a list of the votes intended to be objected to, and of the heads of objection to each such vote, and the Registrar shall allow inspection of office copies of those lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the election court, upon such terms as to amendment of the list, postponement of the inquiry and payment of costs as may be ordered.<sup>48</sup>

### **6.14 List of Objections in Recriminatory Case**

The respondent in a petition, complaining of an undue return and claiming the seat or the nomination for some person, may lead evidence to prove that the election or the nomination of that person was undue, and in that case the respondent must, within seven days before the

day appointed for trial, deliver to the Registrar, and also at the address, if any, given by the petitioner, a list of the objections to the election or the nomination upon which he intends to rely, and the Registrar must allow inspection of office copies of those lists to all parties concerned; and no evidence must be given by a respondent of any objection to the election or the nomination not specified in the list, except by leave of the election court, upon such terms as to amendment of the list, postponement of the inquiry and payment of costs as may be ordered.<sup>49</sup>

### **6.15 Appointment of Advocate by Petitioner**

With the petition the petitioner or petitioners must leave at the office of the Registrar a writing, signed by him or them, giving the name of an advocate or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address in Kenya at which notices may be left; and if no such writing is left all notices may be given by leaving them at the office of the Registrar.<sup>50</sup>

### **6.16 Appointment of Advocate by Respondent**

A person elected or nominated may at any time after he is elected or nominated send or leave at the office of the Registrar a writing, signed by him or on his behalf, appointing an advocate to act as his advocate in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address in Kenya at which notices addressed to him may be left; and if no such writing is left all notices and proceedings may be given or served by leaving them at the office of the Registrar.<sup>51</sup>

### **6.17 Service on Respondent**

Notice of the presentation of a petition, accompanied by a copy of the petition, must, within ten days of the presentation of the petition, be served by the petitioner on the respondent.

Service may be effected either by delivering the notice and copy to the advocate appointed by the respondent or by posting them in a registered letter to his address so that, in the ordinary course of post, the letter would be delivered within the time stipulated, or if no advocate has been appointed, or no address was given, by a notice published in the Gazette stating that the petition has been presented and that a copy of it may be obtained by the respondent on application at the office of the Registrar.<sup>52</sup>

### **6.18 Time and Place of Trial**

The time and place of the trial of each election petition shall be fixed by the election court, and not less than fourteen days' notice thereof must be given to the petitioner and respondent by letter directed to the address left by the petitioner or respondent with the Registrar, or if no such address has been left, by notice in the Gazette.

The election court may, from time to time by order made on the application of a party to the petition, postpone the beginning of the trial to such day as the court may specify; and the order, when made, shall forthwith be published by the Registrar in the Gazette.

No formal adjournment of the election court for the trial of an election petition is necessary, but the trial stands adjourned, and may be continued from day to day until the trial is concluded; and, if one judge is disabled by illness or otherwise during the trial, the trial may be continued and concluded by the other judges.<sup>53</sup>

### **6.19 Withdrawal of Petition**

An election petition must not be withdrawn without the leave of the election court, and leave may be given upon terms as to the payment of costs and otherwise as the election court may think fit.

Before leave for the withdrawal of an election petition is granted, there must be produced affidavits, by all the parties to the petition and their advocates: provided that an election court may, on cause shown, dispense with the affidavit of any particular person if it seems to the election court on special grounds to be just to do so.

Each affidavit must state that, to the best of the deponent's knowledge and belief no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect of the withdrawal of the petition, the affidavit must set forth that agreement, and must make the foregoing statement subject to what appears from the affidavit.

The affidavits of the applicant and his advocate must further state the ground on which the petition is sought to be withdrawn.<sup>54</sup>

### **6.20 Substitution of Another Petitioner**

On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates may apply to the election court to be substituted, as petitioner for the petitioner desirous of withdrawing the petition.

The election court may substitute any such applicant as petitioner; and may further, if the proposed withdrawal is, in the opinion of the election court, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner must remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security the original petitioner is liable to pay costs of the substituted petitioner.

If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petitioner, subject to the same conditions, must be given on behalf of the substituted petitioner before he proceeds with his petition, and within three days after the order of substitution.

A substituted petitioner stands in the same position, as nearly as may be, and shall be subject to the same liabilities, as the original petitioner.

If a petition is withdrawn, the petitioner is liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition can be made except with the consent of all the petitioners.<sup>55</sup>

### **6.21 Death of Petitioner**

An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners. The abatement of a petition does not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.<sup>56</sup>

### **6.22 Countermanding Notice of Trial**

After receiving the petitioner's application for leave to withdraw or notice of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events such as death of the respondent or vacation of his seat, if the notice is received after the notice of trial has been given and before the trial has commenced the Registrar must forthwith countermand the notice of trial.

The countermand must be given in the same manner, as nearly as practicable, as the notice of trial.<sup>57</sup>

### **6.23 Recovery of Costs**

Costs must be taxed by the Registrar upon the order of the election court in the same manner as costs are taxed in the High Court, but subject to such express directions, whether general or specific, as the election court may give; and costs when taxed may be recovered in the same manner as the costs in civil proceedings.

The election court may direct that the whole or any party of any monies deposited by way of security may be applied in the payment of taxed costs.

There must be paid in respect of all proceedings the same court fees as are payable in respect of civil proceedings in the High Court in so far as the same are applicable.<sup>58</sup>

## **— Section 7 —**

### **ELECTION OFFENCES**

#### **7.01 General Offences**

Any person who –

- (a) knowingly makes any false statement on or in connection with any application to be placed on any register of electors; or
- (b) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing it to be forged; or
- (c) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot

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- paper or the official perforation, stamp or mark on any ballot paper; or
- (d) without due authority supplies any ballot paper to any person; or
  - (e) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person; or
  - (f) not being a person entitled to be in possession of any ballot paper which has been marked with any official perforation, stamp or mark has any such ballot paper in his possession; or
  - (g) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
  - (h) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station; or
  - (i) without due authority destroys, takes, opens or otherwise interferes with any ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election; or
  - (j) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or
  - (k) for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election; or
  - (l) not being authorised to do so under the provisions of the Election Offences Act, makes any mark on any ballot paper issued to any person other than to himself; or
  - (m) votes at any election when he is not entitled to vote thereat,
- is guilty of an offence.<sup>59</sup>

### **7.02 Offences by Election Officers**

Any officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election who –

- (a) makes, in any record, return or other document which he is required to keep or make under such written law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true; or
- (b) permits any person whom he knows or has reasonable cause to believe not to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be; or
- (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be; or
- (d) wilfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote; or
- (e) wilfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law; or
- (f) wilfully counts any ballot paper as being cast for any candidate, which he knows or has reasonable cause to believe was not validly cast for such candidate; or

(g) is without reasonable cause guilty of any act or omission in breach of his official duty, is guilty of an offence.<sup>60</sup>

### **7.03 Maintenance of Secrecy at Elections**

Every officer, clerk, interpreter, candidate and agent authorised to take part in any proceedings connected with the issue or receipt of postal ballot papers or to attend at a polling station, or at the counting of the votes, shall before so attending make an oath of secrecy in the prescribed form.

Every officer, clerk, interpreter, candidate and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, but the total number of voters who have voted at any station at any time before the poll is closed may in the discretion of the presiding officer be divulged to a candidate or his agent authorised to attend at the polling station.

No such officer, clerk, interpreter, candidate or agent and no other person shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number of the ballot paper given to any voter at such station.

Every officer, clerk, interpreter, candidate and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such counting the number of any ballot paper or communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.

No person, except a presiding officer acting for a purpose authorised by any written law relating to any election or a person authorised by the presiding officer and acting for such purpose as aforesaid, shall communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.

Every person attending any proceedings in connection with the issue or receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of the voting and shall not without lawful excuse –

- (a) communicate, before the poll is closed, to any person any information obtained at those proceedings as to any official perforation, stamp or mark to be used in connection with any ballot paper; or
- (b) communicate to any person at any time any information obtained at those proceedings as to the number of the ballot paper sent to any person; or

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- (c) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on any ballot paper; or
  - (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

Every person who acts in contravention of these provisions is guilty of an offence.<sup>61</sup>

#### **7.04 Corrupt Practices**

##### ***Personation***

Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, is guilty of the offence of personation.

A person who has applied for a ballot paper for the purpose of voting in person is deemed to have voted.

##### ***Treating***

Every person is guilty of the offence of treating who corruptly, by himself or by any other person on his behalf, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part the expense of giving or providing, any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote, whether to a particular candidate or not at such election or on account of any such person or any other person having given or refrained from giving, or being about to give or refrain from giving, his vote, whether to a particular candidate or not, at such election, and every elector or voter who corruptly accepts or takes any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision.

##### ***Undue Influence***

Every person is guilty of the offence of undue influence who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens any force, violence or restraint, or any temporal or spiritual injury, damage or loss, or any fraudulent device, trick or deception, for the purpose of or on account of –

- (a) inducing or compelling a person to give or refrain from giving his vote, whether to a particular candidate or not, at an election; or
- (b) otherwise impeding or preventing the free exercise of the franchise of an elector or voter; or

- (c) compelling a person to refrain from becoming a candidate or to withdraw if he has become a candidate; or
- (d) impeding or preventing a person from being nominated as a candidate for an election or from being registered as a voter.

### ***Bribery***

Every person shall be guilty of the offence of bribery who –

- (a) directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to give or refrain from giving his vote, whether to a particular candidate or not, or corruptly does any such act as aforesaid on account of such elector or voter having given or refrained from giving his vote at any election, whether to a particular candidate or not; or
- (b) directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises or promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to give or refrain from giving his vote, whether to a particular candidate or not, or corruptly does any such act as aforesaid on account of any elector or voter having so given or refrained from giving his vote at any election; or
- (c) directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election; or
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the election of any person, or the vote of any elector or voter at any election; or
- (e) advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election; or
- (f) being an elector or voter, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for giving or agreeing to give or for refraining or agreeing to refrain from giving his vote, whether to a particular candidate or not, at any such election; or
- (g) after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having given or refrained from giving or having induced any other person to give or to refrain from giving his vote, whether to a particular candidate or not, at any such election; or

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- (h) directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; or
  - (i) directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.<sup>62</sup>

### **7.05 Punishment and Incapacities for Corrupt Practice**

Every person who –

- (a) commits the offence of personation, treating, undue influence or bribery; or
- (b) prints, publishes, distributes or posts up, or causes to be printed, published, distributed or posted up, any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher; or
- (c) makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate; or
- (d) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of withdrawal of any other candidate at such election,

or aids, abets, counsels or procures the commission of or attempts to commit any such offence is liable, in the cases referred to in sub-paragraph (a), to imprisonment for a term not exceeding five years, and in any other case, to imprisonment for a term not exceeding four years.<sup>63</sup>

### **7.06 Illegal Practices**

No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate in any election, be made –

- (a) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles, vessels or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or
- (b) to or with an elector or voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice or on account of the exhibition of any address, bill or notice.

If any payment or contract for payment is knowingly made in contravention of these provisions either before, during or after an election, the person making such payment or contract is guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing it to be in contravention of these provisions, is also guilty of an illegal practice.

A person shall not let, lend or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of electors or voters to and from the poll, and if he does so he is guilty of an illegal practice.

However, where it is the ordinary business of a voter as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such voter which is made in the ordinary course of business, shall not be deemed to be an illegal practice.

Where voters are unable at an election to reach their polling stations from their places of residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying such voters to their polling stations, or to enable them to cross in order to reach their polling stations: provided always that such means of conveyance shall be made available equally to all such voters who wish to avail themselves thereof.

Every employer shall, on polling day, allow to every elector in his employ a reasonable period for voting, and no employer shall make any deduction from the pay or other remuneration of any such elector or impose upon or exact from him any penalty by reason of his absence during such period.

Any employer who, directly or indirectly, refuses or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ, of a reasonable period for voting, as in these provisions, is guilty of an offence.

These provisions do not apply to such categories of employees as the Minister may from time to time by notification in the Gazette designate nor to any employee who at the election in question is acting as an election officer.

No person shall furnish or supply any musical instrument or loudspeaker to any person with intent that it shall be used by any person in any way or used in or upon vessels, animals, motor cars, trucks, or other vehicles as or for the purpose of political propaganda on polling day and no person shall with any such intent use himself or use in or upon any vessel, animal, motor car, truck or other vehicle any such musical instrument or loudspeaker on polling day. Any person who contravenes the provisions of this paragraph is guilty of an offence.<sup>64</sup>

## NOTES

1. Constitution of Kenya, see section 41
2. Ibid., see section 42
3. Ibid., see section 42A
4. National Assembly and Presidential Elections Act, see sections 2 and 3
5. Presidential and Parliamentary Elections Regulations, see regulation 3
6. Ibid., see regulation 10
7. National Assembly and Presidential Elections Act, see section 4
8. Ibid., see section 5
9. Constitution of Kenya, see section 43
10. National Assembly and Presidential Elections Act, see section 6
11. Ibid., see section 7
12. National Assembly Elections (Registration of Voters) Regulations, see regulation 3
13. Ibid., see regulations 4-7
14. See section 9 of the National Assembly and Presidential Elections Act and regulations 8 and 9 of the National Assembly Elections (Registration of Voters) Regulations
15. See section 10 of the National Assembly and Presidential Elections Act and regulations 10 and 11 of the National Assembly Elections (Registration of Voters) Regulations
16. National Assembly Elections (Registration of Voters) Regulations, see regulation 12
17. The words “not more than” were purported to be substituted by the Attorney-General to correct an error on the face of the provision which originally read “not less than” etc. The matter was taken to court and the correction was held to be invalid. Presumably the provision reads “not less than” etc and not “not more than” etc as is carried in the 1992 Revised version of the law. See regulation 14 of the Presidential and Parliamentary Elections Regulations for the correct version.
18. National Assembly and Presidential Elections Act, see section 13
19. Ibid., see section 14
20. Constitution of Kenya, see section 34
21. See section 17 of the National Assembly and Presidential Elections Act and regulation 14 of the Presidential and Parliamentary Elections Regulations
22. Presidential and Parliamentary Elections Regulations, see regulation 15
23. Ibid., see regulations 16-18
24. Ibid., see regulation 19
25. Ibid., see regulation 20
26. Ibid., see regulation 21
27. Ibid., see regulation 22
28. Ibid., see regulation 24
29. Ibid., see regulations 25, 27 and 29
30. Ibid., see regulations 30-33
31. Ibid., see regulation 34
32. Ibid., see regulation 36
33. Ibid., see regulation 37
34. Ibid., see regulations 38 and 39
35. Ibid., see regulation 40
36. National Assembly and Presidential Elections Act, see section 19
37. Ibid., see section 20
38. Ibid., see section 21
39. Ibid., see sections 22 and 23
40. Ibid., see section 24
41. Ibid., see section 25
42. Ibid., see section 26
43. Ibid., see section 28
44. Ibid., see section 29
45. Ibid., see section 30
46. Ibid., see section 31
47. National Assembly Elections (Election Petition) Rules, see rules 3-6
48. Ibid., see rule 7
49. Ibid., see rule 8
50. Ibid., see rule 9
51. Ibid., see rule 10
52. Ibid., see rule 15
53. Ibid., see rules 18-20
54. Ibid., see rule 21
55. Ibid., see rule 26
56. Ibid., see rule 27
57. Ibid., see rule 31
58. Ibid., see rule 33
59. Election Offences Act, see section 3
60. Ibid., see section 4
61. Ibid., see section 5
62. Ibid., see sections 7-10
63. Ibid., see section 11
64. Ibid., see sections 12-14

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## INTRODUCTION

The Constitution of Ghana 1992 sets out important provisions relating to elections. Among these provisions are the right to vote, the establishment, composition and functions of the Electoral Commission, and the demarcation of constituencies.

The Electoral Commission Act 1993 re-enacted the constitutional provisions with some elaborations on the Commission's scope of operation.

This presentation deals mainly with parliamentary elections, but covers briefly presidential elections. It therefore draws on the provisions of the Representation of the People Law 1992, the Political Parties Law 1992 and the Public Elections (Parliament) Regulations 1992.

### — *Section 1* —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### **1.01 Right to Vote**

Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda.<sup>1</sup>

##### **1.02 Electoral Commission**

There shall be an Electoral Commission which shall consist of:

- (a) a Chairman;
- (b) two deputy chairmen; and
- (c) four other members.

The members of the Commission shall be appointed by the President, acting on the advice of the Council of State.

A person is not qualified to be appointed a member of the Electoral Commission unless he is qualified to be elected as a Member of Parliament.

The Chairman of the Electoral Commission shall have the same terms and conditions of service as a Justice of the Court of Appeal. The two deputy chairmen of the Commission shall have the same terms and conditions of service as are applicable to a Justice of the High Court.

The Chairman and the two deputy chairmen of the Commission shall not, while they hold office on the Commission, hold any other public office.

The other four members of the Commission shall be paid such allowances as Parliament may determine.

If a member is absent or dies, the Commission shall continue its work until the President, acting on the advice of the Council of State, appoints a qualified person to fill the vacancy.<sup>2</sup>

### **1.03 Functions of Electoral Commission**

The Electoral Commission shall have the following functions:

- (a) to compile the register of voters and revise it at such periods as may be determined by law;
- (b) to demarcate the electoral boundaries for both national and local government elections;
- (c) to conduct and supervise all public elections and referenda;
- (d) to educate the people on the electoral process and its purpose;
- (e) to undertake programmes for the expansion of the registration of voters; and
- (f) to perform such other functions as may be prescribed by law.<sup>3</sup>

### **1.04 Independence of the Commission**

Except as provided in the Constitution and any other law not inconsistent with the Constitution, in the performance of its functions, the Electoral Commission, shall not be subject to the direction or control of any person or authority.<sup>4</sup>

### **1.05 Constituencies**

Ghana shall be divided into as many constituencies for the purpose of election of Members of Parliament as the Electoral Commission may prescribe, and each constituency shall be represented by one Member of Parliament.

No constituency shall fall within more than one region. The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

The number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the regions and other administrative or traditional areas.

The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of enumeration figures after the holding of a census of the population of Ghana, whichever is earlier, and may, as a result, alter the constituencies.

Where the boundaries of a constituency established under these provisions are altered as

a result of a review, the alteration shall come into effect upon the next dissolution of Parliament.

“Population quota” means the number obtained by dividing the number of inhabitants by the number of constituencies into which Ghana is divided.

A person aggrieved by a decision of the Electoral Commission in respect of a demarcation of a boundary, may appeal to a tribunal consisting of three persons appointed by the Chief Justice and the Electoral Commission shall give effect to the decision of the tribunal.

A person aggrieved by a decision of the tribunal may appeal to the Court of Appeal whose decision on the matter shall be final.<sup>5</sup>

### **1.06 Voting at Elections and Referenda**

At any public election or referendum, voting shall be by secret ballot.

Immediately after the close of poll, the presiding officer shall, in presence of such of the candidates or their representatives and their polling agents as are present, proceed to count, at that polling station, the ballot papers of that station and record the votes cast in favour of each candidate.

The presiding officer, the candidates or their representatives and, in the case of a referendum, the parties contesting or their agents and the polling agents if any, shall then sign a declaration stating:

- (a) the polling station; and
  - (b) the number of votes cast in favour of each candidate,
- and the presiding officer shall, there and then, announce the results of the voting at that polling station before communicating them to the returning officer.<sup>6</sup>

### **1.07 Election of Candidates**

Where at the close of nominations and on the day before a public election:

- (a) two or more candidates have been nominated, the election shall be held and the candidate who receives the largest number of votes cast shall be declared elected; or
- (b) only one candidate is nominated, there shall be no election and that candidate shall be declared elected.

Where for the purposes of a public election two or more candidates are nominated but at the close of nominations and on the day before the election only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for any person nominated within that period of ten days to withdraw his nomination.

Where at the close of nominations and after the expiry of the further period of ten days only

one candidate stands nominated, there shall be no election and that candidate shall be declared elected.

Where at the close of nominations, but before the election, one of the candidates dies, a further period of ten days shall be allowed for nominations; and where the death occurs at any time within twenty-five days before the elections, the election in that constituency or unit shall be postponed for twenty-one days.<sup>7</sup>

### **1.08 Regulations for Elections**

The Electoral Commission shall, by constitutional instrument, make regulations for the effective performance of its functions and in particular, for the registration of voters, the conduct of public elections and referenda, including provision for voting by proxy.<sup>8</sup>

### **1.09 Regional and District Representatives of Commission**

There shall be in every region and district a representative of the Electoral Commission who shall perform such functions as shall be assigned to him by the Commission.<sup>9</sup>

### **1.10 Appointment of Staff of Commission**

The appointment of officers and other employees of the Electoral Commission shall be made by the Commission acting in consultation with the Public Services Commission.<sup>10</sup>

### **1.11 Expenses of Commission**

The administrative expenses of the Electoral Commission, including salaries, allowances and pensions payable to, or in respect of, persons serving with the Commission, shall be charged on the Consolidated Fund.<sup>11</sup>

### **1.12 Political Parties**

The right to form political parties is guaranteed. Every citizen of Ghana of voting age has the right to join a political party.

A political party is free to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programmes of a national character, and sponsor candidates for elections to any public office other than to District Assemblies or lower local government units.

Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.

The internal organisation of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with the Constitution or any other law.

An organisation shall not operate as a political party unless it is registered as such under the law for the time being in force for the purpose.

For the purposes of registration, a prospective political party shall furnish the Electoral Commission with a copy of its Constitution and the names and addresses of its national officers; and shall satisfy the Commission that:

- (a) there is ordinarily resident, or registered as a voter, in each district of Ghana, at least one founding member of the party;
- (b) the party has branches in all the regions of Ghana and is, in addition, organised in not less than two-thirds of the districts in each region; and
- (c) the party's name, emblem, colour, motto or any other symbol has no ethnic, regional, religious or other sectional connotation nor gives the appearance that its activities are confined only to a part of Ghana.

A political party shall not have as a founding member, a leader or a member of its executive, a person who is not qualified to be elected as a Member of Parliament or to hold any other public office.

The members of the national executive committee of a political party shall be chosen from all the regions of Ghana.

Every citizen of voting age has the right to participate in political activity intended to influence the composition and policies of the Government.

The State shall provide fair opportunity to all political parties to present their programmes to the public by ensuring equal access to the state-owned media.

All presidential candidates shall be given the same amount of time and space on the state-owned media to present their programmes to the people.

Every candidate for election to Parliament has the right to conduct his campaign freely and in accordance with law.

Political parties shall be required by law:

- (a) to declare to the public their revenues and assets and the sources of those revenues and assets; and
- (b) to publish to the public annually their audited accounts.

Only a citizen of Ghana may make a contribution or donation to a political party registered in Ghana.

A member of an organisation or interest group shall not be required to join a particular political party by virtue of his membership of the organisation or group.

Subject to these provisions, Parliament shall by law regulate the establishment and functioning of political parties.<sup>12</sup>

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— *Section 2* —

**ADMINISTRATION OF ELECTIONS**

**2.01 The Electoral Commission**

Pursuant to the Constitution an Electoral Commission was established by the Electoral Commission Act 1993. Its functions followed those set out above under the Constitution to which have been added the preparation of identity cards and the storage of election material.<sup>13</sup>

**2.02 Meetings of the Commission**

The Commission shall meet at such times and such places as the Chairman shall determine but shall meet at least once in every two months.

The Chairman shall preside over every meeting of the Commission at which he is present and in his absence, one of the deputy chairmen shall preside. The quorum at every meeting of the Commission shall be four and shall include the Chairman or one of the deputy chairmen. There shall be given to members a notice of four clear days for every meeting called by the Commission.

Decisions at meetings of the Commission shall be that of the majority of the members present and voting and in the event of equality of votes the person presiding at the meeting shall have a second or casting vote.

Subject to these provisions, the Commission shall regulate the procedure for the conduct of its meetings.

The Commission may appoint such committees as it considers necessary for the discharge of its functions. A committee appointed by the Commission may include non-members of the Commission but shall be chaired by a member of the Commission.<sup>14</sup>

(The other provisions of the Electoral Commission Act 1993 follow closely the relevant provisions of the Constitution set out above.)

**2.03 Appointment of Returning and Deputy Returning Officers**

The Commission for each election appoints a returning officer and two deputy returning officers for each constituency. The Commission charges them with overall responsibility for the conduct of the election in the constituency.<sup>15</sup>

**2.04 Presiding Officers and Polling Assistants**

The Commission shall appoint a presiding officer for each polling division and such number of assistants as it considers necessary. Subject to such directions as may be given by the Commission, the duties imposed by the Representation of the People Law 1992 on a presiding officer may be performed by his assistant.<sup>16</sup>

— *Section 3* —

**REGISTRATION OF VOTERS**

**3.01 Qualification of Voters**

A person qualifies to be registered as a voter if:

- (a) he is a citizen of Ghana of eighteen years of age or above; and
- (b) he is of sound mind; and
- (c) he is resident in the polling division; and
- (d) he is not otherwise disqualified to be registered as a voter by any law for the time being in force.

No person shall be entitled to have his name included at any one time in the register of more than one constituency or in more than one divisional register in a constituency.

A person shall be deemed to be resident in a polling division on the qualifying date if he has a place of abode in the division on the date. A person shall not be deemed to be resident in a polling division if he has been absent from his place of abode for a continuous period of six months ending on the qualifying date.

A person who is a patient in an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or who is detained in legal custody in any place shall not be treated as resident there for the purposes of these provisions.

A person who is resident in more than one place and who would be entitled to have his name included in the register of more than one constituency or in more than one divisional register in a constituency shall select one constituency and one polling division for the purposes of registration and voting.<sup>17</sup>

**3.02 Registration of Officials Abroad**

A person who is a citizen of Ghana employed in a post outside Ghana:

- (a) in the service of the Republic; or
  - (b) in the service of the United Nations or of any other international organisation,
- shall be entitled to be registered as a voter if he satisfies the requirements for registration prescribed other than those relating to residence in a polling division. These provisions also apply to the spouse of a person covered by them where the spouse is resident outside Ghana with the employed spouse.

Unless otherwise disqualified, a person employed on Government duty outside Ghana who is a citizen of Ghana, shall be entitled to be registered as a voter notwithstanding that the person does not satisfy the requirements of the Law relating to residence in a polling division.

The Commission may appoint the Head of a Ghana Mission or Embassy abroad as a registration officer for the purposes of receiving claims from a person entitled to be registered as a voter.

The Commission may give such directions as it thinks fit to a person appointed as a registration officer and the person shall comply with the directions.<sup>18</sup>

## — Section 4 —

### REGISTRATION OF POLITICAL PARTIES

#### 4.01 Formation of Political Parties

Political parties may be formed in Ghana to further purposes which are not contrary to the laws of Ghana. Every citizen of Ghana of voting age has the right to form or join a political party.

No political party shall be formed:

- (a) on ethnic, regional, professional or religious basis; or
- (b) which uses words, slogans or symbols which could arouse ethnic, regional, professional or religious divisions.

For the purposes of the foregoing provisions, a political party is formed on ethnic, religious, regional or professional basis if its membership or leadership is restricted to members of any particular community, region, ethnic group, profession or religious faith or if its structure and mode of operation are not national in character.<sup>19</sup>

#### 4.02 Registration Procedure

Every political party in Ghana shall be registered in accordance with the Law and shall pay in respect of the registration such fees as the Commission shall determine.

A political party registered under the Law is a body corporate and has perpetual succession and may sue and be sued in its corporate name.

No person shall:

- (a) canvass for votes; or
- (b) put forward a person for public election, on behalf of or in the name of a political party unless the political party is registered under the Law (Political Parties Law 1992).

No political party shall organise or hold public meetings unless it has been issued with a final certificate of registration by the Commission.

A political party shall not have as a leader of the party or a member of its executive a person who:

- (a) is not qualified to be elected as a Member of Parliament;
- (b) is not qualified to hold public office; or
- (c) has not complied with the provisions of the Public and Political Party Office Holders (Declaration of Assets and Eligibility) Law.

No political party shall have as a founding member of the party a person who:

- (a) is not qualified to be elected as a Member of Parliament; or
- (b) is not qualified to hold public office.

A political party shall not be registered unless it has on its national executive committee secretariat a member ordinarily resident or registered as a voter in each region.

Every citizen of voting age has the right to participate in political activity intended to influence the composition and policies of the Government.

Any person who suppresses or attempts to suppress the lawful political activity of another person commits an offence and shall on summary conviction be liable to a minimum fine of C50,000 or to imprisonment for a term not exceeding two years or to both.

An application to register a political party shall be made to the Commission and shall be accompanied with:

- (a) two copies of the constitution and rules or regulations, if any, of the political party duly signed by the interim national chairman or leader and by the interim national or general secretary of the party;
- (b) a list of the full names and addresses of at least one founding member of the political party from each district and such other particulars as the Commission may reasonably require;
- (c) a full description of identifying symbols, slogans and colours, if any, of the political party; and
- (d) the registration fee specified.

The Commission shall, not later than seven days after the receipt of the application, issue the political party with a provisional certificate of registration and shall cause a notice of the application to be published in the Gazette as soon as practicable after receiving it, inviting objections from any person concerning the name, aim, objects, constitution, rules, symbols, slogans or colours of the party.

The Commission may in addition to inviting objections to the application, cause independent enquiries to be made so as to ascertain the truth or correctness of the particulars submitted with the application for registration.

On expiration of thirty days after the date of the publication of the Gazette notice the

Commission shall, if satisfied that all the provisions of the law with respect to registration have been complied with, register the political party.

Where within the thirty day period an objection has been brought to the notice of the Commission it shall not register the political party until the objection has been disposed of to the satisfaction of the Commission.

If the Commission upholds the objection or if enquiries made disclose that any of the particulars submitted with the application for registration are false, the Commission shall refuse to register the political party and cancel the provisional certificate issued to that political party.

The Commission upon registering a political party shall issue to that party a final certificate of registration which shall be evidence that the provisions of the law with respect to registration have been complied with.<sup>20</sup>

#### **4.03 Power of Commission to Refuse Registration**

The Commission shall not register a political party unless it is satisfied:

- (a) that its constitution and any rules or regulations submitted to the Commission for registration conform to democratic principles;
- (b) that there is in each district of Ghana a founding member of the party who is ordinarily resident in the district or is a registered voter in the district;
- (c) that the party has branches in all the regions of Ghana and is, in addition, organised in not less than two-thirds of the districts in each region;
- (d) that the party's name, emblem, colour, motto or any other symbol has no ethnic, regional, religious or other sectional connotation nor gives the appearance that its activities are confined only to a part of Ghana;
- (e) that the executive officers of the political party have been elected under the supervision of the Commission in accordance with the law;
- (f) that it is not in breach of any of the provisions of the Law; and
- (g) that the purpose of the prospective political party is lawful.

The membership of the national executive committee of a political party shall reflect membership from all regions of Ghana.<sup>21</sup>

#### **4.04 Appeal on Refusal of Registration**

Any political party whose application for registration is refused by the Commission may at any time apply to the Commission for it to reconsider its decision not to register the political party.

If within fourteen days after an application has been made to it, the Commission refuses or fails to register the political party, the party may appeal to the Court of Appeal against the decision of the Commission and the decision of the Court of Appeal shall be final.

The appeal shall be on notice to the Commission and such other persons as the Court of Appeal may direct.<sup>22</sup>

— *Section 5* —

**PRESIDENTIAL ELECTIONS**

**5.01 Qualification for Election as President**

A person is not qualified to be a candidate for the office of President of Ghana unless:

- (a) he is a citizen of Ghana by birth;
- (b) he has attained the age of forty years;
- (c) he is a registered voter;
- (d) he is resident in a constituency for which he can stand as a candidate for election to Parliament or has resided there for a total period of not less than five years out of the ten years immediately preceding the election for which he stands or he hails from that constituency; and
- (e) he has paid all his taxes or made arrangements satisfactory to the appropriate authority for the payment of his taxes.<sup>23</sup>

**5.02 Nomination and Election of President**

No person shall be a candidate in a presidential election unless he is nominated for election as President by a document which:

- (a) is signed by him;
- (b) is signed by not less than two persons who are registered voters resident in the area of authority of each district assembly;
- (c) is delivered to the Commission on or before the day appointed as nomination day in relation to the election; and
- (d) designates a person to serve as Vice-President.

The foregoing document must be accompanied with:

- (a) a statutory declaration in the prescribed form made by the candidate; and
- (b) a deposit of such sum as the Commission shall direct.

The statutory declaration shall also be made by the person seeking election as Vice-President.

A person who makes a statutory declaration which he knows to be false in a material particular or recklessly whether it is true or not, shall be guilty of an offence and liable on summary conviction to a fine or a term of imprisonment not exceeding two years or to both and his deposit shall be forfeited to the State.

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A deposit made by a candidate shall be refunded to him if he polls more than twenty-five per cent of the total votes cast in the election.<sup>24</sup>

### **5.03 Election Result for Presidency**

A person shall not be elected as President of Ghana unless at the presidential election the number of votes cast in his favour is more than fifty per cent of the total number of valid votes cast at the election.

Where at a presidential election there are more than two candidates and no candidate obtains the number or percentage of votes specified in the foregoing provisions, a second election shall be held within twenty-one days after the previous election.

The candidates for this election shall be the candidates who obtained the two highest number of votes at the previous election, and the candidate who obtains the highest number of votes shall be declared elected.

An instrument which:

- (a) is executed under the hand of the Chairman of the Commission; and
  - (b) states that the person named in the instrument was declared elected as the President of Ghana at the election of the President,
- shall be prima facie evidence that the person named was so elected.<sup>25</sup>

## **— Section 6 —**

### **PREPARING FOR ELECTIONS**

#### **6.01 Nominations**

Where in any election at the close of nominations and on the day before the election:

- (a) two or more candidates have been nominated, the election shall be held and the candidate who receives the largest number of votes cast shall be declared elected; or
- (b) only one candidate is nominated, there shall be no election and that candidate shall be declared elected.

Where for the purpose of the election two or more candidates are nominated but at the close of nominations and on the day before the election only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for a person nominated within that period of ten days to withdraw his nomination.

Where at the close of nominations and after the expiry of the further period of ten days only one candidate stands nominated, there shall be no election and that candidate shall be declared elected.

Where at the close of nominations, but before the election, one of the candidates dies, a further period of ten days shall be allowed for nominations; and where the death occurs at any time within twenty-five days before the election, the election of that constituency shall be postponed for twenty-one days.

The Commission shall by regulations prescribe the procedure for the nomination of candidates and shall in particular provide for:

- (a) conditions of nomination;
- (b) declaration to be made by candidates; and
- (c) deposit to be paid and whether it is refundable or not and the conditions for such refund.<sup>26</sup>

### **6.02 Allocation of Symbols and Colours**

Where an election is contested, the Commission shall as soon as practicable after the nomination day:

- (a) allocate to each candidate the symbol of his party in the case of a candidate sponsored by a registered political party;
- (b) allocate to a candidate who is not sponsored by a political party a symbol or colour chosen by him; or
- (c) in any other case allocate such symbols or colours as it considers appropriate.

A symbol or colour shall be chosen or assigned for the purpose of these provisions from among symbols and colours approved by the Commission for the purposes of the election.

No person shall be allocated a symbol which is connected with or is attached to the name, status or dignity of a chief or a symbol or a colour which is connected with any religious or racial association within the meaning of the Avoidance of Discrimination Act 1957.<sup>27</sup>

### **6.03 Notice of Poll**

Whenever an election is to be held, the Commission shall, as soon as practicable after the allocation of symbols or colours, publish in the Gazette and in such places in the constituencies as it may direct a notice in the prescribed form, stating:

- (a) the day on which and the time at which the poll is to be taken;
- (b) the location of the polling stations for each polling division; and
- (c) the full names, addresses, occupations and symbols or colours of the candidates nominated for the election.<sup>28</sup>

### **6.04 Adjournment of Poll**

The Commission may, at any time between the issue of a writ and the day specified in the writ as polling day, by executive instrument adjourn the taking of the poll to a day not more than thirty days after the day specified earlier.

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Where an executive instrument is issued, the writ for the constituency to which the instrument relates shall be deemed to be amended by the substitution of the day to which the taking of the poll is adjourned for the day specified in the writ as polling day.<sup>29</sup>

### **6.05 Death of Candidate**

Where an election is to be held and proof of the death of a candidate is given to the returning officer before the poll is commenced, he shall inform the Commission of this and the Commission shall revoke notice of the poll; and all proceedings with reference to the election shall be started afresh as if the writ had been received by the returning officer on the day on which the proof was given to him.

Where proceedings are started afresh, the Commission shall appoint:

- (a) a fresh nomination day, which shall be not less than fourteen days and not more than twenty-one days after the day on which proof of the candidate's death was given to the returning officer; and
- (b) a fresh polling day, which shall not be more than fourteen days after the nomination day.<sup>30</sup>

### **6.06 Polling Stations**

For the purpose of taking the poll, the returning officer shall establish one or more polling stations for each polling division.

The Commission may direct the returning officer to establish more polling stations for a polling division.

Any convenient building, except a dwelling house or a building or class of buildings exempted by the Commission may be established by the returning officer as a polling station and used without charge for that purpose.

The Government shall repair out of public funds any damage done to a building as a result of its being used as a polling station.

Where two or more polling stations are established for a polling division, the returning officer shall:

- (a) assign to each of the stations such number of voters registered in the division as the Commission considers appropriate; and
- (b) give notice in the polling division in such manner as the Commission may direct, of the polling stations to which the voters registered in the division have been assigned.<sup>31</sup>

### **6.07 Equipment of Polling Stations**

The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as the Commission may direct.

Every ballot box shall be so constructed that the ballot papers can be put in it by the person voting but cannot be withdrawn by him.

The returning officer shall provide each polling station with:

- (a) materials for voting;
- (b) instruments for perforating or stamping the ballot papers with the official mark;
- (c) instruments for marking the means of identification of a voter; and
- (d) a copy of the divisional register, the transferred voters' list, the proxy voters' list and the absent voters' list relating to the polling station.

A notice giving directions for the guidance of the voters in voting shall be exhibited inside and outside every polling station in as many languages as the Commission may direct for the benefit of the voters.<sup>32</sup>

### **6.08 Presiding Officer, Polling Assistants and Polling Agents**

The Commission shall appoint a presiding officer to preside at each polling station and such number of polling assistants as it considers necessary to assist the presiding officer in carrying out his duties.

A polling assistant may act as the presiding officer of a polling station during the absence or incapacity of the presiding officer.

A candidate may appoint two polling agents to attend at each polling station in the constituency for which he is seeking election for the purpose of detecting personation.

Each candidate shall submit in duplicate to the returning officer in charge of the polling station to which he intends to assign the polling agent, a letter of appointment stating the name and address and other relevant particulars of the polling agent and the polling station to which he is to be assigned.

The returning officer shall upon receipt of the letter of appointment sign both the original and duplicate copies and stamp it and retain the original and return the duplicate to the polling agent.

If a polling agent dies or becomes incapacitated from acting as such the candidate who appointed him may appoint another polling agent in his place.<sup>33</sup>

### **6.09 Transferred Voters' List**

A registered voter who at any time before elections to Parliament, is resident for not less than two months in a constituency other than that in which he is registered, may apply to the returning officer of the constituency where he is resident for his name to be entered on the transferred voters' list for the constituency.

An application shall be made not less than twenty-one days before nomination day.

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A returning officer to whom an application is made shall enter the applicant's name in the transferred voters' list for his constituency if he is satisfied that the applicant is resident in a polling division in his constituency and is registered in another constituency.

Whenever a returning officer enters the name of any person on the transferred voters' list for his constituency, he shall:

- (a) assign that person to a polling station or a polling division in his constituency and indicate in the list the polling division or polling station to which that person is assigned; and
- (b) send a copy of the entry to the returning officer of the constituency where the person whose name has been entered is registered.

A person whose name is entered in the transferred voters' list for a constituency is entitled to vote at the election in the polling station or polling division to which he is assigned in the list as if it were the polling division where he is registered.<sup>34</sup>

#### **6.10 Special Voters' List**

A special voter who because of his duties will be unable to be present on the polling day at the polling station where he is registered, may apply to the returning officer for his name to be entered on the special voters' list.

Every application shall be made not later than seven days before the polling day in the constituency of the applicant and, except in the case of an applicant who is a returning officer, shall be accompanied by a certificate from the applicant's superior officer stating that:

- (a) the applicant is registered at a polling station in the constituency of the returning officer to whom the application is made; and
- (b) the applicant's duties will prevent him from being present on the polling day at the polling station where he is registered.

A returning officer to whom an application is made shall enter the name of the applicant in the special voters' list for his constituency and shall issue to the applicant a certificate authorising him to vote at a polling station other than the polling station at which he is registered.

Every person whose name is entered on the special voters' list for a constituency:

- (a) is entitled to vote at a polling station and on a day which is not more than seven days before the polling day, appointed by the returning officer and advertised in such manner as the Commission may direct; and
- (b) is not entitled to vote otherwise at the election in respect of which his name has been entered on the special voters' list.

Voting at a polling station for special voters shall be conducted in the same manner as voting on polling day.<sup>35</sup>

### **6.11 Absent Voters' List**

Each returning officer shall, before polling day, prepare for each polling division in his constituency an absent voters' list containing the names of any persons registered in the division whose names have been entered on the transferred voters' list for another constituency or on the special voters' list for his constituency.

A person whose name is entered on the absent voters' list for a polling division shall not be entitled to vote in that division.<sup>36</sup>

### **6.12 Voting by Proxy**

A registered voter who because of ill-health or absence from his constituency will be unable to present himself to vote on polling day may, not less than fourteen days before the poll in the constituency where he is registered apply to the returning officer of the constituency where he is registered or to any representative of the Commission for his name to be entered on the proxy list.

The applicant shall complete the proxy form in the prescribed form in quadruplicate.

The application form shall be endorsed by the returning officer of the constituency of the applicant or the representative of the Commission to whom the application is made and distributed as follows:

- (a) the original copy to the returning officer of the constituency where the applicant wishes the proxy to vote;
- (b) the duplicate copy to the Commission;
- (c) the triplicate copy to the person appointed as proxy;
- (d) the quadruplicate to the applicant.

The returning officer or any representative of the Commission to whom the application is made shall, if satisfied that the proxy is qualified to be registered as a voter and the applicant is a registered voter, enter the names and the particulars of the applicant and the proxy on the proxy list and:

- (a) assign the proxy to a polling station in the constituency;
- (b) indicate on the proxy list the polling station to which the proxy is assigned; and
- (c) forward a copy of the list to the presiding officer for the polling station to which the proxy is assigned.

Every person whose name is entered on the proxy list may vote in the elections at the polling station where he is registered to vote and the provision relating to voting procedure shall have effect accordingly.

No person shall be entitled to have more than one person at a time appointed as a proxy to vote for him at the election.

A person whose application to vote by proxy is accepted and endorsed by the returning

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officer of the constituency or the Commission shall not vote at the election in respect of which the application was granted.

The appointment of a proxy shall be cancelled by the returning officer or the Commission where an application for cancellation is made by the person who made the application for the appointment of the proxy.

An application for the cancellation of a proxy shall be in the prescribed form and shall be made not less than seven days before the election to which it relates.

A proxy whose appointment is cancelled shall cease to have the right to vote for the applicant whether or not he is aware of the cancellation.<sup>37</sup>

## — Section 7 —

### THE POLL

#### 7.01 Number of Votes and Place of Voting

No voter shall cast more than one vote when a poll is taken.

Subject to the provisions relating to transferred voters' list, special voters' list and absent voters' list, a voter shall vote at the polling station allotted to him.

Where at an election in any constituency it is inconvenient or difficult for a voter to vote at his allotted station because he is a candidate for the constituency or is to be employed in an official capacity as an election officer or police officer or otherwise at a polling station in the constituency, the returning officer may, by a certificate under his hand, authorise the voter to cast his vote not at his allotted station but at another polling station in the constituency.

The certificate issued under the foregoing provisions shall be in triplicate and shall specify the name of the voter to whom it relates, his number and description in the register, the reason for the giving of the certificate and the alternate station at which he is authorised to vote.

Copies of the certificate shall be sent by the returning officer to the presiding officers of the allotted station and the alternate station; and for the purposes of the election to which the certificate relates:

- (a) the copy sent to the presiding officer of the allotted station shall be treated as if it formed part of the absent voters' list; and
- (b) the copy sent to the presiding officer of the alternate station shall be treated as if it formed part of the copy of the register provided by the returning officer.

The votes at the poll shall be given by ballot, the result shall be ascertained by counting the votes cast for each candidate and the candidate to whom the largest number of the votes have been cast shall be declared elected.<sup>38</sup>

## **7.02 Ballot Papers and Polling Hours**

The ballot of every voter shall consist of a ballot paper.

Each ballot paper shall:

- (a) contain the names and symbols of all the candidates contesting the election in the constituency;
- (b) be capable of being folded up;
- (c) have a number printed on it; and
- (d) have attached to it a counterfoil with the same number printed on it.

A ballot paper shall not be void because it does not bear any number if it is certified by the Commission that it is a ballot paper issued by it.

The poll shall be taken between the hours of seven in the morning and five in the evening.

The presiding officer shall regulate the number of voters to be admitted to the polling station at each time, and shall exclude all other persons except:

- (a) the candidates and their spouses and their polling agents;
- (b) election officers;
- (c) police or military officers on duty;
- (d) persons authorised by the Commission; and
- (e) the companions of voters who are blind or otherwise physically incapacitated.<sup>39</sup>

## **7.03 Polling Station Procedures**

It is the duty of the presiding officer to keep order at his polling station.

If a person misconducts himself in a polling station or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by a police or military officer; and a person so removed shall not, without the permission of the presiding officer, again enter the polling station on the polling day.

Any person so removed may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a police officer for an offence without a warrant.

The powers conferred by the foregoing provisions shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Immediately before the commencement of the poll, the presiding officer shall show the ballot boxes empty to the persons present in the polling station so that they can see that the ballot boxes are empty and shall then:

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- (a) close the ballot boxes and place his seal upon them in such a manner as to prevent their being opened without breaking the seal; and
  - (b) place them in the view of the public for the receipt of ballot papers.

A presiding officer may, before delivering a ballot paper to a person applying to vote at the election require the person:

- (a) to make a declaration of identity in the prescribed form and to furnish such other evidence of identity as may be determined by the Commission or as the presiding officer thinks necessary; and
- (b) to make a declaration in the prescribed form that he has not already voted at the election in the constituency or, in the case of a general election, in any other constituency.<sup>40</sup>

#### **7.04 Voting Procedure**

Every voter desiring to record his vote shall present himself at his allotted station, and the presiding officer or a polling assistant after satisfying himself that the voter is registered in the divisional register or in the case of a polling division for which two or more polling stations have been established, in that part of the divisional register which relates to his allotted station and has not already voted, and that any other means of identification determined by the Commission in the possession of the voter is valid shall deliver the ballot paper to the voter. Immediately before the ballot paper is delivered:

- (a) the ballot paper shall be perforated or stamped with an official mark selected by the Commission;
- (b) a mark shall be placed in the copy of the register against the number of the voter to indicate that the ballot paper has been received; and
- (c) a mark, which shall, so far as is possible, be permanent shall be made on the voter or any other means of identification as may be determined by the Commission.

The voter on receiving the ballot paper shall immediately proceed to one of the places set aside in the polling station for marking of the ballot paper and shall there secretly make on the ballot paper an imprint of his thumb in the box and column provided for that purpose directly against the name and symbol of the candidate for whom he wishes to vote.

The voter shall then fold up the ballot paper and in the presence of the presiding officer and the polling agents and in the full view of the general public cast or record his vote by putting the folded ballot paper into the ballot box standing in an open place.

The voter shall vote without undue delay, and shall leave the polling station as soon as he has put his ballot paper into the ballot box.

These provisions shall apply subject to the provisions relating to transferred voters' list, special voters' list and absent voters' list.

The presiding officer, on the application of a voter who is incapacitated by blindness or other

physical cause from voting in the manner directed, shall cause a ballot paper as directed by the voter to be put in the ballot box.

When he accedes to the request of a voter pursuant to the foregoing provision, the presiding officer shall record in the register opposite the name of the voter the fact that the vote was recorded by him on the application of the voter and the reason why it was so recorded.

Where a person representing himself to be a particular voter in the register applies for a ballot paper after another person had voted as such voter, the applicant shall, on making a declaration in the prescribed form, be entitled to vote in the same manner as any other voter. A tendered ballot paper shall:

- (a) be of a different colour from the ballot paper; and
- (b) instead of being put into the ballot box:
  - (i) be given to the presiding officer and endorsed by him with the name of the voter and his number in the register; and
  - (ii) be set aside by the presiding officer in a separate packet.

The name of any person voting in the above manner shall be entered by the presiding officer on a list of such voters.

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may on delivering it to the presiding officer and proving to his satisfaction the fact of the inadvertence, obtain another ballot paper in place of the ballot paper delivered and the spoilt ballot paper shall be immediately cancelled and the counterfoil marked accordingly.<sup>41</sup>

### **7.05 Adjournment of Poll in Case of Riot, etc**

When the proceedings at any polling station are interrupted or obstructed by riot, open violence, storm, flood or other natural catastrophe, the presiding officer shall adjourn the proceedings to the following day and shall forthwith give notice to the returning officer.

When the returning officer is satisfied that because of an interruption or obstruction of kind mentioned above it is or will be impossible or impracticable for proceedings which have been adjourned to be continued on the day which they have been so adjourned, he may, with the concurrence of the Commission further adjourn the proceedings for not more than seven days.

Where the poll is adjourned, the hours of polling on the day to which it is adjourned shall be the same as on the original polling day.<sup>42</sup>

### **7.06 Counting of Votes**

Each candidate may appoint not more than three agents to attend at the collation of the votes, and shall give written notice to the returning officer of the names and addresses of the appointed agents.

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The returning officer shall make arrangements for collating the votes in his constituency, in the presence of the agents as soon as practicable after the close of the poll, and shall take such steps as he considers reasonable to give to the agents notice of the time at which the collation of the votes will commence.

No person other than:

- (a) the presiding officer and persons appointed to assist him in collating the votes;
  - (b) the candidates and their wives or husbands; and
  - (c) the agents,
- shall be present at the collation of the votes, unless permitted by the presiding officer to attend.

Immediately after the close of the poll the presiding officer shall, in the presence of the polling agents and such other persons that are permitted to attend the count:

- (a) open each ballot box, take out all the ballot papers in the box; and
- (b) proceed to count the ballot papers; and
- (c) record the total number of votes cast in favour of each candidate.

The presiding officer, the candidates or their representatives and their polling agents shall then sign a declaration stating:

- (a) the total number of persons entitled to vote at the polling station; and
  - (b) the number of votes cast in favour of each candidate,
- and the presiding officer shall there and then announce the results of the voting at that polling station.

A candidate or any of his agents may, if present when the counting of the votes is completed, require the presiding officer to have the votes recounted or again recounted, but the presiding officer may refuse to do so if in his opinion the request is unreasonable.

As soon as practicable after the announcement of the results of the voting at the polling station, the presiding officer shall, in the presence of such of the candidates and their polling agents as are present, make up into separate packets sealed with his own seal and the seals of such polling agents as desire to affix their seals:

- (a) each ballot box in use at the station, sealed so as to prevent the introduction of additional ballot papers;
  - (b) the unused and spoilt ballot papers placed together;
  - (c) the tendered ballot papers, the tendered voters' list and any declarations made pursuant to the relevant regulation; and
  - (d) the marked copies of the register and the counterfoils of the used ballot papers,
- and shall deliver the packets and the ballot boxes, to the returning officer to be taken charge of by him.

The packets shall be accompanied by a statement made by the presiding officer showing the

number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box and unused, spoilt and tendered ballot papers.

Any ballot paper:

- (a) which does not bear the official mark; or
  - (b) on which anything is written or marked other than the printed number and the imprint of the voter's thumb; or
  - (c) which is not marked with the imprint of the thumb of the voter or is so marked as to make it impossible to determine the candidate for whom the vote was cast; or
  - (d) which is void for uncertainty,
- shall be void and not counted.

A ballot paper shall not be void merely because it was not marked with the imprint of the voter, if it is otherwise sufficiently marked by the voter so as to identify the candidate for whom the vote was cast.

Before rejecting a ballot paper as void, the presiding officer shall, taking all proper precautions to prevent any person from seeing the number printed on it, show the paper to each candidate or to one of his polling agents, if present, and give him an opportunity to express an opinion on the matter.

The presiding officer shall endorse the word "rejected" on any ballot paper which is not to be counted, and shall add to the endorsement the words "rejection objected to" if an objection is made by a candidate or polling agent to his decision.

The presiding officer shall draw up a statement showing the number of ballot papers rejected under the several heads of:

- (a) want of official mark;
  - (b) voting for more than one candidate;
  - (c) writing or mark by which a voter could be identified; or
  - (d) unmarked or void for uncertainty,
- and any candidate or polling agent may copy the statement.

The decision of the returning officer on any question arising in respect of a ballot paper shall be final, but shall be subject to review on an election petition.<sup>43</sup>

### **7.07 Equality of Votes**

Where after the completion of the counting of the votes, including any recount, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer shall certify that fact by endorsing the writ and forwarding the writ so endorsed to the Commission.

Within thirty days after the receipt by the Commission of a writ so endorsed, a fresh writ shall be issued for an election in that constituency.<sup>44</sup>

### **7.08 Publication of Results**

The returning officer shall immediately after the result of the poll from all the stations in his constituency have been given to him:

- (a) assemble the results from the polling stations without recounting the ballots in the ballot boxes except where there is a challenge by a candidate or his agent in respect of a ballot box;
- (b) publicly declare to be elected the candidate to whom the largest number of votes has been given;
- (c) give public notice of the total number of votes cast for each candidate;
- (d) endorse on the writ the name of the person elected; and
- (e) forward to the Commission the endorsed writ and a note of the total number of votes cast for each candidate.

On receipt of a writ endorsed as prescribed, the Commission shall:

- (a) publish in the Gazette a notice stating the name of the person elected and the total number of votes cast for each candidate; and
- (b) inform the Clerk of Parliament soon thereafter of the name of the candidate elected.<sup>45</sup>

## **— Section 8 —**

### **ELECTION PETITIONS**

#### **8.01 Method of Questioning Election**

The validity of an election to Parliament may be questioned only by a petition. Every election petition shall be presented before the High Court for hearing.<sup>46</sup>

#### **8.02 Presentation of Election Petition**

An election petition may be presented by one or more of the following persons:

- (a) a person who lawfully voted or had a right to vote at the election to which the petition relates;
- (b) a person claiming to have had a right to be elected at the election;
- (c) a person alleging himself to have been a candidate at the election;
- (d) a person claiming to have had a right to be nominated as a candidate at the election.

An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, except that a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or other award to have been made on his (the respondent's) behalf to his knowledge, may be presented within twenty-one days after the date of the alleged payment.

The presentation of an election petition shall not be valid unless within the time specified, the petitioner gives C20,000 as security for costs.

The time limit provided for the presentation of an election petition shall not be extended.<sup>47</sup>

### **8.03 Relief Which May be Granted**

After the hearing of an election petition, the High Court may make any of the following orders:

- (a) declare that the election to which the petition relates is void;
- (b) declare that a candidate other than the member whose election is questioned was duly elected.<sup>48</sup>

### **8.04 Grounds for Cancelling Election Results**

The election of a candidate shall be declared void on an election petition if the High Court is satisfied:

- (a) that general bribery, general treating, general intimidation or other misconduct or circumstances, whether similar to those specified in the Law or not, have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
- (b) that there had been non-compliance with any provision of the Law or of regulations made pursuant to the Law and that it appears that the election was not conducted in accordance with the principles laid down and that such non-compliance affected the result of the election;
- (c) that a corrupt or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate; or
- (d) that the candidate was at the time of his election a person not qualified or a person disqualified for election.

Where at the hearing of an election petition the High Court finds that a candidate has been guilty through his agent or representative of a corrupt or illegal practice, and the High Court further finds that the candidate has proved to the High Court:

- (i) that no corrupt or illegal practice was committed by the candidate himself or with his knowledge or consent or approval; or
- (ii) that even though there was corrupt or illegal practice the candidate took all reasonable steps to prevent the commission of corrupt or illegal practice at the election; and
- (iii) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate,

then, if the High Court so recommends, the election of the candidate shall not because of the corrupt practice be void or illegal and the candidate shall not be subject to any incapacity under the Law.

Where at the hearing of an election petition the High Court finds that there has been failure

to comply with any provision of the Law or of regulations made thereunder, and the High Court further finds:

- (i) that the election was conducted in accordance with the Law; and
  - (ii) that the failure did not affect the result of the election,
- the election of the successful candidate shall not because of the failure be void and the successful candidate shall not be subject to any incapacity under the Law.<sup>49</sup>

### **8.05 Scrutiny**

Where on an election petition the election is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, the High Court may direct an examination of the votes cast at the election by the Commission or such other person as the Court may determine.

On scrutiny, the following votes shall be struck off:

- (a) the vote of a person:
  - (i) whose name was not included in the divisional register of the polling division in which the vote was recorded;
  - (ii) whose name was not included in that part of the register which contained the names of the voters assigned to the polling station at which the vote was recorded;
  - (iii) who had no right under the Law to vote at the polling station at which his vote was recorded;
- (b) the vote of a person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of a person who committed or procured the commission of personation at the election;
- (d) the vote of a person proved to have voted more than once at the election or in more than one constituency; and
- (e) the vote of a person who has been disqualified from voting at the election because of a conviction for a corrupt or illegal practice or because of a report made by a court under the Law.

A tendered ballot paper, proved on scrutiny to be a valid vote shall be added to the poll.<sup>50</sup>

### **8.06 Certification of Decision**

At the conclusion of the hearing of an election petition the High Court shall certify its decision to the Commission which shall request the return by the returning officer in respect of the election to which the petition relates to be confirmed or altered accordingly.

Where the decision certified by the High Court is to the effect that the election to which the petition relates is void, a writ shall be issued for a fresh election in the constituency concerned.<sup>51</sup>

### **8.07 Report of High Court as to Corrupt or Illegal Practices**

At the conclusion of the hearings of an election petition, the High Court shall, if it is of the opinion that a person has been proved to have committed the offence of corrupt or illegal practice in connection with the election to which the petition relates, send a written report to the Attorney-General giving the name and description of the person and the nature of the practice and such other information as the High Court considers relevant and appropriate.<sup>52</sup>

### **8.08 Prohibition of Disclosure of Vote**

A person who has voted at an election shall not be required to state for whom he has voted in any proceedings questioning an election.<sup>53</sup>

### **8.09 Procedure**

The rules of procedure for presentation and hearing of an election petition shall be the same as the rules of procedure applicable to a civil cause or matter before the High Court.<sup>54</sup>

## **— Section 9 —**

### **ELECTION OFFENCES**

#### **9.01 Registration Offences**

A person who:

- (a) knowingly makes a false statement in or in connection with an application to have his name included in a register; or
- (b) having applied to have his name included in a divisional register, without withdrawing his application, applies to have his name included in another divisional register; or
- (c) by the use of force or threats prevents or attempts to prevent a person from exercising his right to register as a voter,

commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both, and shall, for a period of five years from the date of the expiration of his term of imprisonment be disqualified from being registered as a voter or voting at an election.<sup>55</sup>

#### **9.02 Offences Relating to Nomination Papers**

A person who:

- (a) forges, fraudulently defaces, or destroys a nomination paper, or any other document relating to the registration of a voter, or delivers to a returning officer any nomination paper, knowing it to be forged; or
- (b) forges or counterfeits or fraudulently destroys a ballot paper or the official mark on a ballot paper; or

- 
- (c) without authority supplies a ballot paper to any person; or
  - (d) sells or offers to sell a ballot paper to any person or purchases or offers to purchase a ballot paper from any person; or
  - (e) not being a person entitled to be in possession of a ballot paper which has been marked with the official mark, has such a ballot paper in his possession; or
  - (f) knowingly and intentionally puts into a ballot box anything other than the ballot paper which he is authorised by law to put in; or
  - (g) without authority, destroys, takes, opens or otherwise interferes with a ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election; or
  - (h) without authority, prints a ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or
  - (i) not being authorised to do so, makes a mark on a ballot paper issued to a person, other than himself, with intent that the ballot paper shall be used to record the vote of the person,

commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both; and shall, for a period of five years from the date of the expiration of his term of imprisonment be disqualified from being registered as a voter or voting at an election.<sup>56</sup>

### **9.03 Unauthorised Voting**

A person who knowingly:

- (a) votes at an election at which he is not entitled to vote; or
- (b) votes more than once at an election,

commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both; and shall, for a period of five years from the date of the expiration of his term of imprisonment be disqualified from being registered as a voter or voting at an election.<sup>57</sup>

### **9.04 Offences by Election Officers**

An election officer, clerk, interpreter or other person who has a duty to perform, whether under the Law or otherwise, in relation to an election and who:

- (a) makes in any record, return or other document, which he is required to keep or make in pursuance of the Law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true; or
- (b) permits a person whom he knows or has reasonable cause to believe not to be a person who is blind or incapacitated from voting by other physical cause to vote in the manner provided for such persons; or
- (c) refuses to permit a person whom he knows or has reasonable cause to believe to be a person who is blind or incapacitated from voting by other physical cause to vote in the manner provided for such persons; or
- (d) wilfully prevents a person from voting at the polling station at which he knows or has reasonable cause to believe the person is entitled to vote; or

- (e) wilfully counts a ballot paper as being cast for a candidate which he knows or has reasonable cause to believe was not validly cast for the candidate; or
- (f) without reasonable cause acts or fails to act in breach of his official duty, commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both.<sup>58</sup>

### **9.05 Requirement of Secrecy**

Every election officer, clerk, interpreter, candidate, election agent or polling agent on duty at a polling station shall maintain and aid in maintaining the secrecy of voting and shall not, except for a purpose authorised by law, communicate to any person any information as to:

- (a) the name of a voter who has or has not applied for a ballot paper or voted at a polling station; or
- (b) the number on the register of a voter who has or has not applied for a ballot paper or voted at a polling station; or
- (c) the official mark.

Every person present at the counting of votes shall maintain and help in maintaining the secrecy of voting and shall not communicate any information obtained at the counting of the votes as to the candidate for whom a vote is given on any particular ballot paper.

No person shall:

- (a) interfere with or attempt to interfere with a voter when recording his vote; or
- (b) obtain or attempt to obtain in a polling station information about the candidate for whom a voter at that station is about to vote or has voted; or
- (c) communicate at any time to any person any information obtained in a polling station about the candidate for whom a voter in that station has voted or is about to vote, or about the number, if any, on the ballot paper given to a voter at that station; or
- (d) directly or indirectly induce a voter to display his ballot paper after he has marked or selected it so as to make known to another person the name of the candidate for whom he has or has not voted.

A person who has undertaken to assist:

- (a) a blind voter to vote; or
  - (b) a voter who is incapacitated from voting by any other physical cause to vote,
- shall not communicate at any time to another person information as to the candidate for whom that disabled voter intends to vote or has voted, or as to the number, if any, on the ballot paper given for use of the disabled voter.

A person who contravenes any of these provisions commits an offence.<sup>59</sup>

### **9.06 Personation**

A person commits the offence of personation if he:

- 
- (a) votes as another person, whether that other person is living or dead or is a fictitious person; or
  - (b) votes for a person whom he knows or has reasonable grounds to believe to be dead or to be a fictitious person.<sup>60</sup>

### **9.07 Bribery**

A person commits the offence of bribery:

- (a) if he directly or acting through another person:
  - (i) gives money or obtains an office for a voter in order to induce the voter to vote or refrain from voting; or
  - (ii) corruptly does such an act on account of a voter having voted or refrained from voting; or
  - (iii) makes a gift or provides something of value to a voter to induce the voter to vote in a certain way or to obtain the election of a candidate; or
- (b) if he advances or pays money or causes money to be paid to or for the use of a person with the intent that the money or part of it shall be expended in bribery at an election, or knowingly pays money or causes money to be paid to a person in discharge or repayment of money wholly or in part expended in bribery at an election; or
- (c) if before or during an election he directly or indirectly, by himself or through another person acting on his behalf, receives, agrees or contracts for money, gift, a loan or valuable consideration or an office, place or employment for himself or for another person for voting or agreeing to vote or for refraining or agreeing to refrain from voting; or
- (d) if after an election he directly or through another person receives money or valuable consideration on account of a person having voted or refrained from voting or having induced another person to vote or to refrain from voting.

For the purposes of the foregoing provisions:

- (a) references to giving money include giving, tendering, agreeing to give or lend, offering, promising and promising to procure or to endeavour to procure money or valuable consideration; and
- (b) references to procuring office include giving, procuring, agreeing to procure or give, offering, promising and promising to procure or to endeavour to procure an office, place or employment.<sup>61</sup>

### **9.08 Treating**

A person commits the offence of treating:

- (a) if he corruptly either himself or through another person, before, during or after an election gives or provides or pays wholly or in part the expenses of giving or providing meat, drink, entertainment or provision to or for any person:
  - (i) for the purpose of corruptly influencing that person or another person to vote or refrain from voting; or

- (ii) on account of that person or another person having voted or refrained from voting or being about to vote or refrain from voting; or
- (b) if he corruptly accepts or takes any meat, drink, entertainment or provision offered in the circumstances and for the purposes mentioned in the foregoing provisions.<sup>62</sup>

### **9.09 Undue Influence**

A person commits the offence of undue influence:

- (a) if he directly or indirectly or through another person acting on his behalf:
  - (i) makes use of or threatens to make use of force, violence or restraint; or
  - (ii) inflicts or threatens to inflict on another person a temporal or spiritual injury, damage, harm or loss,  
in order to induce or compel that person to vote or refrain from voting, or an account of that person having voted or refrained from voting; or
- (b) if by abduction, duress or any fraudulent method he impedes or prevents the free exercise of the franchise of a voter.<sup>63</sup>

### **9.10 Interference with Election Activities**

A person who, before or during an election for the purpose of effecting or preventing the return of a candidate either directly or indirectly:

- (a) by words, whether spoken or written, song, sign or any other representation or in any manner whatsoever seeks to excite or promote disharmony, enmity or hatred against another person, group of persons or political party on grounds of religious, tribal, professional, regional or political affiliation; or
- (b) organises a group of persons with the intention of training the group in the use of force, violence, abusive, insulting, corrupt or vituperative songs or language calculated to discredit, malign, disparage, condemn, insult or abuse another person or candidate or with a view to causing disharmony or a breach of the peace or to disturbing public tranquillity so as to gain unfair advantage in the election over that other person or candidate; or
- (c) obstructs or interferes or attempts to obstruct or interfere with the free exercise of the franchise of a voter or compels or induces or attempts to compel or induce a voter to vote or to refrain from voting; or
- (d) compels, induces or attempts to compel or induce a candidate to withdraw his candidature; or
- (e) in any manner whatsoever threatens any candidate or voter with injury or harm of any kind; or
- (f) induces or attempts to induce any candidate or voter to fear or believe that he will suffer illness or will become an object of divine, spiritual or fetish displeasure or censure, commits an offence and is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both; and shall for a period of five years from the date of the expiration of his term of imprisonment be disqualified from being registered as a voter at a public election and in the case of a political party that political party shall be declared a prohibited organisation.<sup>64</sup>

### **9.11 Prohibited Activities on Polling Day**

During the hours when a poll is open on polling day, no person shall, within five hundred metres of any polling station, seek to influence, in whatever manner, any person to vote for any candidate or to ascertain for which candidate any voter intends to vote or has voted.

During the hours when a poll is open on polling day no person shall, within five hundred metres of any polling station, sell any intoxicating liquor.

Any person who contravenes any of these provisions commits an offence and is liable on conviction to a fine not exceeding C500,000 or to a term of imprisonment not exceeding twelve months or both.<sup>65</sup>

### **9.12 False Statements**

A person who before or during an election for the purpose of effecting or preventing the election of a candidate makes or publishes or causes to be made or published by words whether written or spoken, or by song a statement which is false or which he knows or has reason to believe to be false in relation to the personal character of another candidate or the conduct of a political party commits an offence.

A person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate for the purpose of prompting or procuring the return of another candidate commits an offence.

A person who commits an offence under these provisions is liable on conviction to a fine not exceeding C1 million or to imprisonment for a term not exceeding two years or both.<sup>66</sup>

### **9.13 Obstruction of Election Officers**

A person who wilfully obstructs or interferes with an election officer in the execution of his duty commits an offence.<sup>67</sup>

### **9.14 Penalty and Incapacity for Corrupt and Illegal Practices**

A person convicted of the offence of personation, bribery, treating or undue influence shall be liable on conviction to a fine not exceeding C1 million or to a term of imprisonment not exceeding two years or both; and shall for a period of five years after the date of the expiration of his term of imprisonment be disqualified from being registered as a voter or voting at a public election.

Where a court convicts a person of a corrupt or illegal practice, it shall report the conviction in writing to the Commission.<sup>68</sup>

## NOTES

1. Constitution of Ghana 1992, see article 42
2. *Ibid.*, see articles 43 and 44
3. *Ibid.*, see article 45
4. *Ibid.*, see article 46
5. *Ibid.*, see articles 47 and 48
6. *Ibid.*, see article 49
7. *Ibid.*, see article 50
8. *Ibid.*, see article 51
9. *Ibid.*, see article 52
10. *Ibid.*, see article 53
11. *Ibid.*, see article 54
12. *Ibid.*, see article 55
13. Electoral Commission Act 1993, see sections 1 and 2
14. *Ibid.*, see sections 6 and 7
15. Note supplied by the Electoral Commission
16. Representation of the People Law 1992, see section 6
17. *Ibid.*, see section 7
18. *Ibid.*, see section 8
19. Political Parties Law 1992, see sections 1 and 2
20. *Ibid.*, see sections 3-8
21. *Ibid.*, see section 9
22. *Ibid.*, see section 12
23. Presidential Elections Law 1992, see section 1
24. *Ibid.*, see section 3
25. *Ibid.*, see section 4
26. Representation of the People Law 1992, see section 11
27. Public Elections (Parliament) Regulations 1992, see regulation 10
28. *Ibid.*, see regulation 11
29. *Ibid.*, see regulation 12
30. *Ibid.*, see regulation 13
31. *Ibid.*, see regulation 14
32. *Ibid.*, see regulation 16
33. *Ibid.*, see regulations 15 and 17
34. *Ibid.*, see regulation 18
35. *Ibid.*, see regulation 19
36. *Ibid.*, see regulation 20
37. *Ibid.*, see regulation 21
38. *Ibid.*, see regulations 22 and 23
39. *Ibid.*, see regulations 24 and 25
40. *Ibid.*, see regulations 26 and 28
41. *Ibid.*, see regulations 29-32
42. *Ibid.*, see regulation 33
43. *Ibid.*, see regulations 34-37
44. *Ibid.*, see regulation 38
45. *Ibid.*, see regulation 39
46. Representation of the People Law 1992, see section 16
47. *Ibid.*, see sections 17 and 18
48. *Ibid.*, see section 19
49. *Ibid.*, see section 20
50. *Ibid.*, see section 21
51. *Ibid.*, see section 22
52. *Ibid.*, see section 23
53. *Ibid.*, see section 24
54. *Ibid.*, see section 26
55. *Ibid.*, see section 27
56. *Ibid.*, see section 28
57. *Ibid.*, see section 29
58. *Ibid.*, see section 30
59. *Ibid.*, see section 31
60. *Ibid.*, see section 32
61. *Ibid.*, see section 33
62. *Ibid.*, see section 34
63. *Ibid.*, see section 35
64. *Ibid.*, see section 36
65. *Ibid.*, see section 37
66. *Ibid.*, see section 39
67. *Ibid.*, see section 40
68. *Ibid.*, see section 41

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## INTRODUCTION

The Constitution of Mauritius provides that each constituency shall return three members to the Legislative Assembly (except Rodrigues, which shall return two members). Every member returned by a constituency must be directly elected at a general or by-election. In order to ensure a fair and adequate representation of each community, eight additional seats in the Assembly are provided for, which are allocated to persons belonging to parties who have stood as candidates for election as members at the general election but have not been returned as members to represent constituencies.

The Constitution sets out the management structure for the organisation and conduct of elections. It also provides for the delimitation of constituencies and the review thereof from time to time.

The Representation of the People Act (herein called “the Act”) and the Legislative Assembly Elections Regulations form the principal instruments governing the organisation and conduct of elections.

### — *Section 1* —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### **1.01 Electoral Commissioner**

There is an Electoral Commissioner, whose office is a public office and who is appointed by the Judicial and Legal Service Commission.

No person is qualified to hold or act in the office of Electoral Commissioner unless he is qualified to practice as a barrister in Mauritius.

In the exercise of his functions under the Constitution the Electoral Commissioner shall not be subject to the direction or control of any other person or authority.<sup>1</sup>

##### **1.02 Electoral Supervisory Commission**

There shall be an Electoral Supervisory Commission which shall consist of a Chairman appointed by the President in accordance with the advice of the Judicial and Legal Service Commission and not less than two nor more than seven other members appointed by the President, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

No person is qualified for appointment as a member of the Electoral Supervisory

Commission if he is a member of, or a candidate for election to, the Assembly or any local authority or a public officer or a local government officer.

The Electoral Supervisory Commission shall have general responsibility for, and shall supervise, the registration of electors for the election of members of the Assembly and the conduct of election of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

The Electoral Commissioner shall have such powers and other functions relating to such registration and elections as may be prescribed, and he shall keep the Electoral Supervisory Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission and to refer to the Commission for its advice or decision on any question relating to his functions.

Every proposed Bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of the Assembly or to the election of such members shall be referred to the Electoral Supervisory Commission and to the Electoral Commissioner at such time as shall give them sufficient opportunity to make comments thereon before the Bill is introduced in the Assembly or, as the case may be, the regulation or other instrument is made.

The Electoral Supervisory Commission may make such reports to the President concerning the matters under its supervision, or any draft Bill or Instrument that is referred to it, as it thinks fit and if the Commission so requests in any such report, other than a report on a draft Bill or Instrument, that report shall be laid before the Assembly.

The question whether the Electoral Commissioner has acted in accordance with the advice of or a decision of the Electoral Supervisory Commission shall not be enquired into in any court of law.<sup>2</sup>

### **1.03 Electoral Boundaries Commission**

There shall be an Electoral Boundaries Commission which shall consist of a Chairman and not less than two nor more than seven other members appointed by the President, acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

No person is qualified for appointment as a member of the Electoral Boundaries Commission if he is a member of, or a candidate for election to, the Assembly or any local authority or a public officer or a local government officer.<sup>3</sup>

### **1.04 Right to Vote at Elections**

Any person who is registered as an elector in a constituency is entitled to vote in such manner as may be prescribed at any election for that constituency unless he is prohibited from so voting by any law in force in Mauritius because –

- 
- (a) he is a returning officer; or  
(b) he has been concerned in any offence connected with elections,  
provided that no such person is entitled so to vote if on the date prescribed for polling he is in lawful custody or (except in so far as may otherwise be prescribed) he is for any other reason unable to attend in person at the place and time prescribed for polling.

No person shall vote at any election for any constituency who is not registered as an elector in that constituency.<sup>4</sup>

## — Section 2 —

### ELECTION ADMINISTRATION

#### 2.01 Management Body

The management body for elections consists of the Electoral Commissions, that is to say, the Electoral Boundaries Commission (in so far as delimitation of constituencies is concerned) and the Electoral Supervisory Commission, which are established under the Constitution and discussed above. The Electoral Commissioner, who performs the executive role, also enjoys a constitutional position.

The Electoral Supervisory Commission (“the Commission”) has general responsibility for, and shall supervise, the registration of electors for local government areas and the conduct of elections of members of local authorities.<sup>5</sup>

#### 2.02 Electoral Commissioner and His Deputy

The Electoral Commissioner shall have all the powers of the registration officer and of the returning officer in an electoral area.

There may be appointed a barrister-at-law to be Deputy Electoral Commissioner for an electoral area. The Deputy Electoral Commissioner, subject to the authority, directions and control of the Electoral Commissioner, shall have all the powers and may perform any of the functions of the Electoral Commissioner in the electoral area or areas for which he is appointed.

Every appointment made in respect of the Deputy Electoral Commissioner must be published in the Gazette.

The Electoral Commissioner shall ensure that the register of electors is prepared and elections are conducted in any electoral area as required by the Act.

The Electoral Commissioner may –

- (a) require information from any officer appointed under the Act with respect to any matter relating to the functions of the officer;

- (b) issue general instructions to an officer with respect to the performance of his duties.<sup>6</sup>

### **2.03 Registration Officers**

There shall be appointed for every constituency a fit and proper person to be registration officer, and such other fit and proper persons to be assistant registration officers. Subject to the authority, directions and control of the registration officer, an assistant registration officer has all the powers and may perform any of the duties of a registration officer.<sup>7</sup>

### **2.04 Returning Officers and Deputy Returning Officers**

The Commission may from time to time appoint a fit and proper person to be returning officer and some other fit and proper person to be deputy returning officer for each constituency.

Subject to the authority, directions and control of the returning officer, a deputy returning officer shall have all the powers and may perform any of the duties of a returning officer.

A registration officer may be appointed returning officer or deputy returning officer for any constituency.

If any returning officer is prevented by sickness or any other cause, from acting, or refuses or neglects to act, at any election, the Commission may at any time appoint some other fit and proper person to act in the place of such returning officer at such election. Every appointment made under these provisions must be published in the Gazette.<sup>8</sup>

## **— Section 3 —**

### **CONSTITUENCIES**

There shall be 21 constituencies and accordingly –

- (a) the island of Mauritius is divided into 20 constituencies; and  
(b) Rodrigues forms one constituency,  
provided that the Assembly may by resolution provide that any island forming part of Mauritius or Rodrigues shall be included in such one of the constituencies as the Electoral Boundaries Commission may determine and with effect from the next dissolution of Parliament after the passing of any such resolution, this provision shall have effect accordingly.

The Electoral Boundaries Commission is required to review the boundaries of the constituencies at such times as will enable it to present a report to the Assembly 10 years, or as near as may be, after presentation of its last report: provided that the Electoral Boundaries Commission may at any time carry out a review and present a report if it considers it desirable to do so by reason of the holding of any official census of the population of Mauritius and shall do so if a resolution is passed by the Assembly.

The report of the Electoral Boundaries Commission is required to make recommendations for any alterations to the boundaries of the constituencies as appear to the Electoral Boundaries Commission to be required so that the number of inhabitants of each constituency is as nearly equal as is reasonably practicable to the population quota: provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and the boundaries of administrative areas.

The Assembly may, by resolution, approve or reject the recommendations of the Electoral Boundaries Commission but may not vary them, and, if so approved, the recommendations shall have effect as from the next dissolution of Parliament.

“Population quota” means the number obtained by dividing the number of inhabitants of the Island of Mauritius (including any island included in any constituency in the Island of Mauritius by virtue of any resolution) according to the latest official census of the population of Mauritius by 20.<sup>9</sup>

## — Section 4 —

### REGISTRATION OF VOTERS

#### 4.01 Qualification of Electors

A person is entitled to be registered as an elector if –

- (a) he is a Commonwealth citizen of not less than the age of 18 years; and
- (b) either he has resided in Mauritius for a period of not less than two years immediately before such date as may be prescribed by Parliament or he is domiciled in Mauritius and is resident there on the prescribed date.

No person shall be entitled to be registered as an elector –

- (a) in more than one constituency; or
- (b) in any constituency in which he is not resident on the prescribed date.<sup>10</sup>

#### 4.02 Compilation of Registers

Every year there shall be compiled for every electoral area a register of persons entitled to be registered as electors for that electoral area.

No person shall be registered as an elector in any year unless he has attained or will have attained the age of 18 on 15 August in that year.

Every register compiled in any year shall, subject to the Commission’s power to vary the dates, come into force on 16 August in that year and shall remain in force until the register next compiled comes into force.

The normal qualifying date for the purpose of determining the residence of any person shall, in respect of the register to be compiled in any year, be January in that year.

The registration officer for every constituency shall appoint in respect of that constituency such registration office as he thinks fit and may, in addition, operate such mobile registration units as he considers necessary.

A place appointed as a registration office of a constituency shall as far as practicable be within that constituency but the registration officer for any constituency may appoint a registration office or operate a mobile unit at a place not within that constituency.

The Electoral Commissioner may, by notice published in the Gazette, appoint for each constituency such registration areas as he thinks necessary. A registration area shall be sufficiently described by enumerating the inhabited areas composed in it.

The registration officer for every constituency shall compile the register of persons entitled to be registered as electors in the constituency.

There must be a separate part of the constituency register for each registration area of the constituency. Every part of a register shall be in the prescribed form.

The names in each part of the register shall –

- (a) be classified in alphabetical order or in such other manner or order as may be prescribed; and
- (b) as far as is reasonably practicable, be numbered consecutively.

There shall be a distinguishing letter for each part of a register, and the distinguishing letter shall form part of the elector's number in the register.

In compiling the registers, the registration officer –

- (a) shall, as far as possible, have a house-to-house or other sufficient inquiry made as to the persons entitled to be registered as electors in his constituency and for this purpose may by himself or by any of his assistants –
  - (i) require any householder or any person owning or occupying premises within his constituency to complete a return in the prescribed form; and
  - (ii) require any person named in the return to subscribe a declaration of his qualification in the prescribed form;
- (b) shall prepare or cause to be prepared a list of all persons who appear to him, from the information obtained in the inquiry or from any other information in his possession, to be qualified to be registered as electors in his constituency and shall publish the list as soon as possible and in any event not later than 1 April in any year.

Any person who fails to complete a return or knowingly gives information which is false in material particular shall commit an offence.

The electors' list shall be published in the form in which the register is to be framed and shall consist of as many parts as there are registration areas in the constituency.

Each part shall include two sections, namely –

- (a) Section A, which shall consist of a copy of the part of the register in force relating to the registration area, with the deletion of the names of all persons who appear to the registration officer to be no longer qualified to be registered as electors in that registration area;
- (b) Section B, which shall include the name of every person who has subscribed the declaration stipulated, unless it appears to the registration officer that that person is not qualified to be registered as an elector in the registration area to which the part of the electors' list relates.

Each part of the electors' list may, if the Commission thinks necessary, consist of only one section which shall include the names of all persons who appear to the registration officer to be qualified to be registered in the registration area to which that part of the elector's list relates.

Section A of the electors' list shall be published at the office of the registration officer and at such other places as the Commission may, by notice published in the Gazette and in three daily newspapers, appoint.<sup>11</sup>

#### **4.03 Claims and Objections**

A person (referred to as a "claimant") who –

- (a) claims to be entitled to be registered as an elector and is not already entered on the electors' list for the electoral area in which he claims to be registered;
  - (b) being entered on the electors' list, does not have the same qualifications as described in the list; or
  - (c) is, in any other manner, incorrectly entered on the elector's list,
- may between 1 April and 15 April in every year, appear before the registration officer of the constituency in which he claims to be registered as an elector and present his claim to be registered or to be correctly registered in the manner stipulated.

At the time of the publication of the electors' list –

- (a) the registration officer shall cause a notice in the prescribed form to be published in the Gazette informing all persons in his constituency of the right to make claims and shall affix copies of the notice at conspicuous places in his constituency; and
- (b) the Electoral Commission shall give further notice of the right to make a claim by publication in at least three daily newspapers.

A claimant shall, in the presence of the registration officer receiving the claim, sign and date his claim which shall also be signed by the registration officer.

Where a claimant is incapacitated or declares that he cannot read or write, the registration officer shall require him to impress his thumb print on the registration form and the registration officer shall sign and date the form. Where, for a physical reason a claimant cannot affix his thumb print, he may affix the print of another finger. Where, for a physical reason, a claimant cannot affix the print of any finger, the registration officer shall insert a note to that effect on the registration form.

The registration officer when receiving claims shall not allow to be present inside his office any person other than the officers concerned with the procedure for registration, the claimant and one of his relatives and his counsel or attorney and such other members of the public as can be accommodated in the public gallery.

A claimant who knowingly makes a statement which is false in any material particular advanced by him, is guilty of an offence.

A service elector who claims to be entitled to be registered in any year shall, not later than 15 April in that year, make a declaration by sending to the Electoral Commissioner a notice in the prescribed form.

The Permanent Secretary of the Ministry of External Affairs shall, not later than 15 April in every year, give written notice to the Electoral Commissioner of the name of every person who is entitled to be registered as a service elector, and of anyone who has ceased to be so.

“Service elector” means a person who holds the office of Ambassador, High Commissioner or other principal representative of Mauritius, or who is a public officer required to perform duties on behalf of the Government of Mauritius under a person mentioned above who is absent from Mauritius for the purpose of taking up his office or performing his duties, or is a member of the family of a person so specified and forms part of his household.

The registration officer shall publish the list of claimants not later than 30 April in every year.

A person whose name appears on an electors’ list or on a list of claimants may object to the registration of a person as an elector for the same constituency or for the same local government area as that in respect of which the objector’s name appears in the electors’ list or the list of claimants in the manner stipulated.

An objection to the registration of any person whose name is included in the electors’ list shall be made by sending notice of objection in the prescribed form to the registration officer not later than 7 April.

An objection to the registration of any person whose name is included in the list of claimants, shall be made by sending notice of the objection in the prescribed form to the registration officer not later than 15 May.

A notice of objection is not valid unless it is accompanied by a deposit of the sum of 10 rupees made of any legal tender.

Where, after considering the objection, and subject to an appeal being made from his decision, the registration officer –

- (a) admits the objection, the deposit must be returned to the objector;
- (b) does not admit the objection, the deposit shall be –
  - (i) paid to the person objected to, if that person appeared at the hearing of the objection; or
  - (ii) forfeited to the State if that person has not appeared.

The registration officer shall as soon as practicable after receiving a valid notice of objection, cause a notice in the prescribed form to be served on the person in respect of whose registration the notice of objection is given.

The registration officer must examine the electors' list and the list of claimants with a view of ascertaining whether all the persons whose names appear on the electors' list or on the list of claimants are qualified as electors.

Where the registration officer has reason to believe that a person whose name appears on the electors' list or the list of claimants is not qualified as an elector, he shall cause a notice in the prescribed form to be served on that person, calling upon him to show cause why his name should not be expunged.

The registration officer shall, not later than 10 April, publish a list of the names of persons included in the electors' list in respect of whose registration notice of objection has been given.

The registration officer shall, not later than 20 May, publish a list of the names of persons included in the list of claimants in respect of whose registration notice of objection has been given.

The registration officer shall, as soon as practicable, consider all objections of which notice has been given to him and for that purpose shall give at least five clear days' notice to the objector and to the person in respect of whose registration the notice of objection has been given, of the time and place at which the objection will be considered by him.

In all proceedings for the consideration of claims and objections by the registration officer the law and rules of evidence to be complied with shall be the same as in civil cases before a Magistrate, and the practice and procedure shall as nearly as may be conform to the practice and procedure on the hearing of such cases, and the registration officer shall have the same powers, jurisdiction and authority (including the power to administer an oath or affirmation) as a Magistrate in such cases.

Any person who makes a false statement on oath or affirmation in any proceedings for the consideration of claims and objections by the registration officer shall commit an offence.

Where the registration officer considers that any claim of which notice has been given to

him, and, in respect of which no notice of objection has been given, may be allowed without further inquiry, he must, enter the claimant's name in the register.

Where the registration officer is not satisfied that any such claim can be allowed without inquiry, he shall either consider the claim and in due course enter the claimant's name in the register or, where he cannot accept the claim, give at least five clear days' notice to the claimant of the time and place at which the claim will be considered by him.<sup>12</sup>

#### **4.04 Correction of Lists**

The registration officer shall make such additions to and corrections of the electors' list and the list of claimants as are required in order to carry out his decision on any objection or claim, and shall also make any such correction in these lists, whether by way of the removal of duplicate entries (subject to any expression of choice by the person affected as to those entries), the expunging of the names of persons who are dead or subject to any legal incapacity, the correction of clerical errors or otherwise in order to ensure that no person is registered as an elector in respect of more than one qualification in the same electoral area and that the list will be complete and accurate as a register.

Where the registration officer makes any correction in the electors' list or in the list of claimants, otherwise than in pursuance of a claim or objection, or for the purpose of correcting a clerical error, he shall give notice to the person affected by the correction, and give that person an opportunity of objecting to the correction, and if necessary, of being heard with respect to the correction.<sup>13</sup>

#### **4.05 Formation of Lists into Register**

The Registrar-General in Port Louis, and the civil status officers in the other districts and in Rodrigues, shall, not later than 20 May, furnish to every registration officer a statement of the names of all persons deceased whose names appear on the list of claimants or on the electors' list published by such registration officer.

On receipt of the statement, the registration officer shall, after inquiry, if necessary expunge the names of the deceased persons from the lists.

The registration officer shall, not later than 15 June, decide all objections and shall thereafter make all necessary corrections of the electors' list and the list of claimants and do everything necessary to form those lists so corrected into a register (with a separate series of numbers for each part of the register) in time to allow its publication on the day stipulated.

The registration officer shall sign and date the register and the register so dated and signed shall be the register in force. The register may be altered or corrected in conformity with any decision of the Court.<sup>14</sup>

#### **4.06 Publication of Registers**

The Electoral Commissioner or the registration officer, as the case may be, shall as soon as

practicable after 1 July, and not later than 14 August, publish the registers by making a copy of them available for inspection by the public at his office and causing a notice to be affixed outside his office informing the public that it is so available.

The Electoral Commissioner or the registration officer, as the case may be, shall, on application of any person during business hours and on payment of the prescribed fee, furnish copies of the registers to the applicant.

The registration officer shall, on the application of any person, allow that person to inspect, and take extracts from, or, on payment of the prescribed fee, supply to that person copies of the electors' list or list of claimants and of any claim or notice of objection.<sup>15</sup>

#### **4.07 Hearing Proceedings of Claims and Objections**

On the consideration by the registration officer of any claim or objection or other matter, the claimant, the objector or person objected to may appear and be heard either in person or by counsel or attorney on his behalf.

The registration officer may, at the request of any person interested or, if he thinks fit, without such request, on the consideration of any claim or objection or other matter make such order as he thinks just for ascertaining if any person is duly qualified for registration as an elector and may for that purpose examine such person or other witnesses on oath or affirmation, call for the production of books and other papers or documents, and make local inspections.

No misnomer or inaccurate description of a person or place on a list, register or notice shall prejudice the operation of the Act in respect of that person or place where the person or place is so designated as to be commonly understood.<sup>16</sup>

#### **4.08 Appeals**

An appeal lies to a Judge in Chambers, in vacation, or, in term time, to the Supreme Court from any decision of a registration officer on any claim or objection which has been considered by him.

No appeal shall lie where a claimant or objector has not availed himself of the opportunity of being heard by the registration officer on the claim or objection.

A claimant or objector desiring to appeal against the decision of a registration officer or of any of his assistants shall give written notice of appeal to the registration officer and to any opposite party within five days after the said decision, specifying the grounds of appeal.

The registration officer shall immediately forward the notice to the Registrar of the Court together with a statement of the material facts which, in his opinion, have been established in the case, and of his decision upon the whole case and upon any point which may be specified as a ground of appeal, and shall also furnish to the Court or Judge any further information which the Court or Judge may require and which he is able to furnish.

Where it appears to the registration officer that any notices of appeal given to him are based on similar grounds, he shall inform the Registrar of the Court of the fact for the purposes of enabling the Court or Judge, if the Court or Judge thinks fit, to consolidate the appeals or to select a case as a test case.

On appeal the registration officer shall be a party to the proceedings, if there is no other respondent.

The right of any person whose name is for the time being on the register to vote at an election shall not be prejudiced by any appeal pending and any vote given at an election in pursuance of that right shall be as valid and effective as if no such appeal were pending, and shall not be affected by the subsequent decision of the appeal.

Notice shall be sent to the registration officer by the Registrar of the decision of the Court or Judge on any appeal and the registration officer shall make such alteration in the electors' list or the register, as the case may be, as may be required to give effect to the decision.

The jurisdiction vested in the Court or Judge, and any duty imposed upon the Registrar shall, in Rodrigues, vest in the Magistrate appointed for the purpose and be performed by the district clerk of the Court of Rodrigues respectively.

A decision of the Magistrate in the exercise of his jurisdiction is final and not subject to appeal.<sup>17</sup>

#### **4.09 Omissions in Register**

The Court may order the insertion in the register of the name of any person which has been inadvertently omitted from it on application made by way of motion in that behalf by such person, or *ex parte*, by the Electoral Commissioner.<sup>18</sup>

### **— Section 5 —**

## **REGISTRATION OF POLITICAL PARTIES**

### **5.01 Application for Registration of Parties**

Every political party wishing to be registered under paragraph 2(1) of Schedule 1 to the Constitution is required to make application to the Commission in the prescribed manner at least ten days before nomination day.

Any application shall be made and signed in the presence of the Electoral Commissioner by the president, chairman or secretary of the party duly authorised so to do by a resolution passed by the executive committee of such party, and such application must be supported by a certified extract of the minutes of proceedings of the meeting at which the executive committee of such party passed such resolution.

Where an application is made by political parties as a party alliance, such application shall be made and signed jointly by the respective president, chairman or secretary of such political parties and supported by a certified extract of the minutes of proceedings of the meeting at which the executive committees of the respective political parties passed the resolution.<sup>19</sup>

## **5.02 Registration Procedure**

The Commission shall, upon application made in accordance with the stipulated procedure, register the name of the party and the name or names of the person or persons making or authorised to make the application in a register kept for that purpose.

The Commission must not register any party until the day next following the last day for making applications. As soon as practicable after the registration of any party the Commission shall give notice of such registration by publication in the Gazette.

Where any party has applied to be registered in a name that is the same as that of any other party that has also applied or that is so similar thereto as to be liable in the opinion of the Commission to confuse the electorate, the Commission shall not register any of the parties concerned and shall forthwith give notice to those parties accordingly.

Where such a party is a party formed in Rodrigues the foregoing provision does not apply, and the Commission shall in its absolute discretion register such party under a name that is not open to objection under the regulations: provided that before registering such party as aforesaid, the Commission shall cause the party to be informed of the name under which it intends to register such party and the party may not later than two days before nomination day, request the Commission either not to register it under the proposed name or to register it under such alternative name as would not be open to objection, and the Commission shall, if satisfied that such alternative name is not so open to objection, register the party accordingly.

Within 24 hours of the receipt of a notice from the Commission disallowing a proposed name, any parties concerned may apply to the Supreme Court for a determination that it may be registered in the name specified in its application for registration.

If application is made to the Supreme Court as aforesaid, the party applying shall give notice of such application to all the other parties who have applied for registration under the same name or a similar name, as the case may be, and the Supreme Court after hearing such of the parties as desire to be heard shall determine the name in which each party shall be registered and shall make an order directed to the Commission to that effect and the Commission shall register those parties accordingly.

Any party concerned in proceedings relating to an application to the Supreme Court may submit to the Court an alternative name under which, in the event of the Court deciding that it should not be registered under the name specified in its application for registration, such party could be registered, and the Court when making an order shall in the event as aforesaid, if it is satisfied that the alternative name is not open to objection, direct the Commission to register the party under such alternative name.

Any application to the Supreme Court shall be heard and determined by a single Judge of the Court not later than two days before nomination day, and the determination of the Judge therein shall not be subject to appeal.

Where any party is registered with the Commission, notice shall from time to time be given in writing by that party to the Commission of the names of at least two persons any one of whom is authorised by such party to discharge the functions of leader of that party.

The notice required to be given must be given by the president, chairman or secretary of the party duly authorised so to do by a resolution passed by the executive committee of such party, and such notice shall be supported by a certified extract of the minutes of proceedings of the meeting at which the executive committee of such party passed such resolution.

Where a notice is given by political parties as a party alliance, such notice must be given jointly by the respective president, chairman and secretary of such political parties and supported by a certified extract of the minutes of proceedings of the meeting at which the executive committees of the respective political parties passed the resolution.<sup>20</sup>

## — Section 6 —

### PREPARATION FOR ELECTIONS

#### 6.01 Writs for Election

The President, acting in accordance with the advice of the Prime Minister, shall, for the purpose of electing a new Parliament, not later than 55 days after a dissolution of Parliament –

- (a) issue a writ of election directed to the returning officer of every constituency; and
- (b) by notice of the Commission appoint the day on which, if it becomes necessary to adjourn the election for the taking of a poll, the poll is to be taken.

Every writ of election shall –

- (a) specify the place of election and the day of election; and
- (b) be forwarded to the Electoral Commissioner for transmission to the returning officer.

The writs of election for all constituencies shall be dated on the same day and shall specify the same day of election.

The day of election appointed must not be less than fifteen days nor more than thirty days after the day on which the writ is issued and the day on which a poll is to be taken must not be less than fifteen days nor more than sixty days after the day on which the nomination of candidates for the election is received.

Where on the day of election or at any time thereafter until the day on which the poll is to be taken, being days appointed in the notice of the writ, no candidate has been nominated or the number of candidates remaining nominated is less than or is reduced to a number less than the number of seats to be filled an election shall be held for the purpose of filling any seat that is unfilled –

- (a) on such day of election; or
  - (b) on such day on which, if it becomes necessary to adjourn the election for the taking of a poll, the poll is to be taken,
- as may be determined by the person appointed to conduct the election.<sup>21</sup>

## **6.02 Nomination of Candidates**

On the day and at the place fixed for the receipt of nominations, the returning officer shall attend between the hours of 9am and 3pm to receive the nomination of candidates for the seats to be filled. Any nomination paper which is delivered after the hour of 3pm shall be rejected.

Every candidate for election shall be nominated in writing by not less than eight registered electors of the constituency for which he seeks to be elected.

Every candidate shall make and subscribe on nomination paper a declaration –

- (a) that he is qualified;
- (b) in the case of a general election, of the party, if any, registered under these regulations to which he belongs, if he wishes to declare such party;
- (c) in the case of a general election, as to which of the Hindu, Muslim, Sino Mauritian or General Population communities he belongs.

If such declaration is not made in conformity of these provisions the nomination of such candidate shall be deemed to be void and of no effect.

Any candidate making a statement in a declaration which is false in any material particular and which he knows or believes to be false or does not believe to be true is guilty of an offence and is liable on conviction to imprisonment for any term not exceeding two years and to a fine not exceeding one thousand rupees, and shall, in addition, be incapable, during a period of six months from the date of his conviction, of being elected a member of the Assembly, or if elected before his conviction, of retaining his seat as such member.

The aforesaid disqualification shall not take effect until the time allowed by law for appealing against such conviction to any court in Mauritius has expired and, if an appeal against such conviction is filed, shall not take effect until the final determination thereof.

If the conviction is upheld on appeal, the disqualification shall take effect from the date of final determination of the appeal.

Every candidate, or some other person on his behalf, shall in the case of a general election,

at the time of delivering his nomination paper, deposit with the returning officer a certificate under the hand of the president, chairman or secretary of the party declared by him that he belongs to that party. If the candidate fails to deposit such certificate he shall be deemed not to belong to any party and his nomination paper shall have effect accordingly.

The returning officer shall, on the nomination paper being delivered to him, forthwith publish a notice of the name of the person nominated as a candidate, of the names of the persons nominating him and of the community to which he belongs by placarding or causing to be placarded such notice in a conspicuous position outside his office. In the case of a general election, the Electoral Commissioner shall give further notice of the names of the candidates nominated together with the name of the party, if any, and the community to which each candidate belongs by publication in the Gazette and in at least three daily newspapers.

Every candidate, or some other person on his behalf, shall, at the time of delivering his nomination paper, deposit, or cause to be deposited, with the returning officer, the sum prescribed, and if he fails to do so, the nomination of such candidate is deemed to be invalid.

If after the deposit is made, the candidature is withdrawn not more than seven days after the nomination day by notice given in the prescribed form, the deposit shall, if the withdrawal is allowed, be returned to the person by whom it was made, and if the candidate dies after the deposit is made and before the poll has commenced, the deposit, if made by him, shall be returned to his estate, or, if not made by him, shall be returned to the person by whom the deposit was made.

Before the hour of 3pm on the day fixed for the receipt of nominations and within one hour afterwards objection may be made to a nomination paper by the returning officer or some other person and the returning officer shall decide on the validity of every such objection.

The returning officer is entitled to hold a nomination paper invalid only on one of the following grounds –

- (a) that the candidate has failed to make the deposit prescribed;
- (b) that the particulars of the candidate or the persons subscribing the nomination paper are not as required by law; and
- (c) that the nomination paper is not subscribed as required.

Where the returning officer decides that a nomination paper is invalid, he shall endorse and sign on the nomination paper the fact and the reasons for his decision.

The decision of the returning officer that a nomination paper is valid is final and cannot be questioned in any proceeding other than on an election petition.<sup>22</sup>

### **6.03 Appeal by Aggrieved Prospective Candidate**

The decision of the returning officer that the nomination paper of a candidate presenting himself for election is invalid may be questioned by that candidate within five days of that

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decision by way of motion to the Supreme Court for an order directing the returning officer to insert his name on the list of candidates for the said election.

Any such motion shall be heard by a single Judge of the Supreme Court.<sup>23</sup>

#### **6.04 Questioning Declaration as to Community**

Within seven days of the nomination of any candidate for election at any general election any elector may question the correctness of the declaration relating to his community made by that candidate at his nomination and obtain an order directing the returning officer to insert the proper community of the candidate on his nomination paper for the said election.

A motion to the Supreme Court in respect of this matter shall be heard and determined by a single Judge of the Supreme Court within fourteen days of nomination and the determination of the Judge therein is not subject to appeal.<sup>24</sup>

#### **6.05 Withdrawal of Candidature**

Any candidate may withdraw from his candidature by notice in writing signed by him, and delivered by himself or one of the persons nominating him to the returning officer between the hours of 9am and 3pm not more than seven days after nomination day, unless he has before the expiry of such period of seven days been declared elected.<sup>25</sup>

#### **6.06 Method of Election**

Where, at 4pm on nomination day, the number of candidates remaining nominated exceeds the number of seats to be filled, a poll shall be taken.

Where, at the time aforesaid on nomination day or at any time thereafter until the time fixed for the taking of the poll, the number of candidates remaining nominated is, or is reduced to, a number equal to the number of seats to be filled, the remaining candidates shall forthwith be declared elected.

If, at the time aforesaid on nomination day or at any time thereafter until the time fixed for the taking of the poll, no candidate has been nominated or the number of candidates remaining nominated is less than, or is reduced to a number less than, the number of seats to be filled, the remaining candidates, if any, shall forthwith be declared elected, and the returning officer shall appoint a day of election for the purposes of filling any seat that is unfilled.

Where any candidate is to be declared elected the returning officer shall forthwith publicly declare such candidate elected and immediately thereafter certify by endorsement on the writ of election the return of such candidate.<sup>26</sup>

#### **6.07 Preparation for the Taking of the Poll**

If there are more candidates, duly nominated, than there are seats to be filled the returning officer must adjourn the election to the day appointed for the taking of a poll and shall

report to the Electoral Commissioner the names of the candidates and, in the case of a general election, the respective party, if any, to which they belong.

The Electoral Commissioner shall allot a symbol of identification to each candidate, and the returning officer shall thereupon cause to be placarded in a conspicuous position outside his office a facsimile of the symbol allotted to each candidate.

At the expiry of the time limit laid down, if more candidates remain nominated than there are seats to be filled, the returning officer shall forthwith report to the Electoral Commissioner the names of the candidates remaining nominated.

Upon receipt of such reports the Electoral Commissioner shall give notice of the day on which the poll will be taken and of the names of candidates nominated for election and, in the case of a general election, their respective party, if any, by the publication in the Gazette, of a notice in the prescribed form.

The returning officer shall cause similar notices to be posted up in a conspicuous position at such places in the constituency as he may deem necessary.

The Electoral Commissioner shall further give public notice, combined with a statement of the candidates nominated for election, in at least three daily newspapers, of the situation of each polling station and the description of voters entitled to vote thereafter: provided that such notice shall, in Rodrigues, be given by the returning officer by affixing copies thereof at such conspicuous places as he may deem fit.<sup>27</sup>

### **6.08 Polling Agents**

Each candidate may appoint in respect of any polling station not more than one person to be in attendance in each voting room and in addition to his official election agent, if any, not more than two polling agents to be within the precincts of the polling station for the purpose of detecting personation: provided that no person shall be appointed under this paragraph who has at any time been convicted of, and sentenced to a term of imprisonment in respect of, any offence involving fraud, dishonesty or the use of violence against the person of any individual.

Notice in writing of the appointments stating the names and address of the polling agents, together with the polling stations to which they have been assigned, shall be given by the candidate to the returning officer not later than three days before the day fixed for the election.

Each candidate may, in addition to the polling agents appointed by him, appoint one alternate polling agent who shall, whenever a substantive polling agent is incapable of acting as such and upon notice being given by the candidate to the returning officer or the senior presiding officer, be entitled to replace any such substantive polling agent.

If any polling agent (whether substantive or alternative) dies or becomes incapable of acting as such, the candidate may, before the opening of the poll or within two hours of such

opening and subject to such notice being given to the returning officer, appoint another polling agent in the place of any agent.

A polling agent must not remove his marked register or make any extract therefrom or remove such extract from the voting room before the close of the poll nor shall he leave the voting room to which he has been assigned without the permission of the presiding officer, provided that the presiding officer must not unreasonably withhold such permission.

Any polling agent who contravenes these provisions is guilty of an offence.<sup>28</sup>

### **6.09 Voting Procedures**

The ballot of each elector shall consist of a paper (referred to as ballot paper) showing:

- (a) the full name and description of each candidate;
- (b) the symbol of identification allotted to each candidate in accordance with regulations; and
- (c) in the case of a general election, the party if any, to which the candidate belongs.

Each ballot paper shall have a number printed on the back and shall have attached to it a counterfoil with the same number printed on the face.

The returning officer shall ensure that, wherein poll is to take place, each polling station is provided with proper doors, barriers, tables, chairs or other conveniences, properly arranged for carrying out the polling activities and he shall, subject to the approval of the Commission, appoint a senior presiding officer to preside at each polling station and a presiding officer to preside at each voting room therein: provided that he may himself act as a senior presiding officer at any one polling station in the constituency for which he has been appointed.

The returning officer shall, subject to the approval of the Commission, also appoint such poll and other clerks and other persons to assist in the taking of the poll and he shall also provide each polling station with polling compartments or other places properly screened from observation, with copies of the register of electors for the constituency, certified under his hand, a proper ballot box, and a sufficient number of ballot papers, and such other conveniences and materials for taking the poll as may be necessary.

The returning officer shall, on or before the day fixed for the taking of the poll, visit each polling station, and see that each such station is provided with such requisites as aforesaid for taking the poll.

The poll at each polling station shall take place between the hours of 6.30am and 12 noon and of 1pm and 6pm on the same day.

During the interval when voting is suspended between 12 noon and 1pm the presiding officer shall place the ballot box and all documents relating to the election under his own seal and shall otherwise take proper precautions for the securing of such ballot box and documents.

The ballot box shall be of convenient size and shall be so constructed that the ballot paper can be introduced therein but cannot be withdrawn without the box being unlocked. It shall be provided with a lock and key.

The ballot box shall be exhibited empty to such persons as may be in the polling station immediately before the taking of the poll, and shall then be securely locked, and sealed in a manner as to prevent it being opened without breaking the seal. It shall be placed in the full view of the presiding officer and the polling agents for the receipt of ballot papers.

For the guidance of electors in voting, notices in the prescribed form shall be printed in conspicuous characters in English, French, Hindi, Tamil, Telegu, Urdu, Gujarati and Chinese and posted in various places outside and inside of each polling station.

The senior presiding officer shall keep order at his polling station and shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the Chairman and members of the Commission, the election officers, the candidates, one polling agent in each voting room for each candidate and the members of the police force on duty.

The senior presiding officer may limit the number of polling agents who may be admitted at any one time within the precincts of a polling station.

The polling agents in the voting room shall be posted in such a place that they can see each person who presents himself as an elector, and hear his name as given in by him, but so that they cannot see how an elector votes. They shall not interfere in the proceedings save in so far as may be allowed.

Every elector desiring to record his vote shall proceed to the polling station allotted to him and shall present himself to the presiding officer at the appropriate voting room and state his name and the presiding officer, after satisfying himself that the name of such elector appears on the copy of the part of the register of electors containing the names of the electors allotted to that voting room, shall, in accordance with the stipulated procedure, deliver a ballot paper to the elector.

Every ballot paper shall bear an official mark consisting partly of a printer's design printed on such ballot paper and partly of a secret mark which shall be stamped, embossed or perforated thereon.

An interval of not less than five years shall intervene between the use of the same official mark at elections for the same constituency.

Immediately before being delivered to the voter, the ballot paper shall be marked on both sides with the mark, which is required to be stamped, embossed or perforated thereon. The number and names of the elector as stated in the copy of the register shall be called out, the number of such elector shall be marked on the counterfoil and a mark shall be placed in the register against the number of the elector to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

Before delivering a ballot paper the presiding officer may and shall if requested by a candidate or a polling agent, put to the person applying therefor the following questions –

- (a) are you the person registered in the register of electors for this constituency as follows (the whole entry from the register to be read)?
- (b) have you already voted at this election either here or elsewhere?

and may require such person to furnish an impression of his thumb or, if he is incapacitated by physical cause from impressing his thumb print, of such other finger as may be available for the purpose.

If any person does not answer satisfactorily any question put to him or refuses to furnish an impression of his thumb or finger, or if the presiding officer is satisfied that the person offering himself to vote is not the same person whose name is on the register of electors or that such person has already voted at the election, the presiding officer may refuse to give him a ballot paper.

If any person makes a false answer to any such question he is guilty of an offence.

The elector, on receiving his ballot paper shall forthwith proceed to a polling compartment, within the voting room, and there secretly mark his paper, and fold it up so as to conceal his vote, and shall then put the ballot paper, so folded up, into the ballot box after having shown to the presiding officer the official mark on the back; and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

The elector shall mark his vote upon the ballot paper by placing a cross opposite the name of each candidate for whom he wishes to vote. The presiding officer shall on request give to any elector such instructions as may appear to be necessary for the purpose of enabling him to record a valid vote.<sup>29</sup>

### **6.10 Tendered Ballot Paper**

If a person representing himself to be a particular elector named on the register applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions set forth in the regulations, be entitled to mark a ballot paper in the same manner as any other elector, but the ballot paper (referred to as a “tendered ballot paper”) shall be of a colour differing from the other ballot papers and instead of being put into the ballot box shall be given to the presiding officer, and shall be endorsed by him with the name of the elector and his number in the register of electors, and set aside in a separate packet, and shall not be counted by the returning officer. The name of the elector and his number on the register shall be entered on a list to be called the tendered votes list.<sup>30</sup>

### **6.11 Spoilt Ballot Papers**

An elector who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction

of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (referred to as a “spoilt ballot paper”), and the spoilt ballot paper shall be immediately cancelled by the presiding officer writing the word “cancelled” across the face thereof.

All spoilt ballot papers shall be preserved by the presiding officer, in a separate packet, and shall be given up by him at the close of the poll to the returning officer.<sup>31</sup>

### **6.12 Incapacitated Voters**

If any elector is incapacitated by blindness or other physical cause from voting in the manner laid down in the regulations or declares that he is unable to read or understand the symbols, the poll clerk shall, at the request of the elector, and on being so ordered by the presiding officer and in his presence and that of another election officer, mark the vote of such elector on a ballot paper in the manner directed by such elector and the ballot paper so marked shall be placed in the ballot box; and the name and number on the register of electors of every elector whose vote is so marked for him, and the reason why it is so marked, shall be entered on a list to be called the “list of votes marked by the presiding officer”.

All necessary precautions must be taken by the presiding officer to ensure that no person, save the person by whom the ballot paper is marked for the voter and the other election officer present, shall know for whom such voter has voted.<sup>32</sup>

### **6.13 Voting by Proxy**

The following persons are entitled to vote by proxy –

- (a) any member of the Police and any election officer, certified in writing by the Commissioner of Police or the returning officer, as the case may be, to be engaged in the performance of duties at the date of any election held;
- (b) any service elector; and
- (c) any candidate duly nominated for election.

At least seven days before the date of any election the Commissioner of Police, the Permanent Secretary, Ministry of External Affairs and the returning officers of all the constituencies shall forward to the Electoral Commissioner lists of persons entitled to vote by proxy showing also the constituency in which they are entitled so to vote.

Any elector whose name appears on a list or whose name appears in a notice of taking of poll published under the regulations may apply to the returning officer in the prescribed form, not less than seven days before the date of such election aforesaid, for the issue of a proxy paper appointing another person to vote as proxy for such elector.

The application form shall be filled in and signed by the applicant and the proxy, as required.

The returning officer shall, on application, appoint the person designated by the elector in

his application form as proxy for that elector and issue to the elector or, in the case of a service elector, to the proxy, a proxy paper in the prescribed form. A person shall not be entitled to have more than one proxy at a time appointed to vote for him at any election, nor shall a person be entitled to vote in person at any election where that person's application for a proxy paper has been allowed.

A person shall not be capable of being appointed to vote, or of voting, as proxy at any election unless he is a Commonwealth Citizen over eighteen years of age, and not subject to any legal incapacity to vote as an elector, and a person shall not be entitled to vote as proxy at the same election on behalf of more than two electors.

It shall be the duty of the returning officer to issue a proxy paper in pursuance of any application duly made to him in that behalf if he is satisfied –

- (a) that the applicant's name appears on the register of electors for the constituency and on a list of specified persons or, in the case of a candidate, on any notice of poll; and
- (b) that the proxy is capable of being, and is willing to be, appointed.

The returning officer shall keep a record (the list of proxies) of electors for whom proxies have been appointed and of the names and addresses of the persons appointed. No person must be permitted to vote as proxy unless he first surrenders to the presiding officer his proxy paper.

Before delivering a ballot paper to a proxy, the presiding officer may, and shall, if requested by a candidate or a polling agent, put to the person applying therefor the following questions –

- (a) are you the person whose name appears as A.B on your proxy paper and on the list of proxies for this election as entitled to vote as proxy on behalf of C.D (the whole entry from the register of electors to be read)?
- (b) have you already voted here or elsewhere at this election as proxy on behalf of C.D? and may require such person to furnish an impression of his thumb or, if he is incapacitated by physical cause from impressing his thumb print, of such other finger as may be available for the purpose.

If any person does not answer satisfactorily any question put to him, or refuses to furnish an impression of his thumb or finger, or if the presiding officer is satisfied that the person offering himself to vote is not the same person whose name is on the proxy paper and on the list of proxies as entitled to vote as proxy on behalf of the elector, or that such person has already voted at the election as proxy on behalf of the elector, the presiding officer may refuse to give him a ballot paper.

If any person makes a false answer to any such question he is guilty of an offence.

If a person whose name appears on a proxy paper and on a list of proxies as proxy for an elector applies for a ballot paper after another person has voted as proxy for the elector the

presiding officer shall deliver to him a tendered ballot paper. In the case of a person applying for a ballot paper as proxy for an elector, a mark shall be placed against that proxy's name in the list of proxies, to denote that he has received a ballot paper, in addition to the mark placed against the number of the elector in the copy of the register of electors.<sup>33</sup>

#### **6.14 Close of Poll and Counting of Votes**

The presiding officer of each voting room, as soon as practicable after the close of the poll, shall, in the presence of the agents of the parties or of the candidates as the case may be, make up into separate packets sealed with his own seal and the seals of such agents as desire to affix their seals –

- (a) the ballot box in use at his voting room unopened but with the key attached, and so sealed as to prevent the introduction of additional ballot papers;
  - (b) the unused and spoilt ballot papers;
  - (c) the tendered ballot papers;
  - (d) the marked copies of the register of electors and the counterfoils of the ballot papers;
  - (e) the tendered votes list, and the list of votes marked by the presiding officer; and
  - (f) the list of proxies and the proxy papers,
- and shall deliver such packets to the returning officer.

The packets must be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of "ballot papers in the ballot box" and "unused, spoilt and tendered ballot papers", which statement is called the ballot paper account.

Each candidate may appoint not more than two persons (counting agents), to attend the counting of votes at each counting compartment: provided that no person shall be appointed as counting agent who has at any time been convicted of, and sentenced to a term of imprisonment in respect of, any offence involving fraud, dishonesty or the use of violence against the person of any individual.

Notice in writing of the appointments, stating the names and addresses of the counting agents, shall be given by the candidate to the returning officer not later than three days before the day of election and the returning officer may refuse to admit to the place where the votes are counted any person purporting to be a counting agent in respect of whom such notice has not been given.

If a counting agent dies or becomes incapable of acting as such, the candidate may appoint another counting agent in his place and shall immediately give to the returning officer notice in writing of the name and address of the counting agent so appointed.

On the day next following the poll the returning officer shall attend at the place of election or such other place as he may appoint, and at 8am shall, in the presence of such of the duly

appointed agents of the candidates as attend, break any seal affixed to each ballot box in compliance with the regulations, open each ballot box and first proceed to count the ballot papers contained in each ballot box and record the number thereof, keeping the ballot papers with their faces upwards and taking all proper precautions for preventing any person from seeing the numbers on the backs of such papers, and then proceed to count the votes.

The returning officer may, with the approval of the Commission, in addition to any clerks, appoint competent persons to assist him in counting the votes.

No person shall be allowed within the precincts of any place where a counting is carried out except the election officers, the candidates and their official agents, if any, two counting agents for each candidate at each counting compartment and the members of the police force on duty.

The returning officer may limit the number of counting agents who may be admitted at any one time at each counting compartment.

The returning officer shall, as far as is practicable, proceed continuously with the counting of the votes allowing only time for refreshment, and excluding (except in so far as he and the candidates or their official election agents otherwise agree) the hours between 6pm and 8am. During the excluded period the returning officer shall place the ballot papers and other documents relating to the election under his own seal, and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

Any ballot paper which has not on its back the official mark or on which votes are given to more candidates or to a lesser number of candidates than required or on which anything, except the number on the back, is written or marked by which the voter can be identified, or which is unmarked or which there is any uncertainty as to the vote, shall be void and not counted.

The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to" if an objection to his decision be in fact made by any agent.

The returning officer shall report to the Commission the number of ballot papers rejected and not counted by him under the several heads of –

- (a) want of official mark;
- (b) voting for more candidates than entitled to;
- (c) voting for a lesser number of candidates than required to;
- (d) writing or mark by which the voter could be identified;
- (e) unmarked or void for uncertainty,

and shall, on request, allow the agents of the candidates before such report is sent to copy it.

A candidate or his election agent may, if present when the counting is completed, require the returning officer to have the votes recounted or again recounted but the returning officer may refuse to do so if in his opinion the request is unreasonable.

No step shall be taken on the completion of the counting or any recount of the votes until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred under the regulations.

Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or of marked copies of the register of electors and counterfoils of ballot papers, or of the list of proxies and the proxy papers, but shall proceed, in the presence of the agents of the candidates, to verify each ballot paper account by comparing it with the number of ballot papers counted by him as aforesaid, and the unused and spoiled ballot papers in his possession and the tendered votes list, and shall seal each packet opened by him after examination.

The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.<sup>34</sup>

### **6.15 Equality of Votes**

Whenever there is an equality of votes between any candidates at an election, the election as between the candidates with an equal number of votes shall be decided by the drawing of lots in the presence of the returning officer.

No elector shall be entitled to vote in a constituency for which he is the returning officer or in which he performs the duties of the returning officer.<sup>35</sup>

### **6.16 Declaration of Results**

The returning officer shall, as soon as he shall have ascertained the result of the poll, forthwith publicly announce such result and in the case of the election of more than one member shall declare to be elected as members the candidate who has received the greatest number of votes and the candidate or the candidates standing next in order on the basis of the number of votes they have received up to the total number of seats to be filled, and shall immediately thereafter certify by endorsement on the writ of election the return of such candidates and the number of votes they have respectively obtained and shall return that writ so endorsed to the President within the time for the purpose specified therein.

In respect of Rodrigues the writ so endorsed shall be forwarded by the returning officer to the Magistrate and Civil Commissioner for Rodrigues who shall forthwith inform the Commission of the terms of endorsement of such writ and thereafter transmit the writ to the President at the earliest opportunity.<sup>36</sup>

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— *Section 7* —

**ELECTION EXPENSES**

**7.01 Election Agents**

On or before the day fixed for the election, each candidate or prospective candidate shall, by notice in writing given to the returning officer, appoint either himself or some other person as his election agent and specify an address within the electoral area to which all claims, notices, writs, summonses and documents addressed to the candidate or to his agent may be sent, and the returning officer shall forthwith give public notice of the name and address of every election agent so appointed.

A candidate may, by notice in writing given to the returning officer, revoke the appointment of his election agent, and, in the event of such revocation or of the death of the agent, whether such event is before, during or after the election, forthwith appoint another election agent and give written notice of his name and address to the returning officer who shall forthwith give public notice thereof.

An election agent may act in relation to any matter required to be done in a polling station by sub-agents appointed by him for that station and anything done for the purposes of the Act by or to any sub-agents in his electoral area shall be deemed to be done by or to the election agent, and any act or default of a sub-agent, which, if he were the election agent, would be an illegal practice or other offence under the Act is an illegal practice or other offence committed by the sub-agent, and the sub-agent is liable to punishment accordingly.

A candidate shall suffer the like incapacity, as if the act or default had been the act or default of the election agent unless he proves that he had no knowledge of that act or default.

Not later than two clear days before the poll the election agent shall declare in writing the name and address of every sub-agent to the returning officer, who shall forthwith give public notice thereof.

The appointment of a sub-agent shall not be vacated by the election agent who appointed him ceasing to be election agent, but may be revoked by the election agent of the candidate, and, in the event of such revocation, or of the death of a sub-agent, another sub-agent may be appointed, and notice of his name and address shall forthwith be given in writing to the returning officer, who shall forthwith give public notice thereof.

A document delivered at the address specified in the notice shall be deemed to have been duly served on the election agent and every election agent may, in respect of any matter connected with the election for which he is acting, be sued in any competent court.

The election agent of a candidate shall appoint every sub-agent, clerk and messenger employed for payment on behalf of the candidate at an election, and hire every committee room hired on behalf of the candidate.

A contract whereby any expenses are incurred on account of, or in respect of, the conduct or management of an election, shall not be enforceable against a candidate at such election unless made by the candidate himself or by his election agent either by himself or by his sub-agent.

The inability to enforce such contract against the candidate shall not relieve the candidate from the consequence of any illegal practice having been committed by his agent.

Except as permitted by the Act, no payment, advance or deposit shall be made by a candidate, at an election, or by an election agent on behalf of the candidate, or by any other person, whether before, during, or after such election, in respect of expenses incurred on account of, or in respect of, the conduct or management of such election, otherwise than by or through the election agent of the candidate, whether acting in person or by a sub-agent.

All money provided by a person other than the candidate for any expenses incurred on account of, or in respect of, the conduct or management of the election, whether as gift, loan, advance or deposit, shall be paid to the candidate or his election agent and not otherwise.<sup>37</sup>

## **7.02 Authorised Amount of Election Expenditure**

No election expenses shall be incurred and no sum shall be paid in respect of a candidature in excess of the amount specified.

The maximum amount of election expenses to be incurred in respect of a candidature shall be –

- (a) in respect of a Legislative Assembly election –
  - (i) where the candidate does not belong to any party, or there is no other candidate belonging to the same party at the election in a constituency, 250,000 rupees;
  - (ii) where the candidate is not the only candidate belonging to a party at the election in a constituency, 150,000 rupees;
- (b) in respect of a municipal council election, 50,000 rupees.

In determining the total expenditure incurred in relation to the candidature of any person at any election regard shall not be had –

- (a) to any deposit required to be made by the candidate on his nomination in compliance with the regulations;
- (b) to any expenditure incurred before the notification of the date fixed for the election in respect of services rendered or materials supplied before such notification; or
- (c) (i) any act done, services rendered or expenditure incurred by a public officer, a local government officer or an officer of a statutory authority or corporation either in the discharge or purported discharge of the officer's functions while that person was the holder of an office; or
  - (ii) any act done, services used or expenditure incurred by that person while he was the holder of an office.

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No expenditure shall be incurred in respect of the candidature of any person at any election except by the candidate, his agent or a person authorised in writing by the agent.

No payment must be made by any candidate to any person other than his agent in connection with his candidature of any election except –

- (a) expenditure for the candidate's personal living expenses during the period of the election to an amount not exceeding 25,000 rupees; and
- (b) petty expenditure to an amount not exceeding 2,500 rupees.

This paragraph does not apply to a candidate who is his own official agent.

No expenditure must be incurred in respect of the candidature of a candidate at an election, by a person authorised in writing by the agent of such candidate, in excess of the amount specified in the authorisation.<sup>38</sup>

### **7.03 Unauthorised Expenditure**

Where any expenditure is incurred in contravention of the Act, the person by whom such expenditure was incurred and the candidate in connection with whose candidature it was incurred shall be deemed to be guilty of an illegal practice.

A candidate shall not be guilty of an illegal practice by reason of any other person having incurred any expenditure in connection with the candidature of the candidate in contravention of sections 51, 52 or 54 unless it is proved that such expenditure was incurred with his consent.<sup>39</sup>

### **7.04 Return by Election Agent**

Within six weeks after the day on which the candidate or candidates returned at an election is or are declared elected, the election agent of every candidate at such election shall make an election return to the returning officer for the electoral area in which he acted as an election agent.

Every return shall contain a full statement under that appropriate head specified in the return of all expenditure incurred in connection with the election by or on behalf of the candidate and shall be supported by vouchers for all payments in excess of 30 rupees.

Every return made shall contain a full statement of all money, securities, or the equivalent of money, received by the election agent from the candidate or from any other person in connection with the election.

Every return shall be in the prescribed form and shall be sworn to before a Magistrate by the agent by whom it is made.

Every return shall be supported by a declaration sworn to before a Magistrate by the candidate stating –

- (a) that the return fully and accurately sets out all payments made by the candidate himself; and
- (b) that to the best of his knowledge, information and belief the return is a full and accurate return of all expenditure incurred, and of all money, securities or the equivalent of money received by the election agent, in connection with the election.

Sub-paragraph (b) does not apply where a candidate acts as his own agent.

The returning officer shall, within 10 days after he receives a return, publish in a daily newspaper a notice of the time and place at which the return and the documents in support thereof can be inspected.

In Rodrigues, the notice shall be published by affixing copies thereof at such conspicuous places in Rodrigues as the returning officer thinks fit.

Any candidate or election agent who fails to comply with any of the provisions of this section is guilty of an offence.<sup>40</sup>

### **7.05 Claim and Payment for Election Expenses**

Every claim against a candidate at an election, or his election agent, in respect of any expenses incurred on account of, or in respect of, the conduct or management of such election which is not sent in to the election agent within 14 days after the day on which the candidates returned are declared elected shall be barred and shall not be paid, and an election agent who pays a claim which is barred shall be guilty of an illegal practice.

Where the election agent in the case of any claim sent to him within the time limited disputes it, or refuses or fails to pay it within the period of 28 days, the claim is deemed to be a disputed claim.

The claimant may bring an action for a disputed claim in the competent court. Any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by the Act.

On cause shown to the satisfaction of a Judge in Chambers, or, in Rodrigues, of the Magistrate appointed for the purpose, the Judge or Magistrate, on application by the claimant or by the candidate or by his election agent, may by order give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for any such expenses as are incurred although sent in after the time for sending in claims or although such claim was sent in to the candidate and not to the election agent, and any sum specified in the order of leave may be paid by the candidate or his election agent, and when paid in pursuance of such leave shall be deemed to be paid within the time limited by the Act.<sup>41</sup>

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— *Section 8* —

**ELECTION OFFENCES**

**8.01 Corrupt Withdrawal from a Candidature**

Any person who corruptly induces or procures another person to withdraw from being a candidate at an election in consideration of any pecuniary or other reward or promise of pecuniary or other reward is guilty of the offence of illegal payment.

Any person withdrawing, in pursuance of such inducement or procurement, is also guilty of illegal payment.<sup>42</sup>

**8.02 Name and Address of Printer on Placard**

Every bill, placard or poster having reference to an election must bear on its face the name and address of the printer and publisher.

Any person printing, publishing, or posting, or knowingly causing to be printed, published, or posted, any bill, placard or poster and which does not bear on its face the name and address of the printer and publisher, shall, if he is the candidate, or the election agent of the candidate, be guilty of illegal practice and, if he is not the candidate or the election agent of the candidate, shall commit an offence, the conviction for which is liability to a fine not exceeding 1,000 rupees.<sup>43</sup>

**8.03 Bribery and Treating**

Any person who –

- (a) directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at any election;
- (b) directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises or promises to procure or to endeavour to procure any office, place, or employment, to or for any elector, or to or for any person, on behalf of any elector or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act on account of any elector having voted or refrained from voting at any election;
- (c) directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person as an elected member of a council or the vote of any elector at any election;

- (d) upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procures or engages, promises or endeavours to procure, the return of any person as an elected member of a council or the vote of any elector at any election;
  - (e) advances or pays, or causes to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof, shall be expended in bribery at any election, or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money in whole or in part expended in bribery at any election;
  - (f) before or during any election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place, or employment, for himself or for any person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election; or
  - (g) after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting, at any election,
- is guilty of bribery.

A person who –

- (a) corruptly by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or pays in whole or in part the expenses of giving or providing, any food, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or refrain from voting at such election; or
  - (b) corruptly accepts or takes any such food, drink, entertainment, or provision,
- is guilty of treating.<sup>44</sup>

#### **8.04 Undue Influence**

A person who directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of, any force, violence or restraint, or inflicts, or threatens to inflict, by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress or any fraudulent contrivance, impedes or prevents the free exercise of the franchise of any elector, or thereby compels, induces, or prevails upon, any elector either to give or refrain from giving his vote at any election, is guilty of undue influence.

Any person who, on polling day –

- (a) annoys, molests or otherwise interferes with an elector;
- (b) attempts to obtain any information as to the candidate for whom an elector is about to vote or has voted, or as to the number on the ballot paper given to an elector;

- (c) remains outside any voting room except for the purposes of gaining entry to the voting room in order to vote; or
  - (d) within 200 metres of the precincts of a polling station –
    - (i) loiters in any street, or open place;
    - (ii) by word, message, writing or in any other manner, endeavours to persuade any person to vote for any candidate or party or dissuades any person from voting or from voting for any candidate or party; or
    - (iii) opens or maintains, for the purpose of any activity directed towards promoting or procuring the election of a candidate at an election, an office in any room, building or place, whether public or private, open or closed,
- is guilty of undue influence.<sup>45</sup>

### **8.05 Personation**

Every person who –

- (a) at an election applies for a ballot paper in the name of another person, whether that name is the name of a person living or dead, or of a fictitious person; or
  - (b) having voted once at any election, applies at the same election for a ballot paper in his own name,
- is guilty of personation.<sup>46</sup>

### **8.06 Disqualification on Conviction**

Every person who is convicted of bribery, treating, undue influence or personation, shall, without prejudice to any other punishment, be incapable during a period of seven years from the date of his conviction –

- (a) of being registered as an elector, or of voting at any election;
- (b) of being a candidate at an election or, if elected before his conviction, of retaining his seat.<sup>47</sup>

### **8.07 Illegal Practice**

A person who –

- (a) votes, or induces or procures any person to vote, at any election, knowing that he or such other person is prohibited from voting at such election; or
  - (b) before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate,
- is guilty of an illegal practice.

A person who is guilty of an illegal practice is liable on conviction to a fine, and in addition shall be incapable during a period of five years from the date of his conviction of being registered as an elector or of voting at any election or of being a candidate at an election, or, if elected before his conviction, of retaining his seat.<sup>48</sup>

### **8.08 Offences by Election Officers**

Every election officer who –

- (a) makes in any record, return or other document which he is required to keep or make, any entry which he knows, or has reasonable cause to believe to be false, or does not believe to be true;
  - (b) permits any person whom he knows, or has reasonable cause to believe, not to be a blind person, an incapacitated person or an illiterate person, to vote in the manner provided for blind persons, incapacitated persons or illiterate persons, as the case may be;
  - (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person, an incapacitated person or an illiterate person to vote in the manner provided for blind persons, incapacitated persons or illiterate persons, as the case may be;
  - (d) wilfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote;
  - (e) wilfully rejects or refuses to count any ballot paper which he knows, or has reasonable cause to believe, is validly cast for any candidate; or
  - (f) wilfully counts any ballot paper as being cast for any candidate, which he knows, or has reasonable cause to believe, was not validly cast for such candidate,
- shall commit an offence.<sup>49</sup>

### **8.09 Duty of Secrecy**

Every officer, clerk, candidate and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in the station, and shall not communicate except for a purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station or as to the official mark.

No person shall interfere with an elector when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any elector in such station is about to vote or has voted, or communicate to any person any information obtained in a polling station as to the candidate for whom any elector in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any elector at such station.

Every officer, clerk, candidate and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at the counting the number on the back of any ballot paper, or communicate any information obtained at the counting as to the candidate for whom any vote is given in any particular ballot paper.

No person shall, directly or indirectly, induce any elector to display his ballot paper after he has marked it so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

A person who contravenes these provisions commits an offence.<sup>50</sup>

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— *Section 9* —

**ELECTION PETITION**

**9.01 Grounds for Presenting Election Petition**

An election petition complaining of an undue return or undue election of a member to the Assembly, a municipal or village council on the ground that –

- (a) the person whose election is questioned was not qualified or was disqualified at the time of the election; or
  - (b) the election was avoided by reason of bribery, treating, undue influence, illegal practice, irregularity, or any reason,
- may be presented to a Judge in Chambers by –
- (i) any person who voted or had the right to vote at the election to which the petition relates;
  - (ii) any person who claims to have had a right to be returned or elected at the election to which the petition relates;
  - (iii) any person who alleges he was a candidate at the election to which the petition relates.

A petition shall not be presented on the ground that a candidate other than the person whose election is questioned was not qualified or was disqualified for election.

An election petition shall not be presented against a member and the return or election of a member shall not be avoided on the ground that, in connection with, or in furtherance of, his candidature or for his return or election –

- (a) any act was done, services were rendered or expenditure was incurred by a public officer, a local government officer or an officer of a statutory authority or corporation where the act was done, the services were rendered or the expenditure was incurred either in the discharge or purported discharge of the officer's function or while the member was the holder of an office;
- (b) any act was done, services were used or expenditure was incurred by the member where the act was done, the services were used or the expenditure was incurred while the member was the holder of an office.<sup>51</sup>

**9.02 Procedure for Presenting Petition**

On the presentation of an election petition –

- (a) the petition shall be signed by the petitioner, or all petitioners if more than one, and shall be presented to a Judge in Chambers who shall fix a day on which the Court shall hear the petition;
- (b) the petition shall be heard and determined by a court consisting of at least two Judges;
- (c) the petition shall be presented within 21 days or in the case of Rodrigues 56 days

after the date of the return made by the returning officer to the Commission of the member to whose election the petition relates, unless it questions the return or election upon an allegation of illegal practice and specifically alleges a payment of money or some other act to have been made or done since the date of such return by the member, or an agent of the member or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, in which case the petition may be presented at any time within 28 days or, in the case of Rodrigues, 70 days after the date of such payment or other act;

- (d) at the time of the presentation of the petition or within three days thereof, security for the payment of all costs, charges and expenses that may become payable by the petitioner –
  - (i) to any person summoned as a witness on his behalf; or
  - (ii) to the member whose election or return is complained of, or to any other person named as a respondent in the petition,shall be given on behalf of the petitioner;
- (e) the security shall be the amount prescribed and shall be given by recognizance to be entered into before the Master by any number of sureties not exceeding four approved by him, or by a deposit of money in the Registry of the Court or partly in one way and partly in the other.<sup>52</sup>

### **9.03 Trial of Election Petition**

During the trial of an election petition the Court may order –

- (a) the production and inspection of any rejected ballot paper;
- (b) the inspection of any counted ballot paper; or
- (c) the opening of any sealed packet of counterfoils of used ballot papers.

In making and carrying into effect the order, the Court shall ensure that the way in which the vote of any particular person has been given shall not be disclosed until it has been proved that the vote was given and the vote has been declared by the Court to be invalid.

No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.<sup>53</sup>

### **9.04 Rules of Court Governing Trial of Petition**

Rules as to the practice and procedure for the service and hearing of election petitions and as to the matters connected therewith and as to the practice and procedure in respect of any application made to the Court under regulations made for the conduct of elections to the Assembly may be made in like manner as rules under the Courts Act.<sup>54</sup>

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## NOTES

1. Constitution of Mauritius, see section 40
2. Ibid., see sections 38 and 41
3. Ibid., see section 38
4. Ibid., see section 44
5. See sections 38 and 40 of the Constitution of Mauritius and section 2A of Representation of the People Act
6. Representation of the People Act, see section 3
7. Ibid., see section 5
8. Legislative Assembly Elections Regulations, see regulation 3
9. Constitution of Mauritius, see section 39
10. Ibid., see section 42
11. Representation of the People Act, see sections 4-9
12. Ibid., see sections 10-18
13. Ibid., see sections 20-21
14. Ibid., see sections 23-24
15. Ibid., see sections 25-29
16. Ibid., see sections 33-35
17. Ibid., see section 36
18. Ibid., see section 36A
19. Legislative Assembly Elections Regulations, see regulation 7
20. Ibid., see regulations 8-10
21. Representation of the People Act, see section 41
22. Legislative Assembly Elections Regulations, see regulation 12
23. Ibid., see regulation 12
24. Ibid., see regulation 13
25. Ibid., see regulation 14
26. Ibid., see regulation 15
27. Ibid., see regulation 16
28. Ibid., see regulation 18
29. Ibid., see regulations 19-34
30. Ibid., see regulation 35
31. Ibid., see regulation 36
32. Ibid., see regulation 37
33. Ibid., see regulations 38-43
34. Ibid., see regulations 45-53
35. Ibid., see regulations 54 and 55
36. Ibid., see regulation 56
37. Representation of the People Act, see sections 49-50
38. Ibid., see sections 51-54
39. Ibid., see section 55
40. Ibid., see section 56
41. Ibid., see section 57
42. Ibid., see section 59
43. Ibid., see section 60
44. Ibid., see section 64
45. Ibid., see section 65
46. Ibid., see section 67
47. Ibid., see section 69
48. Ibid., see sections 70 and 74
49. Ibid., see section 73
50. Ibid., see section 72
51. Ibid., see section 45
52. Ibid., see section 45
53. Ibid., see section 46
54. Ibid., see section 47

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## INTRODUCTION

Seychelles introduced a new Constitution in 1993 to govern the transition from a one-party to a multi-party system of government. The Constitution sets out a number of provisions which deal with elections and contains a transitional regime under which the first multi-party elections were held.

The constitutional provisions dealing with elections generally will be presented herein first and then the transitional arrangements which governed the organisation and conduct of the first multi-party Presidential and National Assembly elections.

The principal instrument which dealt with the election organisation was the Constitution of the Republic of Seychelles (First Presidential Election and First Assembly Election) Regulations 1993 (referred to herein as “the Regulations”). The Regulations were made under the Constitution by the Director of Elections in lieu of an Act of Parliament in the circumstance, as a transitional measure.

### — Section 1 —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 Right to Vote

A citizen of Seychelles who is registered as a voter in an electoral area shall be entitled to vote, in accordance with the law, in the electoral area:

- (a) at an election for the office of the President;
- (b) at an election of the members of the National Assembly; or
- (c) in a referendum held under the Constitution,

unless any circumstances have arisen which, if the citizen were not so registered, would cause the citizen to be disqualified under an Act made under the Constitution.<sup>1</sup>

##### 1.02 Qualification for Registration as a Voter

A person who is a citizen of Seychelles and has attained the age of eighteen years is entitled to be registered as a voter unless the person is disqualified from registration under an Act on the ground of:

- (a) infirmity of mind;
- (b) criminality; or
- (c) residence outside Seychelles.

Any such Act may provide for different grounds of disqualification with regard to:

- (a) an election for the office of President;
- (b) an election of the members of the National Assembly; and
- (c) a referendum held under the Constitution.

A person is not entitled to be registered as a voter in more than one electoral area.<sup>2</sup>

### **1.03 Electoral Commissioner**

There shall be an Electoral Commissioner who shall be appointed by the President from candidates proposed by the Constitutional Appointments Authority for a term of office of not more than seven years.

A person is qualified to be appointed as the Electoral Commissioner if:

- (a) the person is qualified to be registered as a voter and is a person of proven integrity and high repute; and
- (b) the person is not a candidate in an election or is not the President, a Minister or a member of the National Assembly.

Subject to the Constitution, the Electoral Commissioner shall not be subject to the direction or control of any person or authority in the performance of the functions of the Commissioner.

The Electoral Commissioner shall be paid such salary, allowances and gratuity as may be prescribed by an Act and the salary, allowances or gratuity so payable shall be a charge on the Consolidated Fund.

Subject to removal from office, the terms and conditions on which a person has been appointed Electoral Commissioner shall not be altered to the disadvantage of the person after the appointment.

The Electoral Commissioner shall at the end of the term of office, vacate the office and is eligible for reappointment.<sup>3</sup>

### **1.04 Functions of Electoral Commissioner**

The Electoral Commissioner shall:

- (a) be responsible for the conduct and supervision of the registration of voters and of elections and referenda;
- (b) keep under continuous review the number and boundaries of the electoral areas into which Mahé and Praslin are divided;
- (c) keep under continuous review the practices and working, including such matters as finance, broadcast and advertising, of political campaigns in respect of elections and referenda;

- (d) have such other functions as may be prescribed by or under the Constitution or an Act.

The Electoral Commissioner shall, within ninety days after each election or referendum submit to the National Assembly and the President a report on the conduct of:

- (a) the political campaign leading up to the election or referendum; and  
(b) the election or referendum,

together with such recommendations as the Commissioner may consider necessary for the purposes of ensuring true, fair and effective elections and referenda.

The Electoral Commissioner shall, not later than three years after the coming into force of the Constitution and thereafter three years after the Commissioner last submitted a report relating to the review of the boundaries of electoral areas in Mahé and Praslin, submit to the National Assembly and the President such a report together with such recommendations regarding changes in the number or boundaries of the electoral areas on Mahé and Praslin which the Commissioner considers necessary in the circumstances.

As soon as is practicable within thirty days after the submission of the said report, the President shall cause to be laid before the National Assembly the draft of an order by the President for giving effect to the recommendations contained in the report relating to changes in the number or boundaries of the electoral areas referred to in the report and the draft may make provision for any matter which appears to the President to be incidental to or consequential upon the other provisions of the draft.

When the draft order laid before the National Assembly is approved by resolution of the National Assembly, the President shall make an order, which shall be published in the Gazette, in terms of the draft and the order shall come into force on the next dissolution of the National Assembly after the order is so published.

Where the draft order laid before the National Assembly is not approved by resolution of the National Assembly, the President shall refer the matter to the Electoral Commissioner for its reconsideration.<sup>4</sup>

### **1.05 Role of Director of Elections**

For the purposes of the transitional arrangements “Director of Elections” was defined to mean the person holding office as Chairman of the Constitutional Commission immediately before the date of coming into force of the Constitution.

The Director of Elections shall, by notice in the Gazette, appoint the date or dates, which shall be or, as the case may be, the first of which shall be not later than five weeks after the date of coming into force of the Constitution, on which the first Presidential election and the first Assembly election shall be held.

Subject to Schedule 7 of the Constitution (the transitional arrangements), the Director of Elections may make regulations with respect to the holding and conduct of the first Presidential election and the first Assembly election.

The Director of Elections shall supervise and shall have general responsibility for the conduct of the first Presidential election and the first Assembly election.

The Director of Elections shall for the purpose of conducting the first Presidential election and the first Assembly election, appoint a Chief Registration Officer and a Chief Electoral Officer and such number of registration officers, electoral officers, assistant registration officers and assistant electoral officers as the Director thinks fit.

In the exercise of the functions of the Director of Elections, the Director of Elections shall not be subject to the direction or control of any person or authority.

The Director of Elections shall discharge the functions of the Electoral Commissioner in respect of the matters which may be prescribed by an Act and may, for this purpose make regulations in respect thereof for the purposes of the first Presidential election and first Assembly election.<sup>5</sup>

### **1.06 Electoral Areas**

Seychelles shall be divided into as many electoral areas, as may be prescribed, for the purposes of election of members to the National Assembly and each electoral area shall be represented by one member of the National Assembly.

There shall be not less than nineteen electoral areas on Mahé and two electoral areas on Praslin and the Inner Islands shall constitute one electoral area.

In determining the number and boundaries of the electoral areas on Mahé and Praslin the Electoral Commissioner:

- (a) shall have regard to:
  - (i) the boundaries of the electoral areas which exist at the time of the determination by the Commissioner; and
  - (ii) the natural geographical features of Seychelles;
- (b) shall ensure that, each electoral area on Mahé shall have, as nearly as is practicable, an equal number of inhabitants and each electoral area on Praslin shall have, as nearly as is practicable, an equal number of inhabitants;
- (c) shall, for the purposes of the application of article 78(b) of the Constitution, ensure that the total number of electoral areas is, as far as is practicable, a multiple of two.<sup>6</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 General Remarks**

This and subsequent sections in the presentation refer to the arrangements for the first Presidential election and first Assembly election of 1993. The role of the Director of

Elections set out in Schedule 7 of the Constitution (hereinafter referred to as “the Schedule”) and discussed above was pivotal in the administration for those elections.

## **2.02 Registration Officers**

Subject to paragraph 11 of the Schedule, the Chief Registration Officer appointed under that paragraph shall be responsible for the amendment of the existing registers of voters and may give directions, not inconsistent with the Schedule, to any person exercising a function in connection with the amendment of the existing registers of voters and the person shall comply with those directions.

A registration officer appointed shall assist the Chief Registration Officer in all matters relating to the amendment of the existing registers of voters for the electoral area for which the registration officer has been appointed.

The Chief Registration Officer, a registration officer and an assistant registration officer may demand from any person any information necessary for the amendment of the existing registers of voters.

There shall be at least one registration officer for each electoral area but the Director may appoint a registration officer for more than one electoral area.<sup>7</sup>

## **2.03 Electoral Officers**

Subject to paragraph 11 of the Schedule, the Chief Electoral Officer appointed under that paragraph shall be responsible for the supervision and conduct of the first Presidential election and the first Assembly election and may give directions, not inconsistent with the Schedule, to any person exercising a function in connection with the conduct of those elections and the person shall comply with those directions.

An electoral officer shall have supervision over all matters relating to the conduct of the first Presidential election and the first Assembly election in the electoral area for which the person has been appointed.

The Chief Electoral Officer, an electoral officer or an assistant electoral officer may demand from any person any information necessary to ascertain whether the person is entitled to vote at the first Presidential election and the first Assembly election.

There shall be at least one electoral officer for each electoral area.<sup>8</sup>

## **— Section 3 —**

### **REGISTRATION OF VOTERS**

The Chief Registration Officer may amend the existing registers of voters for the purposes of:

- (a) removing any obsolete entries;
- (b) correcting any mistake in respect of the name and other particulars of a registered voter;
- (c) where a registered voter has since the referendum changed the residence to another electoral area, registering the voter in the existing register of voters of that electoral area;

- (d) registering any voter who has, since the referendum, become qualified to be registered as a voter; or
- (e) deleting the name and other particulars of any person not qualified to be entered as a registered voter.

The Chief Registration Officer shall, before amending the existing registers of voters, publish, within eight days of the publication of a notice by the Director in the Gazette, a notice in a local newspaper and such other news media as the Chief Registration Officer deems appropriate inviting persons:

- (a) to inspect the amendments the Chief Registration Officer intends to make to the existing register of voters; and
- (b) to lodge any objections thereto in such form as may be provided by the Director, such place and within such time, not being later than five days of the publication of the notice under this sub-regulation, as may be specified in that notice.

The Chief Registration Officer shall ensure that there be present, at the place where and the time when the amendments to the existing registers of voters are inspected, a registration officer or an assistant registration officer for the purpose of receiving any objection.

The Chief Registration Officer, after giving the person who has lodged an objection not less than three days notice, shall, within five days after receiving an objection, hear the person and, after considering such other evidence as the Chief Registration Officer thinks relevant and necessary and after consulting the Director, uphold or reject the objection and the Chief Registration Officer shall, immediately notify the person of the decision and, where the objection has been rejected, give reasons for the rejection in writing.

The Chief Registration Officer shall after all objections made have been concluded, amend the existing registers accordingly and certify the register of voters for each electoral area for the purposes of the first Presidential election and first Assembly election.

Where the Chief Registration Officer is of the opinion that an objection is frivolous or vexatious, the person lodging the objection may be required to deposit a stipulated sum of money, with objection and where the objection is rejected, the deposit shall be forfeited to the Republic.<sup>9</sup>

## — Section 4 —

### NOMINATION OF CANDIDATES

#### 4.01 Nomination Day

The Director shall, at least twenty-one days before the earliest date fixed for the elections, hereafter referred to as the “election day”, by notice published in the Gazette appoint the date, place and time for the nomination of candidates for the elections and shall in the notice specify:

- 
- (a) the sum required to be deposited or secured with the Director by each candidate for the elections; and
  - (b) the number of persons required to endorse the nomination paper of each such candidate.

The Director may appoint the same place or different places for nomination of candidates for elections.<sup>10</sup>

#### **4.02 Requirements for Nomination**

Every candidate for the elections shall be nominated by means of a nomination paper provided for the purpose by the Director.

The nomination paper shall be submitted by the candidate on the nomination day at the time and place appointed in the notice published as required:

- (a) in the case of the first Presidential election, to the Director; and
- (b) in the case of the first Assembly election, to the electoral officer appointed for the electoral area for which the candidate proposes to stand for election.

The nomination paper submitted by each candidate for the elections shall be signed by the candidate and:

- (a) in the case of the first Presidential election, shall be endorsed to the satisfaction of the Director by such number of persons entitled to vote at that election as is specified in the Regulations; and
- (b) in the case of the first Assembly election, shall be endorsed to the satisfaction of the electoral officer by such number of persons, specified by the Director in the notice which set the date for nomination, entitled to vote at that election in the electoral area for which the candidate stands for election.

Each nomination paper shall be accompanied by:

- (a) a certificate issued by the Director certifying the deposit of or securing of the sum specified in the notice;
- (b) such number of photographs of the candidate in such form and of such size as the Director may specify in the nomination paper provided by the Director; and
- (c) a symbol or a colour to identify the party or the candidate or, if he is an independent candidate, the candidate.

Any nomination paper submitted after the expiration of the time specified shall be rejected.

After the expiration of the time specified for submission of nominations:

- (a) in the case of the first Presidential election, the Director; and
- (b) in the case of the first Assembly election, the electoral officer of the electoral area, for which the candidate stands for election,

shall, as soon as is practicable thereafter, determine whether to accept or reject the nomination of a candidate.

A candidate may object to the acceptance of a nomination paper of any other candidate on the grounds that the other candidate is not qualified to stand for the first Presidential election or, as the case may be, the first Assembly election, or that the nomination paper does not comply with the Regulations.

The Director or, as the case may be, the electoral officer shall consider the objections and determine whether to accept or reject the nomination paper.

The determination made by the Director or, as the case may be, the electoral officer shall be final.<sup>11</sup>

#### **4.03 Withdrawal of Candidates**

A candidate for the elections may withdraw the nomination at any time by notice in writing to the Director and shall, where the candidate withdraws the nomination at least seven days before the election day, be refunded the deposit or returned the security for the deposit.<sup>12</sup>

### **— Section 5 —**

## **PREPARATION FOR POLLING**

#### **5.01 Names of Candidates and Polling Station**

The Chief Electoral Officer shall at least fifteen days before election day by notice published in the Gazette and a local newspaper specify:

- (a) the address of the polling station for each electoral area;
- (b) the time when voting may commence and the time of closing of the poll;
- (c) the name of each candidate separately for the first Presidential election and separately for the first Assembly election, as the case may be, the name of the registered political party of which the candidate is a member or the fact that the candidate is an independent candidate and the symbol or the colour, as the case may be.

The electoral officer of an electoral area shall allow a voter of that electoral area who at the time specified for the closing of the poll in the notice published:

- (a) is inside the polling station; or
- (b) in the opinion of the electoral officer, was in the immediate precincts of the polling station at that time and was prevented from entering the polling station because of congestion therein,

to vote at elections before closing the poll.<sup>13</sup>

## **5.02 Polling Agents and Counting Agents**

Each candidate may appoint a person to be known as a polling agent to attend at the polling station during voting and a person to be known as a counting agent to attend the counting of votes at the place of counting of votes.

The candidate shall not later than seven days before the election day notify in writing the Chief Electoral Officer the name, national identity number and address of the polling agent and counting agent of the candidate.

The Chief Electoral Officer shall as soon as is practicable before the election day issue a polling agent and a counting agent with a certificate and:

- (a) an electoral officer shall not allow a person to attend at a polling station as a polling agent;
- (b) the Chief Electoral Officer or the electoral officer, as the case may be, shall not allow a person to attend at counting of votes as a counting agent, unless the person holds the certificate issued by the Chief Electoral Officer.

Where the polling agent or counting agent of a candidate dies or becomes incapable of performing the functions as polling agent or counting agent before the election day the candidate shall forthwith appoint another person as polling agent or counting agent, as the case may be, and shall notify the Chief Electoral Officer in writing of the change and the reasons therefor and the Chief Electoral Officer shall issue a certificate to the person so appointed.

A polling agent shall, as far as is practicable, be so posted at a polling station so as to be able to see each person who applies to vote, hear the name of that person being called, see the ballot paper being handed and see the entrance of the compartment used by the voter for the purpose of recording the vote but so that the polling agent cannot see how the voter votes.

A candidate may appoint more than one person as the polling agent but not more than one of such persons shall at any one time be posted at a polling station as the polling agent of the candidate.

A candidate may appoint the same person as the polling agent and counting agent and a person appointed as polling agent for a candidate nominated by a registered political party for the first Presidential election may be appointed as the polling agent for a candidate of the same political party for the first Assembly election at the same polling station.<sup>14</sup>

## **5.03 Arrangement at Polling Station**

A polling station shall be furnished with:

- (a) such number of compartments as the electoral officer of that polling station thinks necessary for the purpose of allowing voters to record their votes screened from observation;

- (b) sufficient number of ballot boxes for the elections;
- (c) notices, both inside and outside the station, containing instructions relating to the voting to be followed at the elections;
- (d) notices showing the name of each candidate at the elections separately together with the photograph of the candidate and the registered political party or the independent status of the candidate;
- (e) sufficient copies of the register of voters for the electoral area;
- (f) such other things which the Chief Electoral Officer may direct to be kept at the polling station.<sup>15</sup>

#### **5.04 Procedure before Commencement of Polling**

The electoral officer at the polling station shall, immediately before the beginning of voting at a polling station, show to persons lawfully present at the station that the ballot boxes are empty and then shall close and seal the boxes in such a manner as to prevent the boxes from being opened without the seals being broken.<sup>16</sup>

#### **5.05 Procedure for Voting**

Voting for the elections at the polling station shall be conducted in substance and as nearly as possible in the following manner:

- (a) a person wishing to vote at the polling station shall:
  - (i) attend personally the polling station; and
  - (ii) satisfy the electoral officer of the identity to vote and that the person has not voted at the station or elsewhere at the elections;
- (b) the electoral officer, on being satisfied, shall:
  - (i) call out the number and particulars of the person as stated in the copy of the register of voters at the polling station;
  - (ii) in respect of each election separately, stamp a ballot paper with an official mark and deliver them to the person with an envelope similarly stamped with the mark into which the voter shall place the ballot paper;
  - (iii) place a mark against the name of the person on the copy of the register of voters to denote that a ballot paper in respect of each election has been delivered to the person; and
  - (iv) explain to the person how to record the vote; and
- (c) the person shall go immediately into one of the compartments at the polling station and, without delay, record the vote in respect of each election separately in the manner required, place the ballot papers inside the stamped envelope and place the envelope in the ballot box provided for this purpose.

Where a voter is incapacitated by blindness, or other physical cause or otherwise or is illiterate, the voter shall, after receiving each of the ballot papers and the stamped envelope, enter the compartment or the place designated for the purpose by the electoral officer accompanied by the electoral officer and a person selected by the voter and in the presence of the person selected direct to the electoral officer how the vote is to be cast and the electoral officer shall mark each of the ballot papers of the voter accordingly, place the ballot

papers in the stamped envelope and after leaving the compartment or the place designated for the purpose by the electoral officer with the voter and the other person place the stamped envelope in the ballot box provided for this purpose and the voter shall be deemed to have voted.

An electoral officer or an assistant electoral officer:

- (a) shall not refuse admission to the polling station of the person selected by a voter;
- (b) shall allow the person selected by a voter to be present at the time when the voter is instructing the electoral officer how the vote is to be cast; and
- (c) shall mark each of the ballot papers in the presence of the person selected by the voter.

A voter or the electoral officer, as the case may be, shall not place on either of the ballot papers or the stamped envelope any writing or mark by which the voter may be identified.<sup>17</sup>

### **5.06 Allegation of Irregularities**

Where an electoral officer at a polling station has reason to believe or a polling agent at that station alleges that a person wishing to vote at the station is not a person entitled to vote at the station, the electoral officer shall:

- (a) advise the person accordingly, giving reasons for the belief, or, where the polling agent has made an allegation, require the polling agent to state in the presence of the person wishing to vote the reason for the allegation;
- (b) warn the person that he may commit an offence by voting.

Where the polling agent refuses to state the reason for the allegation, the electoral officer shall disregard the allegation.

Where an electoral officer has warned a person wishing to vote and notwithstanding the warning the person:

- (a) persists in voting;
- (b) produces evidence that the person is the person entitled to vote;
- (c) makes and subscribes to the declaration stipulated,

the electoral officer shall record in writing the full name and address which the person gives and where the person votes, state that fact in the record.<sup>18</sup>

### **5.07 Declaration of Voter**

An electoral officer at a polling station may, but shall on the request of a polling agent, require a person who wishes to vote, before the person is given the ballot papers, to furnish evidence of the identity of the person to the satisfaction of the electoral officer and to make and subscribe to a declaration in the form provided by the Chief Electoral Officer.

Where a person who wishes to vote fails to furnish evidence of his identity to the satisfaction

of the electoral officer or make and subscribe to the declaration required, the electoral officer shall refuse to give to the person the ballot papers.<sup>19</sup>

### **5.08 No Communication with Voter at Polling Station**

No person, other than the Chief Electoral Officer or the electoral officer or assistant electoral officer of the polling station, shall communicate with a voter while the voter is in the polling station for the purpose of voting and the electoral officer may require any person who contravenes this stipulation to leave the polling station.<sup>20</sup>

### **5.09 Close of Poll and Counting of Votes**

The electoral officer shall, as soon as is practicable, after each ballot box is full and in respect of other ballot boxes after the close of the poll, in the presence of the respective polling agents who wish to attend:

- (a) close and seal the aperture of each ballot box and place the seal of the electoral officer thereto and allow the respective polling agents who are present to place their seals thereto;
- (b) separately in respect of each election, make up in a separate packet the unused ballot papers and envelopes;
- (c) mark the copy of the register of voters;
- (d) separately in respect of each election, complete a statement, to be known as the ballot paper account, in the form provided by the Director;
- (e) separately in respect of each election, place the packet of unused ballot papers and envelopes and register of voters together with any record made in respect of alleged irregularity in a bag and seal the bag with the seal of the electoral officer.

The electoral officer shall, as soon as is practicable, make arrangements for the counting of votes at the polling station and give notice of the time of counting to the candidates, if they are present, and the counting agents of each of the candidates and commence the counting of votes at the time specified in the notice.

In the case of the elections at the electoral area consisting of the islands other than Mahé and Praslin, the electoral officer shall forward the sealed ballot boxes, bags and the ballot paper accounts in respect of the elections to an electoral officer designated for the purpose by the Director who is referred as “designated electoral officer”.

The Chief Electoral Officer may appoint such assistants, to be known as enumerators, as the Chief Electoral Officer thinks necessary for the purpose of assisting the Chief Electoral Officer, the electoral officer or the designated electoral officer, as the case may be, in the counting of the votes.

The designated electoral officer shall, after the receipt of the ballot boxes for the electoral area consisting of the islands other than Mahé and Praslin:

- (a) make arrangements for counting of votes;
- (b) give notice of the place and time, which shall not be earlier than the close of poll of

- other electoral areas, of the counting of votes to the candidates, if they are present, and to the counting agents of each of the candidates; and
- (c) commence the counting of votes at the time and place specified in the notice and in the manner specified.

The electoral officer or the designated electoral officer, as the case may be, shall, at the time and place notified for the counting of the votes and in the presence of the candidates, if they are present, and the counting agents of each candidate who may be present, examine and offer the candidates and the counting agents the opportunity to also examine the seals of all ballot boxes and sealed bags, as the case may be.

In respect of each election, the electoral officer or the designated electoral officer, as the case may be, shall, in the presence of the candidates, if they are present, and the counting agents of each of the candidates who may be present, with the help of enumerators examine, count and record the number of envelopes contained in each ballot box.

When a stamped envelope:

- (i) does not bear the official mark;
- (ii) has anything written or marked by which a voter can be identified; or
- (iii) is mutilated or torn,

the stamped envelope shall be rejected and shall be endorsed with the word “rejected” by the electoral officer or designated electoral officer, as the case may be, and if a candidate or a counting agent of a candidate who may be present objects to the decision of the electoral officer or the designated electoral officer, as the case may be, also with the words “rejection objected to”.

The envelopes, other than the envelopes rejected, shall be opened and the ballot papers inside shall be examined and sorted into two separate groups, one for the first Presidential election and the other for the first Assembly election.

Where a ballot paper:

- (i) does not bear the official mark;
  - (ii) has anything written or marked by which a voter can be identified;
  - (iii) is mutilated or torn;
  - (iv) has not been placed in a stamped envelope; or
  - (v) does not contain a clear indication of the candidate for whom the voter has voted,
- the ballot paper shall be rejected and shall be endorsed with the word “rejected” by the electoral officer or the designated electoral officer, as the case may be, and if a candidate or a counting agent of a candidate who may be present objects to the decision of the Chief Electoral Officer or the electoral officer, as the case may be, also with the words “rejection objected to”.

The ballot papers in each group shall thereafter be counted and the electoral officer or the designated electoral officer, as the case may be, shall record the number of ballot papers in each group.

The ballot papers shall be kept with their faces upwards while being counted and recorded.

Subject to the decision of the court on an election petition, the decision of the Chief Electoral Officer, electoral officer or designated electoral officer, as the case may be, as to the question arising in respect of an envelope or a ballot paper is final.

The electoral officer or the designated electoral officer, as the case may be, shall prepare a statement showing the number of envelopes and ballot papers rejected under the following heads:

- (a) want of official stamp;
  - (b) writing or mark by which a voter could be identified;
  - (c) mutilated or torn;
  - (d) a ballot paper not placed in a stamped envelope; and
  - (e) absence of a clear indication of the candidate for whom the voter has voted,
- and shall, on request, allow a candidate, if present, or the counting agent of each candidate, as may be present, to copy the statement.

A candidate or the counting agent of a candidate may, if present at the counting of ballot papers, require the Chief Electoral Officer or electoral officer, as the case may be, to have the vote recounted once.

The Chief Electoral Officer or electoral officer, as the case may be, may, on his own motion, recount the ballot papers.

In respect of each election, upon the conclusion of the counting of the votes, the electoral officer or the designated electoral officer, as the case may be, shall with the assistance of the enumerators:

- (a) in the presence of the candidates, if present, or the counting agents of candidates, as may be present, proceed to verify the ballot paper account by comparing the number of ballot papers recorded in the account with the number of ballot papers counted, rejected and unused;
- (b) seal in separate packets the counted, rejected and unused ballot papers and rejected envelopes;
- (c) prepare a statement as to the result of the verification carried out and, on request, allow a candidate or the counting agent of a candidate to copy the statement.

The electoral officer or the designated electoral officer, as the case may be, shall as soon as is practicable after the result of the election has been ascertained, transmit:

- (a) a statement of the result to the Director;
- (b) the ballot boxes, bags and other documents used in connection with the election to the Chief Electoral Officer.<sup>21</sup>

### **5.10 Second Ballot**

Where on the statement of the result transmitted to the Director in respect of the first Presidential election, no candidate receives more than fifty per cent of the votes cast, the Director shall not declare the result of the election and the provisions of the Regulations relating to a second ballot shall apply.

Where on the statement of the result transmitted to the Director in respect of the first Assembly election, an equality of votes is found to exist among the candidates receiving the highest number of votes in any electoral area, the Director shall without declaring the result of the election make arrangements for the holding of a second ballot in that electoral area among those candidates receiving equality of votes and the relevant regulation shall apply to the second ballot.<sup>22</sup>

### **5.11 Notice of Result of Election**

The Director shall, as soon as is practicable after receiving the statement of the result:

- (a) of the first Presidential election;
  - (b) of the first Assembly election,
- declare the result of the election.

As soon as is practicable after announcing the result, the Director shall, by notice in the Gazette:

- (a) publish:
  - (i) the results of the first Presidential election and the first Assembly election; and
  - (ii) in accordance with Schedule 4 of the Constitution, declare the number of proportionately elected members of the National Assembly which each political party is entitled to nominate;
- (b) call upon each registered political party which is entitled to nominate a proportionately elected member of the National Assembly to submit to the Director, within seven days after the publication of the results of the first Assembly election, the names and other particulars of the proportionately elected members.<sup>23</sup>

## **— Section 6 —**

### **ELECTION PETITION**

#### **6.01 Avoidance of Elections**

The result of the first Presidential election or the first Assembly election shall not be questioned or subject to review in any court except on an election petition presented to the Constitutional Court under the Regulations.

An election petition may be presented within ten days of the publication of the results.

A petitioner in an election petition may claim:

- (a) a declaration that the election is void; or
- (b) a recount of the ballot papers.

The Constitutional Court, before hearing an election petition, shall require the petitioner to furnish security of such nature and in such amount as the Court may direct for the payment of costs, charges and expenses that may become payable by the petitioner.

The Constitutional Court may declare that an election is void if the Court is satisfied:

- (a) that there was a non-compliance with the Regulations relating to the election and the non-compliance affected the result of the election;
- (b) that an illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the candidate or by or with the knowledge and consent or approval of any of the agents of the candidate;
- (c) that the candidate at the time of the election was not a person qualified to be elected as President or a directly elected member of the National Assembly, as the case may be.

The Constitutional Court may order a recount of the ballot papers where it is satisfied that there was an irregularity in the counting of the ballot papers that affected the results of the election.<sup>24</sup>

## **6.02 Trial of Election Petition**

The trial of an election petition shall be held in the same manner as a trial before the Supreme Court in its original civil jurisdiction.

The Constitutional Court may:

- (a) by an order, compel any person who appears to the Court to be concerned in the election to attend as a witness at the trial; and
- (b) examine a witness compelled to attend the Court or any person in Court, although the person has not been called as a witness.

A witness or a person present in Court may be examined or cross-examined, as the case may be, by the petitioner, respondent and Attorney-General or his representative, if present at the trial.

Where it appears to the Constitutional Court on an election petition:

- (a) that an act or omission of a candidate or the agent of a candidate or any other person, which, but for this regulation, would be an illegal practice, has been done or made in good faith through inadvertence or accidental miscalculation or some other reasonable cause of a like nature; or
- (b) that upon taking into account all the relevant circumstances it would be just that the

candidate, agent of the candidate or the other person should not be subject to any of the consequences for such act or omission, the Court may make an order allowing the act or omission, which would otherwise be an illegal practice under the Regulations, to be an exception to the Regulations and the candidate, agent or other person shall not be subject to the consequences under the Regulations in respect of the act or omission and the result obtained by the candidate shall not, by reason only of that act or omission, be declared to be void.<sup>25</sup>

### **6.03 Certificate of Court as to Validity of Election**

At the conclusion of the trial of an election petition the Constitutional Court shall determine:

- (a) whether the election was valid;
- (b) whether the election was void; or
- (c) whether a recount of the ballot papers is required or not, and shall certify the determination to the Director.

Such determination shall, subject to an appeal to the Court of Appeal, be final.

Where the Constitutional Court determines that an election is void, all the proceedings with regard to the election shall be recommenced.

Where the Constitutional Court determines that a recount of ballot papers is required, the Director shall:

- (a) cause the ballot papers to be recounted in accordance with the Regulations and subject to any directions of the Court; and
- (b) declare the result of the recount.<sup>26</sup>

### **6.04 Report of Court as to Illegal Practice**

At the conclusion of the trial of an election petition, the Constitutional Court shall report in writing to the Director:

- (a) whether an illegal practice has been proved to have been committed by a candidate or an agent of the candidate and the nature of the practice;
- (b) names and descriptions of all persons who have been proved at the trial to have been guilty of an illegal practice.

Before making any report in respect of a person who is not a party to an election petition the Constitutional Court shall give the person an opportunity to be heard and to call evidence to show why he should not be reported.

When the Constitutional Court reports that an illegal practice has been committed by a person, the person is disqualified for a period of five years from the date of the report from being registered as a voter and from voting at an election or a referendum.

The Director shall cause the name of the person reported to be removed from the register of voters and a note of the disqualification to be entered into any other register of voters prepared under any law.<sup>27</sup>

— *Section 7* —

**SECURITY**

A polling agent, counting agent or such other person authorised under the Regulations by the Director or the Chief Electoral Officer to attend at a polling station or at the counting of votes shall, unless he has already taken an oath of secrecy under the Regulations, take an oath of secrecy in the form provided by the Chief Electoral Officer before attending at the polling station or counting of votes.

The Director of Elections or Chief Electoral Officer, an electoral officer, designated electoral officer, assistant electoral officer, enumerator or any other person shall not, except for a purpose authorised:

- (a) seek to obtain any information as to the candidate for whom a person is about to vote or has voted at a polling station;
- (b) communicate to any person any information concerning for whom a person has voted;
- (c) communicate to any person as to the name or number of a voter who has or has not applied for a ballot paper or voted at a polling station or as to the official mark used for stamping a ballot paper;
- (d) communicate or seek to communicate with any person after that person has received a ballot paper and before that person has placed the paper in the ballot box;
- (e) communicate to any person any information regarding the number of votes a candidate has received in respect of a particular election before the declaration of the results of that election.<sup>28</sup>

— *Section 8* —

**OFFENCES**

**8.01 General Offences**

A person who:

- (a) for the purposes of procuring the registration of the person or any other person as a voter, knowingly makes, to any person having the duty of amending the register of voters, a false or misleading statement or representation;
- (b) applies to be registered as a voter in respect of an electoral area when the person resides in another electoral area and is already registered as a voter in respect of that other electoral area;

- 
- (c) forges or fraudulently defaces or fraudulently destroys a register of voters or any part thereof;
  - (d) forges, counterfeits or fraudulently destroys any official mark relating to the first Presidential election or first Assembly election;
  - (e) forges or counterfeits or fraudulently destroys a ballot paper or a stamped envelope;
  - (f) without due authority, supplies a ballot paper or a stamped envelope to any person;
  - (g) fraudulently puts into any ballot box any paper other than a stamped envelope containing a ballot paper which the person is authorised by law to put in;
  - (h) without due authority, takes out of any polling station a ballot paper or stamped envelope or has in the possession of the person a ballot paper or a stamped envelope outside a polling station;
  - (i) without due authority, destroys, takes, opens or otherwise interferes with a ballot box or packet of ballot papers or envelopes then in use for the purpose of the first Presidential election or first Assembly election;
  - (j) wilfully furnishes evidence or makes a false declaration under the Regulations;
  - (k) commits an illegal practice in connection with the first Presidential election or first Assembly election;
  - (l) without lawful authority, destroys, mutilates, defaces or removes a notice which is exhibited or any document which is made available for inspection;
  - (m) after a lawful demand to the person has been made, fails to give such information as the person possesses or unreasonably delays in giving the information;
  - (n) causes any disturbance or fails to comply with a lawful order of the Chief Registration Officer or a registration officer at any place where amendments to a register of voters is kept for inspection or of the Chief Electoral Officer, an electoral officer or a designated electoral officer at a polling station or place where the counting of votes is being carried out;
  - (o) obstructs the Director or an officer carrying out the functions of the Director in the performance of the functions of the Director or fails to obey a lawful order of the Director or the officer;
  - (p) annoys or molests or in any way interferes with a voter within the precincts of a polling station or a radius of 200 metres of a polling station,
- is guilty of an offence.<sup>29</sup>

## 8.02 Illegal Practice

A person commits an illegal practice where the person:

- (a) directly or indirectly, by that person or by any other person on that person's behalf, gives, lends or agrees to give or lend, offers or promises to procure or to endeavour to procure, any money or valuable consideration to or for any voter or to or for any other person on behalf of a voter or to or for any other person, in order to induce the voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at the first Presidential election or first Assembly election;
- (b) directly or indirectly, by that person or by any other person on that person's behalf, gives or procures or agrees to give or procure or to endeavour to procure, any office, place or employment to or for a voter, or to or for any person, in order to induce the

- voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of a voter having voted or refrained from voting at the first Presidential election or first Assembly election;
- (c) directly or indirectly, by that person or by any other person on that person's behalf, makes any gift, loan, offer, promise, procurement, or agreement referred to in paragraph (b) to or for any person in order to induce such person to procure or to endeavour to procure the vote of a voter at the first Presidential election or first Assembly election;
  - (d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement referred to in paragraph (a), (b) or (c), procures or engages or promises or endeavours to procure the vote of a voter at the first Presidential election or first Assembly election;
  - (e) directly or indirectly, by that person or by any other person on that person's behalf, advances or pays, or causes to be paid, any money to or for the use of any other person, with the intention that the money, or any part thereof, shall be expended in bribery at the first Presidential election or first Assembly election or who knowingly pays, or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at the first Presidential election or first Assembly election;
  - (f) before or during the first Presidential election or first Assembly election directly or indirectly, by that person or by any other person on that person's behalf, receives, agrees to receive or contracts for any money, gift, loan or valuable consideration, office, place or employment, for that person or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at the first Presidential election or first Assembly election;
  - (g) after the first Presidential election or first Assembly election, directly or indirectly, by that person or by any other person on that person's behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at the first Presidential election or first Assembly election;
  - (h) corruptly, directly or indirectly, by that person or by any other person on that person's behalf, either before, during or after the first Presidential election or first Assembly election, gives, or provides, or pays, wholly or in part, the expense of giving or providing food, drink, entertainment or provision to or for any person for the purpose of influencing that person, or any other person, to vote or refrain from voting at the first Presidential election or first Assembly election;
  - (i) corruptly accepts or takes any food, drink, entertainment or provision referred to in paragraph (h);
  - (j) directly or indirectly, by that person or by any other person on that person's behalf, makes use of or threatens to make use of, any force, violence or restraint, or inflicts or threatens to inflict by that person or by any other person, any temporal or spiritual injury, damage, harm or loss, upon or against a voter to induce a voter to vote or refrain from voting, or on account of the voter having voted or refrained from voting, at the first Presidential election or first Assembly election or who, by abduction, duress or any fraudulent contrivance, impedes or prevents the free use of the vote by a voter either to give or refrain from giving the vote at the first Presidential election or first Assembly election;

- (k) impersonates any other person in connection with the first Presidential election or first Assembly election;
- (l) votes or attempts to vote, or induces or procures some other person to vote, at the first Presidential election or first Assembly election if that person, or if to that person's knowledge the other person, has already voted at the first Presidential election or first Assembly election;
- (m) at a lawful public meeting held in connection with the first Presidential election or first Assembly election, acts or incites others to act in a disorderly manner for the purpose of preventing the holding of the meeting or the transaction of the business for which the meeting was called.

Where a person is convicted of committing an illegal practice, the person shall, in addition to any penalty imposed under the Regulations, be disqualified for a period of five years from the date of the conviction from being registered as a voter and from voting at an election or referendum under the Constitution or any other written law and the Director shall forthwith cause the name of the person to be deleted from the register of voters of the electoral area where the person is registered as a voter, and a note of the disqualification to be entered in all the registers of voters prepared under any other written law.<sup>30</sup>

## NOTES

- |  |                                      |
|--|--------------------------------------|
| 1. Constitution of Seychelles 1993, see article 113  | 14. Ibid., see regulation 13         |
| 2. Ibid., see article 114  | 15. Ibid., see regulation 14         |
| 3. Ibid., see article 115  | 16. Ibid., see regulation 17         |
| 4. Ibid., see article 116  | 17. Ibid., see regulation 18         |
| 5. Ibid., see paragraphs 1, 8, 9 and 11 of Schedule 7  | 18. Ibid., see regulation 19         |
| 6. Ibid., see article 112  | 19. Ibid., see regulation 20         |
| 7. Constitution of the Republic of Seychelles (First Presidential Election and First Assembly Election) Regulations 1993, see regulation 3 | 20. Ibid., see regulation 21         |
| 8. Ibid., see regulation 4   | 21. Ibid., see regulations 22-30     |
| 9. Ibid., see regulation 6   | 22. Ibid., see regulation 31         |
| 10. Ibid., see regulation 7  | 23. Ibid., see regulation 32         |
| 11. Ibid., see regulation 8  | 24. Ibid., see regulation 38         |
| 12. Ibid., see regulation 9  | 25. Ibid., see regulation 39         |
| 13. Ibid., see regulation 11   | 26. Ibid., see regulation 40         |
|  | 27. Ibid., see regulation 41         |
|  | 28. Ibid., see regulation 42         |
|  | 29. Ibid., see regulation 45(1)      |
|  | 30. Ibid., see regulations 45 and 46 |

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## INTRODUCTION

The Constitution of Botswana deals with the franchise, its conferment and exercise by electors. The Constitution also deals with the appointment of a Supervisor of Elections and the management of election organisation and conduct in Botswana. The Constitution provides for the establishment of a Delimitation Commission for the purposes of delimiting the boundaries of constituencies and contains clear guidelines on the number and creation of new constituencies.

The principal law regulating the organisation and conduct of elections is the Electoral Act, herein referred to as “the Act”.

### — Section 1 —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 The Franchise

A person who –

- (a) is a citizen of Botswana or of any other country to which these provisions are applied by Parliament;
- (b) has attained the age of 21 years; and
- (c) has either resided in Botswana for a continuous period of at least 12 months immediately preceding the date on which he applies for registration as a voter or was born in Botswana and is domiciled in Botswana on the date on which he applies for registration as a voter,

shall unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by any law, to be registered as a voter for the purposes of elections of elected members of the National Assembly, and no other person may be so registered.

A person who has not continuously resided in Botswana for the required period but has during the whole period retained his residence (or if he has more than one residence, his principal residence) in Botswana and has been absent therefrom for some temporary purpose only shall be deemed for the purpose of sub-paragraph (c) to have been resident in Botswana during such absence.

A person shall be entitled to be registered as a voter –

- (a) in the constituency in which he has his residence or if he has more than one

- residence in Botswana in the constituency in which he has his principal residence;  
or
- (b) in the case of a person who does not have a residence in Botswana, the constituency he was born.

A person is entitled to be registered as a voter in one constituency only.

Every person who is registered in any constituency as a voter for the purposes of elections of the elected members of the National Assembly shall unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with the elections or on the grounds of his being reported guilty by the court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under a law in that behalf.<sup>1</sup>

### **1.02 Other Provisions**

Other relevant provisions of the Constitution, namely the Supervisor of Elections and constituencies, are dealt with below under Sections 2 and 3 respectively.<sup>2</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 Supervisor of Elections**

There shall be a Supervisor of Elections whose duty it is to exercise jurisdiction over the registration of voters for elections of elected members of the National Assembly and over the conduct of such elections.

The Supervisor of Elections shall be appointed by the President.

A person shall not be qualified to be appointed as Supervisor of Elections unless –

- (a) he is a citizen of Botswana and holds or has held senior office in or outside the public service, in any country;
- (b) he has not been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has not made a composition with his creditors and has not paid his debts in full; and
- (c) he has not been convicted of any offence involving dishonesty in any country.

A person must not enter upon the duties of the office of Supervisor of Elections until he has taken and subscribed the oath of allegiance and such oath for the execution of his office as may be prescribed by Parliament.

The Supervisor of Elections may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given shall comply with those directions.

The Supervisor of Elections shall, on the completion of any election of an elected member or elected members of the National Assembly, submit a report on the exercise of his functions to the Minister for the time being responsible for matters relating to such elections, and that Minister shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the Assembly.

In the exercise of his functions, the Supervisor of Elections shall not be subject to the direction and control of any other person or authority.

A person holding the office of Supervisor of Elections shall vacate that office on attaining the age of 65 years or such age as may be prescribed by Parliament: provided that the President may permit a holder of the office of Supervisor of Elections to continue in office for such period as may be necessary to enable him to complete any electoral proceedings commenced before he attained that age.

A holder of the office of Supervisor of Elections may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with these provisions.

If the President considers that the question of removing the Supervisor of Elections ought to be investigated then –

- (a) he shall appoint a tribunal which shall consist of not less than two members who hold or have held high judicial office;
- (b) the tribunal shall enquire into and report on the facts thereof to the President and advise the President whether the Supervisor of Elections ought to be removed from office for inability or for misbehaviour,

provided that, pending the determination by the tribunal, the President may suspend the Supervisor of Elections from his duties and appoint the person to act in his place.

Where a tribunal advises the President that the Supervisor of Elections ought to be removed for inability or for misbehaviour, the President shall remove the Supervisor of Elections from office.<sup>3</sup>

## **2.02 Duties of Supervisor of Elections**

The Supervisor of Elections shall –

- (a) exercise general direction and supervision over the registration of voters;
- (b) exercise general direction and supervision over the administration and conduct of

elections and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of the Act;

- (c) issue to election officers and registration officers such instructions as he may deem necessary to ensure effective execution of the provisions of the Act; and
- (d) exercise and perform all other powers and duties conferred and imposed upon him by the Act.<sup>4</sup>

### **2.03 Appointment of Officers**

The Supervisor of Elections shall appoint a principal registration officer for each constituency, and such other registration officers for each constituency as he may deem necessary, who shall execute and perform the powers and duties conferred upon them by the Act in accordance with such instructions as may be given by the Supervisor of Elections.

The Supervisor of Elections shall appoint a returning officer and such number of assistant returning officers for each constituency as he may deem necessary and shall appoint a presiding officer and such number of polling officers as he may deem necessary for each polling station.

Registration and election officers shall execute and perform the powers and duties conferred upon them by the Act in accordance with such instructions as they may be given by the Supervisor of Elections.

Appointments made under these provisions are to be published in the Gazette.<sup>5</sup>

## **— Section 3 —**

### **DELIMITATION OF CONSTITUENCIES**

#### **3.01 Number of Constituencies**

Botswana shall be divided into as many constituencies as there are elected members of the National Assembly and each of those constituencies shall return one member to the National Assembly.<sup>6</sup>

#### **3.02 Delimitation Commission**

The Judicial Service Commission shall, at intervals of not less than five nor more than 10 years, appoint a Delimitation Commission consisting of a Chairman and not more than four other members.

At any time when –

- (a) Parliament has made provision altering the number of seats of elected members in the National Assembly; or
- (b) a comprehensive national population census is held in Botswana,

the Judicial Service Commission shall, as soon as practicable thereafter, appoint a Delimitation Commission.

The Chairman of a Delimitation Commission shall be selected from among persons who hold or have held high judicial office.

No person shall be qualified to be appointed as Chairman or member of a Delimitation Commission who –

- (a) is a member of the National Assembly;
- (b) is or has been within the preceding five years actively engaged in politics; or
- (c) is a public officer.

A person is deemed to be actively engaged in politics or to have been so engaged during the relevant period if –

- (a) he is, or was at any time during that period, a member of the National Assembly;
- (b) he is, or was at any time during that period, nominated as a candidate for election to the National Assembly; or
- (c) he is, or was at any time during that period, the holder of an office in any political organisation that sponsors or supports, or has at any time sponsored or supported, a candidate for election as a member of the National Assembly,

provided that no person shall be disqualified from holding the office of Chairman or member of a Delimitation Commission by reason only of the fact that he has been the Speaker of the National Assembly if he was elected to that office from amongst persons who were not members of the National Assembly.

The office of Chairman or other member of the Delimitation Commission shall become vacant if circumstances arise that, were he not Chairman or member of the Delimitation Commission, would disqualify him for appointment as such.

If, after the appointment of the Delimitation Commission and before the Commission has submitted its report, the office of the Chairman or any other member of the Commission becomes vacant, the Judicial Service Commission may appoint another person to be a member of the Commission: provided that a member appointed because of the inability of some other member to discharge his functions ceases to be a member of the Commission when, in the opinion of the Judicial Service Commission, that other member is able to resume his functions as a member of the Commission.<sup>7</sup>

### **3.03 Report of Commission**

Whenever a Delimitation Commission has been appointed the Commission shall as soon as practicable submit to the President a report which shall state whether any alteration is necessary to the boundaries of the constituencies in order to take account of the population quota or in consequence of any alteration in the number of seats of elected members in the National Assembly and where any alteration is necessary shall include a list of the constituencies delimited by the Commission and a description of the boundaries of these constituencies.

The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable: provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of natural community of interest, means of communication, geographical features, density of population, and the boundaries of Tribal Territories and administrative districts.

“Population quota” means the number obtained by dividing the number of inhabitants of Botswana (as ascertained by reference to the latest comprehensive national population census in Botswana) by the number of constituencies into which Botswana is divided.

The President shall as soon as practicable after the submission of the report of the Delimitation Commission, by Proclamation published in the Gazette, declare the boundaries of the constituencies as delimited by the Commission.

A Proclamation under these provisions shall come into force the next dissolution of the National Assembly after it is made.

The Commission may by regulation or otherwise regulate its own procedure and may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings: provided that any decision of the Commission shall require the concurrence of a majority of all its members.

The Delimitation Commission shall not be subject to the direction or control of any other authority or person.

A Delimitation Commission stands dissolved upon the date on which its report is delivered to the President.<sup>8</sup>

## — *Section 4* —

### REGISTRATION OF VOTERS

#### **4.01 General Registration of Voters – Polling Districts**

As soon as practicable after constituencies have been delimited, the Supervisor of Elections shall divide each constituency into polling districts and establish one or more polling stations in each polling district; and shall cause notice of the boundaries of every such polling district, the situation of every such polling station and the names by which such polling districts and polling stations are to be known, to be published in the Gazette and in such other manner as he may consider appropriate.

The Supervisor of Elections may from time to time in like manner add to the number of

polling stations established in any polling district or vary the situation within a polling district of any polling station established therein.

Whenever polling districts and polling stations have been established or whenever the President considers that it is necessary for new general rolls to be prepared in order to obtain accurate rolls of voters in any constituency or constituencies, the President shall by order published in the Gazette appoint a period to be a general registration period in respect of the constituency or constituencies specified in the order.

During a general registration period registration officers shall attend at all polling stations for the purpose of registering voters.

During a general registration period in any designated polling district, the Supervisor of Elections shall cause copies of the relevant sections of the existing rolls to be made available for inspection by the public at all polling stations within that district and at such other places as he may consider appropriate.

On publication of an order appointing a general registration period, the Supervisor of Elections shall publish a notice or notices, in such manner as he may consider appropriate –

- (a) calling upon every person who is entitled to registration to apply for such registration;
- (b) informing all persons who are entitled to registration in respect of polling stations in any designated polling district of the dates, times and places when and at which copies of the relevant sections of the existing rolls will be available for inspection by the public, and calling upon all such persons who are not already registered in respect of such polling station to apply for registration during the general period, and specifying the dates, times and places when and at which persons so entitled may apply for such registration.<sup>9</sup>

#### **4.02 Supplementary Registration of Voters**

Registration of voters otherwise than during a general registration period shall be carried out at the office of the principal registration officer for each constituency, and at such other places as the Supervisor of Elections may from time to time appoint for such purpose.

A district commissioner or his authorised representative may, during any official visit to any part of his district, register voters in that part of the district.<sup>10</sup>

#### **4.03 Registration Procedure**

During a general registration period –

- (a) any person who claims to be entitled to registration in respect of any polling station not in a designated polling district may, unless he has an existing registration in respect of a polling station in a designated polling district, make application for registration by attending before a registration officer at that polling station;
- (b) any person who claims to be entitled to registration in respect of any polling station

in a designated polling district may, unless he has an existing registration in respect of that polling station or a polling station in a designated polling district, make application for registration by attending before a registration officer for the constituency which contains that polling station.

At any other time, any person who claims to be entitled to registration may, if he is not already a voter, make application for registration by attending before a registration officer for the constituency which contains that polling station in respect of which he claims to be entitled to registration.

If application for registration is made during a general registration period or when the Supervisor of Elections has appointed other places for registration in respect of the constituency concerned, the registration officer shall determine whether or not the applicant is entitled to registration in respect of that polling station, and, if satisfied that he is, shall –

- (a) complete a voter's registration record card in relation to the applicant;
- (b) require the applicant to make the stipulated declaration in the prescribed form;
- (c) register the applicant as a voter in respect of that polling station by completing a voter's registration card in relation to the applicant, and giving it to the applicant;
- (d) forward the completed voter's registration record card to the Supervisor of Elections.

If application for registration is made at any time other than a general registration period, the registration officer must determine whether or not the applicant is entitled to registration in respect of that polling station, and, if satisfied that he is, shall –

- (a) complete a voter's registration record card in the prescribed form in relation to the applicant;
- (b) require the applicant to make the declaration prescribed, and shall forward the completed voter's registration record card to the Supervisor of Elections who, on receipt thereof, will register the applicant as a voter in respect of that polling station by completing a voter's registration card in the prescribed form in relation to the applicant and forwarding it to the applicant.

If a registration officer is not satisfied that an applicant is entitled to registration, he shall complete and give to the applicant a notice of rejection in the prescribed form and send a counterpart of such notice to the principal registration officer.

A registration officer is required to take such reasonable steps as he may deem necessary to satisfy himself as to the identity of any person applying for registration.

For the purpose of satisfying himself with regard to any matter or for the purpose of determining any matter relating to any such application, a registration officer may make such enquiry as he may deem necessary.

There shall be general rolls, supplementary rolls and election rolls of the voters in each constituency.

As soon as practicable after the termination of a general registration period, the Supervisor of Elections shall cause to be prepared a roll of voters in the constituencies affected by such general registration period, containing –

- (a) in respect of polling stations not included in any designated polling district, the names of voters registered in respect of such polling stations during the general registration period;
- (b) in respect of any polling stations included in a designated polling district, the names of voters registered in the relevant sections of existing rolls together with the names of voters registered in respect of such polling stations between the expiration of the period in respect of which the last existing roll was prepared and the expiration of the general registration period.

As soon as practicable after 31 December in each year and at such other intervals as he may consider appropriate the Supervisor of Elections shall cause to be prepared a roll of voters for each constituency, containing the names of voters registered in that constituency since the last such roll was prepared and not included in any general roll, such roll to be known as a supplementary roll.

Whenever a writ of election is issued, the Supervisor of Elections shall amalgamate into one roll for each constituency concerned –

- (a) the last general roll for such constituency; and
- (b) all supplementary rolls for such constituency in operation on the day on which such writ is issued.

Any such amalgamated roll shall be known as an election roll and may be maintained in such form of permanent record as the Minister may by regulations prescribe.

A roll comes into operation on certification.

Upon the coming into operation of a general roll for any constituency, any previous general roll and any existing supplementary rolls for the constituency shall cease to have effect and the Supervisor of Elections may cause the same to be destroyed.

Upon the coming into operation of an election roll for any constituency, the general roll and all supplementary rolls which have been amalgamated into the election roll shall cease to have effect and the Supervisor of Elections may cause the same to be destroyed, and for the purposes of the Act such election roll shall be deemed to be the last general roll for the constituency concerned.

Every roll shall –

- (a) state the surname, initials, sex and address of every voter named therein and the serial number of the voter's registration card given to him;

- (b) be compiled in a regular order in relation to such serial numbers; and
- (c) be divided into sections each relating to the voters registered in respect of a particular polling station.

On completion of any general roll or supplementary roll, and on the certification of any election roll, the Supervisor of Elections shall publish the roll by –

- (a) making it and copies thereof available for inspection by the public; and
- (b) giving notice thereof in the Gazette and in such other manner as he may consider appropriate, specifying the places at which it and such copies are so available, and in the case of a general or supplementary roll, setting out in the prescribed form the manner in which objections in respect of the roll may be made.

As soon as practicable after any objections in relation to a general roll or supplementary roll have been determined, the Supervisor of Elections shall certify the roll in the manner prescribed: provided that if at the expiration of 28 days in the case of a general roll or 14 days in the case of a supplementary roll after such publication, any objection in relation to a roll has not yet been determined, the Supervisor of Elections may certify the roll in accordance with the provisions notwithstanding such objection, but if he does so he shall thereafter alter the roll if necessary to give effect to the decision of a magistrate in relation to that objection.

As soon as practicable after the certification of a general roll or supplementary roll the Supervisor of Elections shall give notice in the Gazette and in such other manner as he may consider appropriate that the roll has been certified and is in operation, and that it and copies thereof are open for inspection by the public, specifying the places at which it and such copies are so available.

The Supervisor of Elections shall certify an election roll in the manner prescribed as soon as it has been completed.

Every existing roll shall be open for inspection by the public without fee at the office of the Supervisor of Elections during the hours the office is open.

A copy of every existing roll for a constituency shall be kept at the office of the principal registration officer for that constituency and at such other places therein as the principal registration officer may determine, and shall be open for inspection by the public without fee during such reasonable hours as the principal registration officer may appoint.

Any person may, without a fee, make copies of a roll or take extracts therefrom during the hours aforesaid.<sup>11</sup>

#### **4.04 Appeals, Objections and Cancellations**

An applicant whose application has been rejected may appeal to a magistrate.

Notice of any such appeal shall be in the prescribed form and shall be delivered to the

principal registration officer for the constituency where the applicant applied within a period of seven days after the rejection of the application, together with a deposit as prescribed.

On receipt of any notice of appeal the principal registration officer shall forthwith set down the appeal for the hearing before a magistrate and the magistrate shall appoint a place and as early a day as is practicable for the hearing of the appeal.

The principal registration officer shall cause an appellant to be notified of the day and place appointed by the magistrate for the hearing of his appeal.

The magistrate shall then determine any such appeal and forthwith notify the principal registration officer concerned of his decision in relation thereto.

If a magistrate allows an appeal the principal registration officer on being so notified shall –

- (a) complete a voter's registration record card in the prescribed form in relation to the appellant, and endorse the card with an entry to the effect that the appeal has been allowed;
- (b) register the appellant as a voter in respect of the polling station named by the appellant in his notice of appeal by completing a voter's registration card in the prescribed manner in relation to the appellant, marking the card in the manner prescribed and giving it to the appellant;
- (c) forward the completed voter's registration record card to the Supervisor of Elections; and
- (d) refund the appellant's deposit.

If a magistrate disallows an appeal the principal registration officer on being so notified shall pay the appellant's deposit into the general revenues of Botswana.

The decision of a magistrate on an appeal shall be final and shall not be challenged in any proceedings whatsoever.

Any person whose name is included in a roll for any constituency may object to the inclusion of any other name appearing therein or in any other existing roll relating to that constituency.

An objection must be made in writing in the prescribed form and must be delivered to the principal registration officer for the constituency together with the stipulated deposit, within 14 days after –

- (a) the date of publication of the roll to which it relates; or
- (b) if the objection relates to the name of a voter inserted in a roll the date on which notice of such insertion was given.

On receipt of an objection the principal registration officer must forthwith set down the

objection hearing before a magistrate and the magistrate shall appoint a place and as early a date as is practicable for the hearing of the objection.

The principal registration officer shall cause the objector and the person to whom the objection relates to be notified of the time and place appointed by the magistrate for the hearing of the objection and shall forward to the person to whom the objection relates a copy of the objection.

The magistrate is then required to determine the objection.

The person to whom an objection relates may appear either in person or by a person appointed in writing under his hand, or may forward by post to a magistrate a statement signed by him setting forth his answer to the objection.

If the objector or the person to whom the objection relates appears by some other person the magistrate may, if he deems it necessary, adjourn the hearing for the attendance in person of the objector or the person to whom the objection relates and may make an order requiring his attendance accordingly.

The magistrate shall forthwith notify the principal registration officer concerned of his decision in relation to any objection.

If a magistrate upholds an objection, the principal registration officer must refund the objector's deposit.

If a magistrate disallows an objection the principal registration officer shall pay the objector's deposit into the general revenues of Botswana.

If in addition the magistrate is of the opinion that the objection was made without reasonable cause, he may order the objector to pay to the person to whom the objection relates such sum not exceeding P100 as he considers will compensate the person to whom the objection relates for the trouble and expense to which he may have been put by reason of the objection.

Any sum payable under this provision is recoverable as a civil debt.

The decision of a magistrate on an objection is final and cannot be challenged in any proceedings whatsoever.

When an objector fails to appear on the day and at the place and time appointed by the magistrate for the hearing of the objection, the magistrate shall disallow the objection.

If any principal registration officer has reason to believe that any voter enrolled in any section of an existing roll in his constituency is not, or is no longer, entitled to registration in respect of the polling station to which that registration relates he shall send to that voter written notice of cancellation in the prescribed form setting forth the grounds on which he proposes to cancel the voter's registration in respect of that polling station and

that unless, on representations made by the voter or otherwise, the principal registration officer withdraws the notice, or unless an appeal by the voter is allowed, the voter's registration in that polling station will be cancelled and his name struck off the roll: provided that –

- (i) in the case of a voter whose registration it is proposed to cancel on the grounds that he does not possess the residence qualification, the principal registration officer may publish such notice in the Gazette and such publication shall be sufficient compliance with these provisions; and
- (ii) no such notice shall be so sent or published during the period between the issue of a writ of election having effect in relation to that constituency and the close of polling in the election to which the writ relates.

A voter who has received notice of cancellation may appeal to a magistrate.

Notice of any such appeal shall be in the prescribed form and be delivered to the principal registration officer who sent the notice of cancellation to the voter within a period of 14 days after delivery of such notice of cancellation.

On receipt of any notice of appeal the principal registration officer shall forthwith set down the appeal for hearing before a magistrate and the magistrate shall appoint a place and as early a day as is practicable for the hearing of the appeal.

The principal registration officer shall cause an appellant to be notified of the day and place appointed by the magistrate for the hearing of his appeal.

The magistrate shall then determine any such appeal and forthwith notify the principal registration officer concerned of his decision in relation thereto.

The procedure for the hearing of appeals or objections shall be regulated in such manner as the presiding magistrate may direct.

For the purpose of determining an appeal or objection a magistrate may summon any person to appear before him to give evidence on oath or affirmation and may order the production of any document bearing on any issue relevant to the determination of such appeal or objection.

If a magistrate upholds an objection or if notice of cancellation is given to any voter and either such voter does not appeal and the notice is not withdrawn, or such voter does appeal and his appeal is dismissed, the principal registration officer concerned shall –

- (a) notify the Supervisor of Elections accordingly who shall, cancel the voter's registration by making an appropriate endorsement on the voter's registration record card relating to such voter, and delete his name from the roll; and
- (b) require the person whose registration is cancelled to surrender to the principal registration officer the voter's registration card given to that person, and forward such card to the Supervisor of Elections.<sup>12</sup>

#### **4.05 Transfer of Registration**

Any person who is registered as a voter in respect of any polling station (referred to as “the existing polling station”) and has become entitled to registration in respect of any other polling station (referred to as “the other polling station”) may make application for the transfer of his registration: provided that during a general registration period, these provisions shall have effect only where the existing polling station is in a designated polling district.

Any person who wishes to make such an application shall attend before a registration officer for the constituency in which the other polling station is situated.

The registration officer shall determine whether the applicant is entitled to transfer his registration to the other polling station and, if satisfied that he is, shall –

- (a) require him to surrender the voter’s registration card given to him on his registration in respect of the existing polling station;
- (b) complete a registration transfer card in the prescribed form in relation to the applicant;
- (c) require him to make the declaration stipulated for the purpose;
- (d) transfer the applicant’s registration to the other polling station by making an appropriate endorsement on the surrendered voter’s registration card, completing a new voter’s registration card in relation to the applicant and giving it to the applicant;
- (e) forward the surrendered voter’s registration card and the completed registration transfer card to the Supervisor of Elections.

The Supervisor of Elections shall –

- (a) make an appropriate endorsement on the applicant’s registration record card;
- (b) delete the applicant’s name from the roll on which he is enrolled; and
- (c) insert his name in the appropriate section of the existing roll for the constituency which includes the polling station to which he has been transferred.

If the registration officer is not satisfied that the applicant is entitled to transfer his registration he shall complete and give to the applicant a notice of rejection and send a counterpart of such notice to the principal registration officer.<sup>13</sup>

#### **4.06 Alterations to Rolls**

An alteration to any existing roll which is required –

- (a) to insert a voter’s name which was incorrectly omitted;
- (b) to transfer a voter’s name from an incorrect section to the correct section;
- (c) to correct any clerical error made therein;
- (d) to change, on the application of a voter, the original name or address of that voter to an altered name or address;

- (e) to delete the name of any person whom the Supervisor of Elections is satisfied is dead,

may be made by the Supervisor of Elections at any time: provided that no alteration shall be made to a roll in terms of sub-paragraph (d) unless the voter produces the voter's registration card given to him to enable it to be endorsed.

Upon making any alteration to a roll, the Supervisor of Elections shall forthwith notify the principal registration officer concerned of the details of such alteration, and the principal registration officer shall cause a similar alteration to be made to every copy of such roll in his possession or in the possession of any other registration officer in that constituency.

In addition, in the case of –

- (a) any alteration involving the insertion of a name therein in respect of a transfer or an omission the Supervisor of Elections shall give notice thereof in the Gazette and in such other manner as he may consider appropriate specifying the places at which the altered roll and copies thereof are available for inspection by the public, and setting out in the manner prescribed the objections in respect of such insertion which may be made;
- (b) any alteration in respect of a change of name or address of a voter, the Supervisor of Elections shall make a corresponding endorsement to the voter's registration record card relating to the voter, and cause a corresponding endorsement to be made to his voter's registration card;
- (c) any alteration with respect to a deceased voter the Supervisor of Elections shall make a corresponding endorsement to the voter's registration record card relating to the deceased voter, and destroy the card after the expiration of such period as he may deem fit.

After the issue of any writ of election, the Supervisor of Elections shall not –

- (a) prepare, publish or certify any roll other than an election roll except to record a transfer of registration effected prior to the issue of a writ of election;
- (b) make any endorsement to a voter's registration record card;
- (c) cause any endorsement to be made to any voter's registration card; or
- (d) make any alteration to a roll except to record a transfer of registration effected prior to the writ of election,

which will have effect in relation to the constituency to which the writ relates, until the close of polling in the election to which the writ relates.<sup>14</sup>

#### **4.07 Duplicate Voter's Registration Card**

Where a voter loses his voter's registration card, or the card is destroyed, a registration officer for the constituency in which the voter is registered, on being satisfied as to such loss or destruction, may issue a duplicate voter's registration card to such person: provided that no duplicate voter's registration card shall be issued on any day fixed for polling in that constituency.<sup>15</sup>

— *Section 5* —

**PREPARATION FOR ELECTIONS**

**5.01 Writ of Election**

For the purpose of a general election to the National Assembly or of a by-election to fill a vacancy therein caused by death, resignation or otherwise, the President shall issue a writ under the public seal of Botswana, addressed to the returning officer of each constituency for which a member is to be returned, fixing –

- (a) the place and day at and on which, and the hours between which, the returning officer will receive nominations of candidates for election;
- (b) the day for the taking of any poll which may become necessary.

The day fixed for nominations shall not be earlier than 14 days after the day on which the writ was issued and, in the case of a general election, shall be not less than five days nor more than 10 days after the day which is the day for nomination of presidential candidates.

The day fixed for election shall not be earlier than 21 days after the day fixed for nominations.

Every writ must be in the prescribed form and shall be forwarded to the Supervisor of Elections for transmission to the returning officer to whom it is addressed.

As soon as practicable after a writ has been issued, the Supervisor of Elections shall give notice thereof in the Gazette, specifying in such notice the various matters prescribed.

Upon receipt of a writ, the returning officer shall proceed to hold an election in the manner provided in the Act and shall give and publish notice thereof throughout the constituency in such manner as he thinks fit and shall cause a notice in the prescribed form to be posted in such places as he considers desirable.<sup>16</sup>

**5.02 Nomination of Candidates**

Every candidate shall be nominated by a proposer, seconder and not fewer than seven other persons as supporters; the names of such proposer, seconder and supporters must be on the election roll for the constituency for which the candidate seeks election.

The nomination shall be made on a nomination paper in the prescribed form which shall be signed by the candidate and his proposer, seconder and supporters, and shall contain the following particulars –

- (a) the name, identity card number and address of the candidate, the name of the constituency in which he is registered, together with his number on the electoral roll for that constituency;
- (b) the names, identity card numbers, addresses and the numbers on the electoral roll

- 
- for that constituency of the proposer, seconder and supporters of the candidate;
  - (c) a statement by the candidate that he is willing and qualified to stand for election;
  - (d) a statement by the candidate as to his preference of symbol and voting colour for the purpose of any contested election;
  - (e) in his discretion, a declaration as to the candidate, if any, whom he supports in the election to the office of President; and
  - (f) if his nomination contains a declaration made under sub-paragraph (e), a declaration in the prescribed form by the presidential candidate named in his nomination that such presidential candidate consents to the declaration being made in his favour.

If any proposer, seconder or supporter is unable to sign his name, he shall affix his mark in place of his signature and such mark shall be witnessed by a person who can sign his name; such witness shall, in addition to his signature, write his name legibly immediately under such signature.

No person shall witness more than one mark. No person may be nominated for election in more than one constituency or while he is a member of the National Assembly.

The returning officer shall attend at the place and during the hours fixed for the nomination papers as may be tendered to him.

The returning officer shall require a candidate nominated, his proposer, seconder and his seven supporters to produce their identity cards for him to inspect.

Where any person is required to produce his identity card and fails to do so, the returning officer shall reject the nomination.

Every candidate shall either before his nomination paper is delivered to the returning officer, deposit or cause to be deposited in any convenient Government revenue office the sum of P100 in cash and, at the time of delivery of such papers, produce or cause to be produced to the returning officer the official receipt for that sum, or at the time of delivery of such papers, deposit or cause to be deposited with the returning officer the sum of P100 in cash, and no nomination is valid unless such deposit has been made or the receipt therefor is produced to the returning officer.

The deposit shall be returned to the candidate or his personal representative if –

- (a) the candidate dies before the date of the election;
- (b) there is no contested election;
- (c) a contested election is declared void;
- (d) he withdraws his candidature in due time;
- (e) in any contested election he is successful or obtains not less than one-twentieth of the total number of votes cast in his constituency; or
- (f) if his nomination is invalid for any other reason.

Any deposit which is not returnable shall be paid into the general revenues of Botswana.

When any nomination paper is delivered and a receipt is produced the candidate is deemed to stand nominated unless the returning officer decides that the nomination paper is invalid, or proof is given to the satisfaction of the returning officer of the death of the candidate, or he withdraws.

The returning officer shall not be entitled to hold a nomination paper invalid except on the following grounds –

- (a) that the candidate does not possess the qualifications (additional to qualifications in respect of proficiency in English) or possesses the disqualifications prescribed by law for membership of the National Assembly;
- (b) that the paper is not completed and subscribed or was not delivered as required by the Act;
- (c) that the candidate has already been nominated for another constituency; or
- (d) that the nomination is void under the Constitution;
- (e) that the candidate, his proposer, seconder or anyone of his supporters has failed to produce their identity card.

The returning officer's decision that a candidate has been validly nominated is final and shall not be questioned in any legal proceedings except on an election petition.

Whenever the returning officer decides that a candidate has been validly nominated he shall endorse and sign on the nomination paper his decision and the reasons therefor, and such decision shall not be questioned in any legal proceedings except on an election petition.

A candidate whose first nomination paper is or may be invalid shall be permitted to submit a second or subsequent nomination paper before the time fixed for the close of nominations.

A candidate may at any time before the close of nominations, but not afterwards, withdraw his candidature by giving to the returning officer a notice to the effect signed by himself.

As soon as practicable after the close of nominations, the returning officer shall publish a statement of the full names of all persons standing nominated, and of their proposers, seconders and supporters, and the respective addresses by displaying it at the place appointed for the receipt of nominations and at such other places as he considers desirable.

Where no candidate remains nominated at the close of nominations, the returning officer shall endorse the writ accordingly and return it to the Supervisor of Elections and the President shall issue a fresh writ.

If at the close of nominations there is only one candidate validly nominated, the returning officer shall forthwith publicly declare that candidate to be elected and shall immediately thereafter certify on the writ the return of that candidate and shall return the writ to the Supervisor of Elections.

If at the close of nominations there is more than one person standing nominated a poll shall take place.<sup>17</sup>

### 5.03 Notice of Poll

Where it is necessary for a poll to take place, the returning officer, as soon as practicable after the close of nominations, shall publish in such manner as he may think fit in the vicinity of each polling station and elsewhere in the constituency a notice –

- (a) stating the day and hours fixed for the poll;
- (b) stating the first names or their initials and the surnames (arranged in alphabetical order of surnames), and places of residence of the candidates, the symbols and voting colours allotted to them;
- (c) stating the situation of the nearest polling station; and
- (d) giving an indication of the persons entitled to vote at such polling station.

Such notice shall be in English and in such other language or languages as in the opinion of the returning officer is or are commonly used in that constituency.

If at any time between the issue of a writ and polling day the President is satisfied that it is expedient in the public interest to do so, he may by proclamation published in the Gazette adjourn the taking of the poll to some other day specified by him and endorsed on the writ.

A proclamation made under the foregoing provision shall apply only to such constituencies as are specified in the proclamation, and in any other constituency for which a writ has been issued, and which is not so specified, the poll shall be taken upon the day appointed by the writ.

Where any such proclamation is made before the day which would have constituted the nomination day if the proclamation had not been made, the nomination day shall be deemed to have been adjourned to the twenty-first day next before the day to which the holding of the poll is adjourned by the proclamation: provided that if the twenty-first day is a Sunday or a public holiday, the nomination day shall be deemed to have been adjourned to the first day, not being a Sunday or a public holiday, after the twenty-first day.<sup>18</sup>

### 5.04 Death of Candidate

If after the close of nominations but before the taking of the poll is commenced, proof is given to the satisfaction of the Supervisor of Elections of the death of one of the candidates, the Supervisor of Elections shall countermand the notice of the poll, and all proceedings with reference to the election shall be started afresh in all respects as if the writ has been received on the day on which proof was given to the Supervisor of Elections of the death.

Where by reason of the death of a candidate proceedings at an election are started afresh, the Supervisor of Elections shall fix –

- (a) the place and day at and on which, and the hours between which, the returning officer will receive nominations of candidates for elections; and
- (b) the day for the taking of any poll which may become necessary.

The day fixed for nominations shall not be earlier than 14 days after the day on which proof was given to the Supervisor of Elections of the death.

The day fixed for the poll shall not be earlier than 21 days after the day fixed for nominations.<sup>19</sup>

### **5.05 Polling Agents, Materials and Arrangements**

Each candidate may by letter appoint two persons as polling agents to attend at each polling station in the constituency for which he is a candidate.

No person shall be appointed as a polling agent for any constituency unless his name appears on the election roll for that constituency.

Notice in writing of the appointment of polling agents stating their names and addresses and the polling station to which each has been assigned shall be given by the candidate to the presiding officer.

Each polling agent shall, upon his first attending at a polling station or at such other time as the presiding officer may require, produce his letter of appointment to the presiding officer.

The ballot paper of every person voting at an election shall consist of a ballot envelope in a form to be determined by the Supervisor of Elections and having a serial number printed or stamped on the back into which the voter shall place a counter having the voting colour allotted to the candidate for whom he wishes to vote.

Every poll shall commence at six-thirty o'clock in the morning and close at seven o'clock in the evening, unless the Supervisor of Elections otherwise orders.

Different hours for taking the poll may be ordered by the Supervisor of Elections in respect of different constituencies or different polling stations and in such case the returning officer shall amend any notice accordingly.

Where a presiding officer is satisfied that for conditions beyond their control many voters would not be able to cast their votes within the stipulated closing time, he may extend the time for the taking of the poll for a further period not exceeding two hours beyond the closing time.

In the absence of the presiding officer from any polling station a polling officer nominated by the returning officer shall act as presiding officer.

A polling officer may be authorised by the presiding officer to do any act which the presiding officer is required or authorised to do at a polling station, except that he may not order the searching of any voter or the arrest of any person from the polling station.

On polling day at every polling station there shall be –

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- (a) outside the polling station in a conspicuous place a notice setting out the name of the polling station;
  - (b) both within and outside the polling station notices setting out (in alphabetical order of surnames) the surnames and first names or their initials, and voting colours of the candidates;
  - (c) one or more polling booths in which voters may handle their ballot envelopes and counters in secrecy, each containing notices of the kind referred to in (b), a table and a discard box;
  - (d) one or more ballot boxes placed in front of the presiding officer; and
  - (e) a copy of the election roll for the constituency, a sufficient number of ballot envelopes, counters and other things necessary for the poll to be properly and expeditiously carried out.

Every presiding officer shall be in possession of a seal supplied by the Supervisor of Elections.

Every ballot box shall be provided with a lock or other device for securing it when closed and shall be so constructed that ballot envelopes can be put therein when it is closed but cannot be removed therefrom once it has been sealed.

Every discard box shall be so constructed that counters can be put therein but cannot be removed or seen unless the box or any fastening thereof is destroyed.<sup>20</sup>

### **5.06 Voting Proceedings**

The voting at an election shall be conducted in the following manner –

- (a) every voter desiring to record his vote shall present himself at the polling station in respect of which he is registered to vote, and shall produce his voter's registration card and his identity card to the presiding officer;
- (b) the presiding officer, after satisfying himself –
  - (i) that the name of such voter appears on his copy of the election roll for that constituency and in the section thereof relating to that polling station;
  - (ii) that such voter has not already voted at the election; and
  - (iii) that such voter has not become disqualified from voting,shall ask the voter to immerse a thumb up to at least the whole of the exposed nail in the ink provided by the presiding officer and shall immediately thereafter deliver to the voter a ballot envelope and such number of counters as there are candidates for the election, each counter having voting colour of a particular candidate: provided that –
  - (aa) in the case of a voter without a thumb, such a voter shall immerse a finger up to at least the whole of the exposed nail;
  - (bb) in the case of a voter without any thumb or finger, the provisions relating to the immersing of a thumb in ink shall not apply;
- (c) immediately before the presiding officer delivers a ballot envelope and counters to any person –
  - (i) the number and name of the voter, as stated in the election roll, shall be called out;

- (ii) a mark shall be made on the copy of the election roll against the number of such voter to show that he has been issued with a ballot envelope and counter;
- (iii) the voter's registration card shall be marked by the presiding officer with the date and his initials;
- (d) subject to the provisions of sub-paragraph (g), a voter on receiving a ballot envelope and counters shall go immediately into a polling booth and shall there secretly record his vote by putting into the ballot envelope the counter having the voting colour of the candidate for whom he wishes to vote;
- (e) he shall then seal the ballot envelope and put the unused counters into the discard box, and return to the presiding officer and, having held up the ballot envelope so that the presiding officer can identify it, shall drop the ballot envelope into the ballot box placed in front of the presiding officer;
- (f) every voter shall vote without undue delay and shall leave the polling station as soon as he has voted;
- (g) on the application in person of any voter who is incapacitated by blindness or other physical cause from voting, the presiding officer shall, in the presence of the person with whose assistance the blind voter came to cast his vote, secretly record the voter's vote by putting into the ballot envelope the counter having the voting colour of the candidate for whom the voter wishes to vote, and he shall then seal the ballot envelope and put the unused counters into the discard box and drop the ballot envelope into ballot box.

Except as provided in the Act, the presiding officer or polling officers shall not give any assistance or explanation to a voter beyond –

- (a) directing him to a polling booth where he may vote;
- (b) informing him of the nature of the notice posted inside the polling booth; and
- (c) informing him of the procedure he should follow after entering the polling booth.

Except as provided in the Act, no person shall approach, interfere with, speak to or assist a voter from the time he has received his ballot envelope and counters to the time he has completed voting.

If a candidate or his polling agent or a voter makes before the presiding officer a written declaration on oath in the prescribed form that he verily believes and undertakes to prove that a person applying for or in possession of a ballot envelope and counters –

- (a) is in fact not the voter whose name he assumed to vote;
- (b) that such person has voted before in the same election; or
- (c) that such person is disqualified from voting in such election,

the presiding officer shall, unless that person makes a written declaration on oath in the prescribed form before the presiding officer that the statements in the first mentioned declaration (which shall be read to him) are false, prohibit the issue of a ballot envelope and counters to that person or, if a ballot envelope and counters have already been issued to him but he has not yet entered the polling booth impound and cancel the ballot envelope and counters and endorse on the envelope the reason for the cancellation and make an appropriate endorsement on the marked copy of the election roll.

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A ballot envelope so impounded and cancelled shall be treated as a spoilt ballot envelope.

The presiding officer is authorised and required to administer the oath.

A person who makes any false statement in a declaration is guilty of an offence unless he proves that he did not know that the statement was false, and shall, on conviction, be liable to penalties prescribed by law for perjury.

A voter who has accidentally dealt with his ballot envelope in such manner that it may not properly be used as a ballot envelope may, on delivering such ballot envelope to the presiding officer, and after satisfying the presiding officer that it has been accidentally spoilt, obtain another ballot envelope in place thereof and the spoilt ballot envelope shall be immediately cancelled and the presiding officer shall make an appropriate endorsement of the marked copy on the election roll.

A voter who has accidentally placed his ballot envelope in the discard box may, on satisfying the presiding officer that it was so placed by accident, obtain another ballot envelope in place thereof and the presiding officer shall make an appropriate endorsement on the marked copy of the roll.

Any voter who has accidentally dealt with his counters in such a manner that he is unable to vote as he wishes shall be entitled to obtain a further set of counters, on demand, and not be required to disclose directly or indirectly what counters were accidentally dealt with.

A vote may not be recorded by a voter except by his attending in person at the polling station and recording his vote in accordance with the Act.

No person shall be permitted to vote at any polling station other than the one in respect of which he is registered.

So far as practicable polling officers and police officers on duty at polling stations shall be assigned to polling stations in respect of which they are registered.

Polling officers and police officers on duty at polling stations in respect of which they are registered shall so inform the presiding officer, who shall himself supervise the formalities necessary for the casting of their votes.

If a presiding officer is on duty at a polling station in respect of which he registered a polling officer shall supervise the formalities necessary for the casting of such presiding officer's vote.

Where election officers and police officers entitled to vote are unable or likely to be unable to vote on the date of the poll by reason of not having been assigned to the polling stations in respect of which they are registered, the Supervisor of Elections shall, for the purpose of enabling such officers to vote –

- (a) fix such times, places and days, not earlier than 15 days before the date fixed for the taking of any poll;

- (b) appoint presiding and returning officers for each place fixed by him under subparagraph (a); and
- (c) inform the candidates of each constituency in respect of which a poll is to be taken in accordance with the preceding provisions by notice published in the Gazette, at least seven days before the day fixed by him for the taking of the poll.

The presiding officer of each polling station as soon as practicable after the closing of the poll, shall –

- (a) place all the ballot envelopes containing the votes of each constituency in a separate packet and seal it with his seal and with the seals of each of the polling agents as attend and desire to affix their seals; and
- (b) transmit all the election documents in safe custody to the returning officer of the constituency in respect of which the votes were cast.

The returning officer of each constituency to whom election documents have been transmitted shall retain such documents unopened in safe custody until after the close of the poll on the date fixed and the documents shall be dealt with in the stipulated manner.

If a person representing himself to be a voter named in the election roll and being in possession of a voter's registration card in such name applies for a ballot envelope after another person has voted in such name, the applicant shall, after making a declaration on oath in the prescribed form be entitled to receive a ballot envelope and counters in the same manner as any other voter, except that such ballot envelope (herein referred to as a "tendered envelope") shall be crossed in the manner of a registered letter.

The name of such voter, his number in the election roll and the number of the tendered ballot envelope issued to him shall be entered on a list to be called the "tendered votes list", which shall be admissible in any legal proceedings arising out of the election.

The presiding officer shall regulate the admission of voters to the polling station and must exclude all other persons who have no lawful reason to be admitted, and shall keep order and ensure compliance with the Act at the polling station.

If any person misconducts himself at a polling station or fails to obey any lawful order of the presiding officer he may, by order of the presiding officer (but not of any other polling officer), be removed from the polling station by a police officer or any other person authorised by the presiding officer, and a person so removed shall not without the permission of the presiding officer again enter the polling station during the day of the election. The powers conferred by these provisions must not be used to prevent any person who is otherwise entitled to vote at a polling station from voting.

When the hour appointed for the closing of the poll has been reached, the presiding officer shall declare that no more persons shall be admitted to the polling station, and thereafter only the persons already inside the polling station, or any area set aside for waiting voters, shall be permitted to vote.

Any person, other than persons entitled to be present at the counting of votes, who between the hour appointed for the closing of the poll and the declaration of the result, remains in association with two or more persons within a radius of 1,000 metres from the place appointed for the counting of votes with the intent to disturb or disrupt the counting of votes, is guilty of an offence.

The presiding officer of each polling station as soon as practicable after the closing of the poll, shall, in the presence of such of the candidates and their polling agents as attend, make up into separate packets, sealed with his seal and the seal of the candidates or their agents if they desire to affix their seals –

- (a) the unused ballot envelopes, the spoilt ballot envelopes and the ballot envelopes cancelled;
- (b) the marked copy of the election roll; and
- (c) the tendered votes list.

Any ballot envelopes which are left in the polling booth must be cancelled by the presiding officer.

Any counters which are left in the polling booths shall be put into the discard box by the presiding officer.

Every unopened ballot box shall be secured by the presiding officer and sealed with his seal and with the seals of such of the candidates or their agents as attend and desire to affix their seals, in such manner that it cannot be opened and nothing can be marked therein without the seals being broken.

The presiding officer shall despatch each such packet and ballot box in safe custody to the returning officer, together with a statement by the presiding officer (referred to as the “ballot envelope account”) showing –

- (a) the number of ballot envelopes entrusted to him;
- (b) the number of ballot envelopes issued;
- (c) the number of ballot envelopes contained in the packet of unused ballot envelopes;
- (d) the number of ballot envelopes alleged to have been placed in the discard box by mistake.

The presiding officer shall despatch the unopened discard box in safe custody to the returning officer for onward transmission to the Supervisor of Elections who shall retain all such boxes in his possession unopened until the result of the election has been ascertained and then dispose of them as he sees fit.<sup>21</sup>

### **5.07 Counting of Votes**

Each candidate may appoint not more than two persons (“counting agents”) to attend at the counting of the votes.

Notice in writing of the appointment, stating the names and addresses of the counting

agents, must be given by the candidate to the returning officer on polling day, and the returning officer may refuse to admit to the place where the votes are counted any person purporting to be a counting agent in respect of whom no such notice has been given.

If a counting agent dies, or becomes incapable of acting as such, a candidate may appoint another counting agent in his place, and the candidate shall immediately notify the returning officer in writing of the name and address of the counting agent so appointed.

The returning officer shall make arrangements for counting the votes, at a place to be determined by him, in the presence of any candidates or counting agents who wish to be present, as soon as practicable after the closing of poll, and shall as far as practicable proceed continuously until the counting is completed, allowing only reasonable time for refreshment.

When all the ballot boxes have been received by the returning officer, he shall, in the presence of any candidate or counting agents, who wish to be present, proceed to verify the ballot envelope accounts of each polling station in the constituency by opening the sealed packet containing the unused, spoilt and cancelled ballot envelopes from that polling station and comparing the number of ballot envelopes in it and the total number of ballot envelopes found in the ballot boxes for that polling station.

The returning officer shall prepare a statement as to the result of the verification and shall on request allow any candidate or counting agent to copy such statement.

After examination the returning officer shall return the unused, spoilt and cancelled ballot envelopes to the packet from which they were taken and shall reseal such packet with his seal.

When the procedures have been completed in each of the polling stations in the constituency the returning officer shall mix together all the envelopes found in the ballot boxes for that constituency and shall then count the votes in the manner stipulated.

After verifying the ballot envelope accounts the returning officer shall then open each ballot envelope, remove the counter therein, affix it to the face of the envelope and put the envelope into a separate pile or receptacle according to the colour of the counter.

The returning officer shall not open the tendered ballot envelopes but shall put them all together into a separate pile or receptacle.

The returning officer shall reject and endorse the word "rejected" on any ballot envelope on which anything except the serial number is written or marked by which the voter can be identified, or in which there is no counter or more than one counter: provided that the returning officer shall not reject any ballot envelope containing two or more counters of the same colour but shall treat such counters as if they were one counter of that colour.

If any candidate or counting agent objects to a decision made by the returning officer, the returning officer shall endorse the words "objected to" on the ballot envelope.

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The returning officer shall then count the ballot envelopes in favour of each candidate.

While handling ballot envelopes the returning officer shall so far as possible keep their faces upwards.

The returning officer shall prepare a statement showing the number of ballot envelopes rejected and shall on request allow any candidate or counting agent to copy the statement.

The decision of the returning officer on any question arising in respect of any ballot envelope shall be final, and shall not be questioned in any legal proceedings except on an election petition.

At the conclusion of the counting of the votes the returning officer shall seal up in separate packets the counted ballot envelopes, the rejected ballot envelopes and the tendered ballot envelopes.

The returning officer shall at no time open the sealed packet containing the marked copy of the election roll or sealed packet containing the tendered votes list.

A candidate or his counting agent may, if present when the counting or any recount of the votes is concluded, require the returning officer to have the votes recounted, or again recounted, but the returning officer may refuse to do so if in his opinion the request is unreasonable.

When an equality of votes is found to exist between any candidates, a fresh election shall be held in respect of that constituency so that the addition of a vote would entitle one of the candidates to be declared elected, the returning officer shall forthwith decide between those candidates by lot, and shall proceed as if the candidate on whom the lot falls had received an additional vote.

After counting the votes and having ascertained the result of the poll the returning officer shall –

- (a) certify by endorsement on the writ the return of the candidate elected;
- (b) declare the result of the poll by reading such endorsement aloud at the place of counting;
- (c) return the writ so endorsed to the Supervisor of Elections.

The Supervisor of Elections shall notify the Clerk to the National Assembly of the return of the writ and shall cause the result of the election to be published in the Gazette.

The returning officer shall deliver all documents (including counters) relating to the conduct of the election to the Registrar of the High Court, who shall ensure their custody.

The Registrar of the High Court shall retain for six months all such documents (including counters) relating to an election forwarded to him and then unless otherwise ordered by the court, or unless he is aware that legal proceedings are pending in respect of such election, shall cause them to be destroyed.<sup>22</sup>

— *Section 6* —

**ELECTION EXPENSES AND ELECTION AGENTS**

**6.01 Election Expenses**

“Election expenses” means all monies expended or expenses incurred on account of or in respect of the conduct or management of that election by the candidate or on his behalf or in his interests and money shall be deemed to have been expended or expenses incurred in respect of the conduct or management of an election if expended or incurred after the issue of a writ in relation to the election.

The following expenses are not deemed to be election expenses –

- (a) any monies expended or expenses incurred by any association or group of persons or by any person in the general interests of a political party or organisation or its candidates generally, not being monies expended or expenses incurred directly in the particular interest of any particular candidate or expenditure;
- (b) any monies expended or expenses incurred by any political party or organisation in the printing, publication or distribution of the official organ of that political party or organisation;
- (c) any money deposited in respect of candidature.

The election expenses of any candidate must not exceed P20,000.<sup>23</sup>

**6.02 Appointment of Election Agent**

Not later than ten days after nomination day a candidate may appoint one and only one person to be his election agent and shall forthwith notify in writing the full name and address of his election agent to the returning officer who shall forthwith publish a statement setting out the information so given by displaying it at the place appointed for the receipt of nominations.

If a candidate revokes the appointment of his election agent or the election agent dies, the candidate may forthwith appoint another election agent.

If the candidate fails to give the notification required he shall be deemed to be his own election agent and thereupon shall, so far as circumstances admit, be subject to the provisions of the Act both as a candidate and an election agent.

An election agent shall appoint every clerk and messenger employed for hire or reward on behalf of the candidate.<sup>24</sup>

**6.03 Disclosure of Expenditure**

All money provided by an association or group of persons or by any person for the election expenses of a candidate, whether as a gift, loan, advance or deposit, shall be paid or promised

to the candidate or his election agent and not otherwise and shall be fully disclosed, whether paid or promised, in the return respecting election expenses made as required.

Any person who makes or promises to make any payment, advance or deposit in contravention of the Act or for any purpose other than a lawful and authorised purpose or pays any money so provided is guilty of an illegal practice and is liable to be punished in respect of illegal practices.

Every payment in respect of any election expenses shall, except where less than P10 in any one account, be vouched for by a bill stating the particulars and by a receipt or some other evidence of payment.

With the consent of the candidates concerned, a political party or organisation may incur expenditure on the advertisement of candidates sponsored by such party or organisation and their meetings and in that event shall –

- (a) apportion the expenditure between such candidates as it thinks fit; and
  - (b) within 30 days after polling day in the election inform each candidate of the amount so apportioned to him,
- and the amount so apportioned shall form part of the candidates' election expenses.

Any such advertisement must include the name of the secretary of the political party or organisation in question and a statement that it is published under the authority of that political party or organisation.

The secretary of a political party or organisation shall, within 90 days after polling day in the election, render in respect of every candidate sponsored by such party or organisation who stood for election, to the appropriate returning officer a true return showing the expenditure incurred, and the amount apportioned to each candidate.<sup>25</sup>

#### **6.04 Return of Election Expenses**

Within 90 days after the result of any election has been declared every candidate at that election shall render to the returning officer a true return in the prescribed form and verified by his affidavit showing –

- (a) all his election expenses which have been paid;
- (b) all his election expenses which are unpaid;
- (c) all claims for election expenses which are disputed by the candidate;
- (d) all money and the name of the person from whom he has received such money;
- (e) any amount apportioned to him,

together with all relevant bills, invoices and receipts relating to the expenses. If no election expenses have been incurred the candidate shall, in an affidavit, render a return to that effect to the returning officer within the period aforesaid.

If a candidate who has taken no part in the election has appointed an election agent, that election agent shall be responsible for rendering the return

If in the case of a successful candidate at an election the return has not been rendered within the period prescribed that candidate shall not thereafter sit or vote in the National Assembly until such return has been rendered or until the date of the condoning order, if any, excusing such failure.

A candidate who fails to comply with these provisions is guilty of an illegal practice unless such failure has been excused by a condoning order.

Any candidate who makes any material false statement of fact in his return knowing it to be false or not believing it to be true is guilty of an offence.

Where the return respecting election expenses has not in respect of any candidate at an election been rendered as required by the Act or, having been rendered, is incomplete or contains some error or false statement –

- (a) if the candidate applies to the High Court and shows that the failure to render the return or any error or false statement therein or omission therefrom has arisen by reason of his illness or of the absence, death, illness or misconduct of his election agent or by reason of inadvertence or of any reasonable cause of a like nature and not by reason of any want of good faith on the part of the applicant; or
- (b) if the election agent of the candidate applies to the High Court and shows that the failure to render the return which he was required to render or any error or false statement therein or omission therefrom arose by reason of his illness or of the death or illness of any prior election agent of the candidate or of the absence, death, illness or misconduct of any employee or agent of an election agent of the candidate or by reason of inadvertence or of any reasonable cause of a like nature and not by reason of any want of good faith on the part of the applicant,

the High Court may, after such notice of the application and on production of such evidence on the grounds stated in the application and of good faith of the applicant and otherwise as to the Court seems fit, make such order excusing the failure to transmit such return or for an error or false statement therein or omission therefrom as to the Court seems just.

Where it appears to the High Court that any person has refused or failed to supply such particulars as will enable the candidate or election agent to comply with the requirement, the High Court before making a condoning order shall order such person to attend before the Court and on his attendance shall unless he shows cause to the contrary order him to supply the necessary particulars within such time as the Court may direct. Any person who fails to comply with such an order is guilty of an offence.

A condoning order may be made conditional upon the rendering of the return in a modified form or within an extended time and upon compliance with such other terms as to the High Court seem best calculated for carrying into effect the objects of the Act.

A condoning order shall relieve the applicant from any liability or consequence under the Act in respect of the matter excused by the order.

The date of the condoning order or, if conditions and terms are to be complied with, the

date on which the applicant fully complies with them is the date of the condoning order.<sup>26</sup>

### **6.05 Inspection of Return**

The return and any accompanying documents must be kept at the office of the returning officer or at some convenient place appointed by him and shall at all reasonable times during six months next after their receipt by the returning officer be open to inspection by any person on payment of a stipulated fee and the returning officer shall supply copies thereof at the stipulated price per copy or part thereof.<sup>27</sup>

## **— Section 7 —**

### **ELECTION OFFENCES**

#### **7.01 Corrupt Practices**

The expression “corrupt practice” means any of the following offences –

- (a) personation;
- (b) treating;
- (c) undue influence;
- (d) bribery;
- (e) aiding, abetting, counselling or procuring any such offence.<sup>28</sup>

#### **7.02 Personation**

Any person who –

- (a) at an election applies for a ballot envelope and counters in the name of some other person whether that name be the name of a person living or dead or of a fictitious person; or
- (b) having voted once at any such election applies for a second ballot envelope and counters in the same election in his own name,

is guilty of personation. A person charged with this offence shall not be convicted except on the evidence of not less than two witnesses.<sup>29</sup>

#### **7.03 Treating**

A person is guilty of treating who –

- (a) corruptly, by himself or by any other person on his behalf, either before, during or after an election, directly or indirectly gives, provides or pays, wholly or in part, the expenses of giving or providing any entertainment or provision other than food or drink to or for any person for the purposes of corruptly influencing that person or any other person to vote or refrain from voting at the election, or on account of such person or any other person having voted or refrained from voting at the election;
- (b) who corruptly accepts or takes any such entertainment or provisions.<sup>30</sup>

#### **7.04 Undue Influence**

Any person who directly or indirectly by himself or by any other person on his behalf makes use of any force, violence, or restraint or inflicts or threatens to inflict by himself or by any other persons any temporal or spiritual injury, damage, harm or loss upon or against any person, in order to induce or compel anyone to vote or refrain from voting or on account of anyone having voted or refrained from voting at any election or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free use of the vote by any voter, or thereby compels, induces or prevails upon any voter either to give or refrain from giving his vote at any election, is guilty of undue influence.<sup>31</sup>

#### **7.05 Bribery**

The following person is guilty of bribery –

- (a) any person who directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or to lend, or offers, promises or promises to procure or to endeavour to procure, any money or valuable consideration to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting, at any election;
- (b) any person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises or promises to procure or to endeavour to procure, any office, place or employment to or for any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting, at any election;
- (c) any person who directly or indirectly, from the time at which nomination papers may be delivered to the returning officer in the constituency concerned until the declaration of the result of the poll by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement as aforesaid to or for any person, in order to induce such person to procure, or to endeavour to procure, the return of any other person as a member of the National Assembly or the vote of any voter at any election;
- (d) any person who, upon, or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures, or engages, promises or endeavours to procure the return of any person as a member of the National Assembly or the vote of any voter at any election;
- (e) any person who advances or pays or causes to be paid any money to or for the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;
- (f) any voter who before or during any election, directly or indirectly, by himself or by any other person on his behalf receives or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or for any

other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election, provided that the aforesaid provisions shall not be construed to extend to any money paid or agreed to be paid for or on account of any expenses bona fide incurred at or concerning any election.

Any person who without the expressed or implied authority of a candidate or his election agent incurs election expenses in relation to that candidate is guilty of illegal practice.<sup>32</sup>

### **7.06 Penalties for Illegal Practices**

Where under the Act no penalty is expressly provided for an illegal practice, a person guilty of an illegal practice is liable to a fine of P400 and to imprisonment for two years.

In addition to any other penalty which may be awarded, a person guilty of a corrupt practice or an illegal practice may where no incapacity is specially provided for any particular class of person under the Act, further be declared incapable during a period not exceeding five years from the date of his conviction –

- (a) of being elected as a member; or
- (b) of being registered as a voter or of voting at an election.<sup>33</sup>

### **7.07 Offences on Day of Election**

No person shall on the date on which an election is held commit any of the following acts within a polling station or within a distance of 200 metres from a polling station, namely –

- (a) canvassing for votes;
- (b) soliciting the vote of any voter;
- (c) persuading any voter not to vote for a particular candidate;
- (d) persuading any voter not to vote at the election;
- (e) shouting slogans concerning the election;
- (f) being in possession of any offensive weapon or wearing any dress or having any facial or other decoration calculated to intimidate voters;
- (g) exhibiting, wearing or tendering any notice, symbol, badge, photograph or party card referring to the election.

No person shall on the date on which a poll is held in a constituency –

- (a) convene, hold or attend any public meeting;
- (b) operate any megaphone, amplifier or public address apparatus for the purpose of making announcements concerning the election (unless he is an election officer making an official announcement).

Any person who contravenes any of these provisions is guilty of an offence and the court convicting that person may in addition award corporal punishment not exceeding six strokes.<sup>34</sup>

### **7.08 Disorderliness at Political Meetings**

Any person who at a political meeting held in any constituency after the publication of a notice in respect of that constituency –

- (a) acts or incites another to act in a disorderly manner for the purpose of preventing transaction of the business for which the meeting was convened; or
- (b) has in his possession an offensive weapon or missile,  
is guilty of an offence.

No person shall, after the publication of the notice of election in respect of that constituency, himself hold, or organise or participate in any meeting, intended to promote the candidature of any person, at any place within the radius of 1,000 metres from a meeting being held or to be held on that day and at that time to promote the candidature of a rival candidate; and any person who contravenes this provision is guilty of an offence.<sup>35</sup>

### **7.09 Bills and Placards to Have Name of Printer and Publisher**

Every bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and publisher.

The proprietor and publisher of every newspaper shall cause the word “advertisement” to be printed as a headline to each article or paragraph in his newspaper containing electoral matter, the insertion of which is or is to be paid for or for which any reward or compensation is or is to be made.

No candidate shall issue or distribute any document (which term includes any bill, placard, poster, pamphlet, circular or card) which contains any facsimile or imitation of a ballot envelope and advises or purports to advise any person as to the manner in which such person should record his vote, unless such candidate has first obtained from the Supervisor of Elections a certificate, in duplicate, stating that, in his opinion, such document contains no representation likely to mislead a voter as to his rights.<sup>36</sup>

## **— Section 8 —**

### **ELECTION PETITIONS**

#### **8.01 Who May Present an Election Petition**

A petition complaining of an undue return or an undue election of a member for any constituency by reason of want of qualification or by reason of disqualification, corrupt or illegal practice, irregularity, or by reason of any other cause whatsoever, may be presented to the High Court by –

- (a) a voter in that constituency; or
- (b) any person who was a candidate at such election.

A petitioner shall, before lodging his petition with the Registrar of the High Court, afford every person, other than the member whose election or qualification is complained of (referred to as “the respondent”), who was a candidate at the election to which the petition relates an opportunity of becoming a party to the petition as a co-petitioner.

The following provisions apply with respect to the representation of an election petition –

- (a) the petition shall be signed by the petitioner, or all the petitioners, if more than one;
- (b) the petition shall be presented within 30 days after the day on which the result of the election has been declared by the returning officer. However, when the return or election is questioned upon an allegation of an illegal practice, the petition may be presented –
  - (i) at any time before the expiry of 21 days after the day on which the returning officer receives the return of election expenses of the person whose election is to be questioned; or
  - (ii) if the election petition specifically alleges a payment of money or some other act to have been made or done since that day by the member or with the privity of the member or his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, at any time within 30 days after the date of such payment or other act;
- (c) presentation of a petition is made by lodging it with the Registrar of the High Court;
- (d) at the time of the presentation of the petition or within seven days afterwards security for the payment of all costs, charges and expenses that may become payable by the petitioner –
  - (i) to any person summoned as a witness on his behalf; and
  - (ii) to the respondent,shall be given by or on behalf of the petitioner;
- (e) the security must be in the amount stipulated by the Registrar of the High Court and shall be given by recognizance to be entered into by the petitioner and any number of sureties not exceeding four, in a form to be approved of by the Registrar.<sup>37</sup>

## **8.02 The Respondent**

Notice in writing of the presentation of a petition and of the names and addresses of the proposed sureties, accompanied by a copy of the petition shall, within ten days after the presentation of the petition, be served by the petitioner on the respondent, either personally or by leaving the same at his usual or last known dwelling or place of business.

The respondent may, by notice in writing served upon the petitioner in the manner prescribed within 21 days after the date of the service on him of the notice in respect of the security, object to such recognizance on the ground that the sureties or any of them are insufficient or that a surety is dead or that he cannot be found or that a person named in the recognizance has not signed the same or that the recognizance is invalid or defective.

Any objection made to the security given shall be heard and decided by the High Court.

If any objection to the security is allowed, the petitioner may within a further time to be fixed by the High Court, not exceeding ten days, remove the objection by a deposit of such sum of money as may be deemed proper by the High Court to make the security sufficient.

If, on objection made, the security is decided to be insufficient and the objection is not removed in the manner ordered by the Court, no further proceedings shall be had on the petition; otherwise, on the expiration of the time during which objections may be made, or, if after objection made the sufficiency of the security is established, the petition shall be deemed to be at issue.<sup>38</sup>

### **8.03 Lists and Trial of Petitions**

The Registrar of the High Court shall, as soon as may be, make out a list of petitions presented to the High Court and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list open to the inspection of any person making application for inspection thereof, and election petitions shall be tried in the order in which they stand in such list unless the High Court otherwise orders.

The following provisions apply with respect to the trial of petitions –

- (a) every election petition shall be tried in open court;
- (b) the trial of election petitions may take place upon any day prescribed by any rule or order of court;
- (c) notice of the time and place at which an election petition will be tried must be given by the Registrar of the High Court to the parties concerned not less than 14 days before the day on which the trial is to be held;
- (d) the High Court may adjourn the trial from time to time and from place to place;
- (e) where, on the trial of election petition praying the High Court to determine that some other person than the respondent is entitled to be declared duly elected in place of the respondent, it is proved that any person who voted for the respondent was bribed or treated or subjected to undue influence by the respondent or anyone on behalf of the respondent or that such person was guilty of personation or of an illegal practice or was not qualified as a voter at the election, the vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election;
- (f) at the conclusion of the trial of any election petition, the High Court shall determine whether the respondent was duly elected or whether any, and if so what, person other than the respondent was or is entitled to be declared duly elected;
- (g) if the High Court determines that the respondent was duly elected, such election shall be and remain as valid as if no petition had been presented against it;
- (h) if the High Court determines that the respondent was not duly elected, but some other person was or is entitled to be declared duly elected the respondent shall forthwith be deemed to have vacated his seat, and the High Court shall forthwith certify its determination to the Supervisor of Elections and the Supervisor of Elections shall thereupon by notice in the Gazette declare such other person duly elected;
- (i) if the High Court determines that the respondent was not duly elected and that no

other person was or is entitled to be declared duly elected the seat of the respondent is deemed to be vacant and the High Court shall certify its determination to the President that a vacancy has occurred, the cause of such vacancy and the constituency in which such vacancy has occurred;

- (j) where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the action from all or a portion of the costs thereof, then –
- (i) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function bona fide made by any officer, it may, after sufficient notice to the Attorney-General to show cause to the contrary, make such order as to the payment by the State of the costs of the action or portion thereof, as it may deem fit;
  - (ii) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function bona fide made by any officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such officer of the costs of the action or portion thereof, as it may deem fit.<sup>39</sup>

#### **8.04 Where Court Reports Cases of Corrupt or Illegal Practices**

If the High Court states in the report on the trial of an election petition that any person has been guilty of a corrupt practice or illegal practices have extensively prevailed at the election to which the petition relates, that statement, together with the evidence taken at the trial, shall be transmitted by the Registrar of the High Court to the Attorney-General with a view to the institution of any prosecution proper to be instituted in the circumstance, and every such report shall, so far as it concerns any person, further be transmitted by the Registrar to the Supervisor of Elections.<sup>40</sup>

#### **8.05 Witnesses**

A witness shall be summoned and sworn in the same manner as a witness may be summoned and sworn in civil proceedings before the High Court.

Any such witness who, in the course of the trial of an election petition, wilfully makes a statement of fact material in the proceedings which he knows to be false or does not believe to be true is guilty of an offence.

On the trial of an election petition, the Court may examine any witness or any person in court, although such witness or person is not called or examined by any party to the petition, and after the examination of a witness as aforesaid by the Court, such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them.

No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt practice or illegal practice at or connected with any election then forming the subject of inquiry on the ground of privilege or on the ground that the answer thereto may incriminate him or tend to incriminate himself.

If any witness fully answers to the satisfaction of the Court every question relating to any matter which he is required by the Court to answer, and the answer to which may incriminate him, such witness shall be absolutely freed and discharged from all liability to prosecution, either at the public instance or at the instance of any private party, for any offence under the Act committed by him previous to the time of his evidence and at or in relation to the election concerned or in relation to which the witness may have been so examined and the witness shall be entitled to receive a certificate signed by the Registrar of the High Court stating that he is so freed and discharged from all liability to prosecution as aforesaid.

The reasonable expenses incurred by any person appearing to give evidence at the trial of an election petition, according to the scale usually allowed to witnesses in civil proceedings before the High Court, may be allowed to such person and such expenses shall be deemed to be costs of the petition.

On the trial of an election petition complaining of an undue election or undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of that person was undue, in the same manner as if the respondent had presented an election petition complaining of such election.<sup>41</sup>

### **8.06 Withdrawal of Petition**

An election petition shall not be withdrawn without the leave of the High Court and after such notice has been given as the Court may direct.

On the hearing of the application for withdrawal of an election petition, any person who might have been a petitioner in respect of the election to which the election petition relates may apply to the High Court to be substituted for a petitioner who desires to withdraw.<sup>42</sup>

### **8.07 Costs of Petition**

If an election petition is withdrawn, the petitioner is liable to pay the costs of the respondent.

All costs, charges and expenses incidental to the presentation of an election petition and to the proceeding consequent thereon shall be defrayed by the parties to the petition in such manner and in such proportions as the High Court may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the Court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent, and regard being had also to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

Costs may be taxed and recovered in the same manner as the costs of civil proceedings in the High Court.

If any petitioner in an election makes default for the space of one month after demand in paying to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to him for his costs, charges or expenses and if the default is proved to the satisfaction of the High Court, every person who has entered into a recognizance relating to the petition shall be held to have made default on his recognizance and the Registrar shall thereupon certify such recognizance to be forfeited, and execution may thereupon by leave of the High Court, be sued out thereon at the suit of any such witness or respondent as occasion may require.<sup>43</sup>

## NOTES

1. Constitution of Botswana, see section 67
2. *Ibid.*, see sections 63-66
3. *Ibid.*, see section 66
4. Electoral Act, see section 3
5. *Ibid.*, see section 4
6. Constitution of Botswana, see section 63
7. *Ibid.*, see section 64
8. *Ibid.*, see section 65
9. Electoral Act, see sections 5 and 7
10. *Ibid.*, see section 8
11. *Ibid.*, see sections 9-15
12. *Ibid.*, see sections 16-23
13. *Ibid.*, see section 24
14. *Ibid.*, see sections 25-27
15. *Ibid.*, see section 28
16. *Ibid.*, see section 31
17. *Ibid.*, see sections 32-39
18. *Ibid.*, see sections 42 and 43
19. *Ibid.*, see section 44
20. *Ibid.*, see sections 45-50
21. *Ibid.*, see sections 51-65
22. *Ibid.*, see sections 66-77
23. *Ibid.*, see sections 78 and 79
24. *Ibid.*, see sections 80 and 81
25. *Ibid.*, see sections 82-84
26. *Ibid.*, see sections 85 and 86
27. *Ibid.*, see section 87
28. *Ibid.*, see section 88
29. *Ibid.*, see section 89
30. *Ibid.*, see section 90
31. *Ibid.*, see section 91
32. *Ibid.*, see sections 92-95
33. *Ibid.*, see sections 101 and 102
34. *Ibid.*, see section 111
35. *Ibid.*, see section 112
36. *Ibid.*, see section 113
37. *Ibid.*, see sections 114 and 115
38. *Ibid.*, see sections 116 and 117
39. *Ibid.*, see sections 118 and 119
40. *Ibid.*, see section 120
41. *Ibid.*, see sections 124-128
42. *Ibid.*, see sections 129 and 130
43. *Ibid.*, see sections 136 and 137

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## INTRODUCTION

In 1994 Malawi held presidential and parliamentary elections which led to the restoration of a multi-party system of government. For a period of 30 years before the May 17 elections, that country was ruled by one party, the greater part of which period the then ruling party was the only legal political party permitted.

In order to organise free and fair multi-party elections, the ruling party sought a mandate from the people through a referendum held in June 1993. The overwhelming majority of the voters in the referendum voted for multi-party democracy. As a result of the outcome of the referendum, new legal structures were created to permit the formation of political parties in addition to the ruling party and to guarantee a fair opportunity for qualified persons to register as voters.

A new Act, the National Consultative Council Act 1993, was passed establishing a new body to oversee appropriate constitutional amendments to allow the organisation of free and fair multi-party elections. A new electoral law, the Parliamentary and Presidential Elections Act (herein referred to as "the Act"), was also to be supervised by the new body – as well as a new Constitution which took effect on the day the multi-party elections were held.

For the sake of completeness, the relevant eight provisions of the National Consultative Council Act and amendments to the Constitution will be presented along with the principal provisions of the Electoral Law.

### — Section 1 —

## THE NATIONAL CONSULTATIVE COUNCIL

### 1.01 Establishment

The National Consultative Council ("the Council") was established by the National Consultative Council Act. The Council consisted of the representatives of all political parties which were registered under the Political Parties (Registration and Regulation) Act 1993 by 30 November 1993. Each registered political party was entitled to designate not more than seven representatives to the Council.<sup>1</sup>

### 1.02 Functions

The functions of the Council were:

- (a) to participate in the formulation of policies and in the initiation of legislative measures necessary for the transition;

- 
- (b) to initiate such amendments to the Constitution as were necessary to facilitate the transition to the first multi-party general election;
  - (c) to prepare the draft of a new electoral law suitable for a multi-party political system to be enacted by Parliament;
  - (d) to review the law governing the registration of political parties for the attention of Parliament;
  - (e) to prepare the draft of a new Constitution suitable for a multi-party political system which would become effective immediately after the first multi-party general election; and
  - (f) to prepare the draft Bill of Rights either as part of the new Constitution or as a separate Act of Parliament.<sup>2</sup>

### **1.03 Officers and Funds to Service the Council**

There were assigned to the service of the Council –

- (a) one officer in the public service not below the rank of Deputy Secretary, being a person approved by the Council, designated as Secretary to the Council (hereinafter referred to as the “Secretary”) who was the chief executive officer thereof responsible for the day-to-day management and administration of the affairs of the Council;
- (b) such number of other officers in the public service as could have been required to be of service to the Council in capacities subordinate to the Secretary.

In the performance of their duties in the service of the Council, the Secretary and all officers in the service of the Council were subject only to the directions of the Council.

A person assigned to the service of the Council could, where the Council so requested, be withdrawn at any time from such service.

The funds for the management and administration of the affairs of the Council consisted of –

- (a) such sums as could have been appropriated for the purpose by Parliament; and
- (b) such sums as could have been received for the purposes of the Council by way of grants, gifts or donations from any government, organisation, agency or person.

All sums received for the purposes of the Council were under the control of the Council and all expenditures of each sum took place in accordance with the directions of the Council.

The Secretary submitted to the Council monthly reports and statements of accounts on receipts and expenditures.<sup>3</sup>

### **1.04 The National Executive Committee (“the Committee”)**

This body was also set up by the National Consultative Council Act. It consisted of two representatives designated from amongst the seven representatives of each political party on the Council.<sup>4</sup>

### **1.05 Functions of the Committee**

The functions of the Committee were –

- (a) to monitor the implementation of the policies of governing the transition;
- (b) to receive such information, relating to or affecting the transitional process, as it could have required from the Government;
- (c) to monitor the activities of all public offices which in the view of both the Committee and the Cabinet had a bearing on the management of the transition;
- (d) to consult with the Cabinet on any measures relating to the transition which had to be taken in the management of the transition;
- (e) to bring to the attention of the Cabinet for corrective action any abuses of political authority, public finances or property in the Government or in any statutory body for political campaigning or gain;
- (f) to monitor the implementation by the Government of legislation relating to the transition; and
- (g) to monitor the activities of the Malawi Broadcasting Corporation to ensure equal and fair access and coverage of the activities of all political parties generally and in particular in relation to their campaigns for the first multi-party general election.<sup>5</sup>

### **1.06 Officers and Funds**

The provisions of Section 1.03 above applied also to the Committee.

### **1.07 Decisions of the Council and the Committee**

Each member of the Council and each member of the Committee, including the chairman, vice-chairman or other person presiding, had one vote.

Members of the Council were required to seek to decide by way of consensus, but where they failed to do so they were required to vote by a show of hands and the decision thereon was taken by a simple majority of the vote of those present and voting.

A member was entitled in his own behalf or on behalf of the political party he represented to make any reservation on any decision of the Council or the Committee and to have the reservation recorded in the minutes of the meeting.<sup>6</sup>

### **1.08 Action on Certain Decisions**

A decision of the Council or the Committee requiring legislative or executive action of the Government had to be submitted by the Secretary to the Minister of the Government responsible for the matter in question and in turn the Minister, with all dispatch, had to refer the matter to the Cabinet for necessary action.

Where the Cabinet did not agree with the decision of the Council or of the Committee on any matter referred to it, it had the right to refer the matter back to the Council or to the Committee for reconsideration, stating in writing the reasons for its position. The right of

the Cabinet to refer any matter back to the Council or to the Committee could be exercised only once in respect of that matter.

A decision of the Council or the Committee confirming or varying its earlier decision referred back to it had to be implemented by the Cabinet.

The Cabinet was required to take, with dispatch, such action as was necessary for giving legislative or executive effect to the decision of the Council or of the Committee and further, had to ensure that all legislative proposals presented to Parliament pursuant to the National Consultative Council Act were passed and enacted into law.<sup>7</sup>

### **1.09 Committees of the Council**

The Council was empowered to appoint any number of committees of its own as it considered necessary for the discharge of its functions and to assign any of its functions to a committee. The assignment of any function to a committee was without prejudice to the authority of the Council to perform the same function.<sup>8</sup>

### **1.10 Duration of Mandate of the Council and the Committee**

The Council and the Committee were mandated to cease to function upon the assumption of the power of government by any political party following the first multi-party general election held after the Referendum.<sup>9</sup>

## **— Section 2 —**

### **RELEVANT CONSTITUTIONAL PROVISIONS**

#### **2.01 Amendments**

Constitutional amendments were enacted to enable the formation and operation of political parties and to restore the fundamental rights which had been removed from the Constitution during one-party rule. Central to the concept of free and fair multi-party elections was the restoration of the right and freedom of expression, of assembly and association.<sup>10</sup>

#### **2.02 Electoral Commission – Establishment**

The Constitution established an Electoral Commission which shall exercise such functions in relation to elections as may be conferred upon it by the Constitution or by an Act of Parliament.

The members of the Electoral Commission were appointed by the President in accordance with an Act of Parliament in that behalf.

A person was not qualified to hold the office of a member of the Electoral Commission if

he was a Minister, a Parliamentary Secretary, a member of the National Assembly or a public officer.

A member of the Electoral Commission was required to vacate his office –

- (a) at the expiration of four years from the date of his appointment; or
- (b) if any circumstances arose that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.<sup>11</sup>

### **2.03 Constituency Boundaries**

The Constitution laid down a minimum number of constituencies (one hundred and forty-one), but provided for the Electoral Commission to review the boundaries of all constituencies at intervals of not less than three nor more than five years, and to alter where necessary the boundaries.<sup>12</sup>

It is to be noted that the Constitution described herein was superseded by a new Constitution which came into effect when the new Government took power in May 1994.

## **— Section 3 —**

### **ELECTION ADMINISTRATION**

#### **3.01 The Electoral Commission**

The Electoral Commission (“the Commission”) shall be appointed with respect to every general election and must consist of such number of persons as the President deems appropriate to appoint. The President must cause a notice of the appointment of the Commission to be published in the Gazette. However, for the first general election (which was held on 17 May 1994) members of the Commission were required to be appointed by the President on the recommendation of the Council.

The Commission is empowered to determine its own procedure.

The Commission may appoint such number of its own committees as it considers necessary for the performance of its functions and may assign to any of such committees any of its functions, and every such committee shall –

- (a) consist of a chairman who must be a member of the Commission and other persons who may or may not be members of the Commission;
- (b) subject to the directions of the Commission have power to determine its own procedure.<sup>13</sup>

#### **3.02 Functions of the Commission**

The Commission is required to exercise general direction and supervision over the conduct

of the general election in respect of which it is appointed and, without prejudice to the generality of such power, it shall have the following further functions –

- (a) to determine the number of constituencies for the purposes of the general election in respect of which the Commission is appointed and to undertake or supervise the demarcation of boundaries of constituencies;
- (b) to organise and direct the registration of voters;
- (c) to devise and establish voters' registers and ballot papers;
- (d) to print, distribute and take charge of ballot papers;
- (e) to approve and procure ballot boxes;
- (f) to establish and operate polling stations;
- (g) to take measures for ensuring that the election is conducted under conditions of complete freedom and fairness;
- (h) to establish security conditions necessary for the conduct of the election;
- (i) to promote through the media and other appropriate and effective means the civic education of the citizens concerning the election; and
- (j) to ensure compliance with the Act and generally to adopt measures necessary to guarantee that the election is free and fair.<sup>14</sup>

### **3.03 Term of Office of Members of the Commission**

A member of the Commission holds office from the date of his appointment to a date occurring 30 days after the publication in the Gazette of the national result of the general election but may sooner resign his office by notice in writing to the President.

All members of the Commission appointed with respect to one general election can be called upon from time to time to exercise the authority of the Commission with respect to the conduct of a by-election to fill a vacancy that may arise before the next general election.<sup>15</sup>

### **3.04 Independence of the Commission**

In discharging the functions of the Commission, the Commission and every individual member thereof must act and strive to be seen to act independently of –

- (a) any public officer;
- (b) any organ of the Government;
- (c) any political party;
- (d) any candidate; or
- (e) any person whatsoever or organisation whatsoever,

but for the purpose only of accountability the Commission and every individual member thereof is answerable, and reports directly to the President on the overall fulfilment of the functions of the Commission.<sup>16</sup>

### **3.05 Funds**

The funds of the Commission consist of such sums as Parliament appropriates for the

purposes of the Commission and such other sums as may otherwise be received and accounted for by the Commission.

The funds of the Commission and all expenditure of the funds shall be in accordance with the directions of the Commission.

The books of account of the Commission may be audited at any time as the Commission may direct by a professional auditor appointed by the Commission.<sup>17</sup>

### **3.06 Legal Representation**

The Commission may instruct the Attorney-General or any legal practitioner to provide legal representation to the Commission in any court proceedings concerning appeals against its decisions on complaints about any aspect of the electoral process, or to provide general legal advice to the Commission.<sup>18</sup>

### **3.07 Publicity**

The Commission is required to establish its own publicity machinery and is free to communicate openly and equally with each political party or any candidate, person or organisation.<sup>19</sup>

### **3.08 Duty to Co-operate with the Commission**

It is the duty of every relevant or competent public officer and public or private entity to co-operate with the Commission in its activities and to contribute towards the success of an election and not to do anything that might hinder such process.

It is the special duty of –

- (a) District Commissioners, in their respective districts, to give the Commission and its officers the support and collaboration deemed by the Commission or its officers to be necessary for the execution of the activities connected with the conduct of an election;
- (b) officers-in-charge of police, in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under the Act.<sup>20</sup>

### **3.09 Election Officers**

The Clerk of Parliament and officers subordinate to him are required to serve as election officers and must be attached to the Commission and act in its service for the conduct of an election.

There may be seconded to the service of the Commission such number of other public officers as the Commission may request by writing to the Secretary to the President and Cabinet and a public officer so seconded shall perform his duties in relation to the conduct of the election solely under the directions of the Commission.

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The Clerk of Parliament shall while in the service of the Commission be designated as the Chief Elections Officer and, as such, he is the chief executive officer of the Commission and must supervise the affairs thereof subject only to the general or special directions of the Commission.<sup>21</sup>

## — Section 4 —

### REGISTRATION OF VOTERS

#### 4.01 Eligibility

Every citizen of Malawi residing in Malawi and who on or before polling day, shall have attained the age of 18 years is eligible to register as a voter in an election.

It is the right and the civic duty of every eligible citizen to present himself for registration as a voter and further he is entitled to verify with the Commission or its officers that he has been registered and to request that any error or omission with respect to his registration be corrected.<sup>22</sup>

#### 4.02 Commission's Duty to Promote Registration

The Commission is required to create the necessary conditions and take all necessary actions for promoting awareness among the citizens of Malawi of the need to register as a voter for the purpose of an election and of the need for their full participation in the election.

A citizen eligible to register as a voter shall be registered only once.

A person shall be registered as a voter in the area where he ordinarily resides or was born or is employed or carries on business.<sup>23</sup>

#### 4.03 Temporary Registration Officers

The Commission may employ temporary staff, on such terms and conditions as it shall determine, as registration officers who shall register voters throughout Malawi.

No person shall be employed as a registration officer with respect to any local area of Malawi, unless –

- (a) he is a citizen of Malawi and has attained the age of 18 years;
- (b) he has attained the minimum educational qualification of Junior Certificate of Education or its equivalent; and
- (c) he has knowledge of the language commonly spoken in the area.

Every registration officer shall, before commencing his duties, receive vocational training in the identification and registration of voters and generally in the requirements of the Act with respect to the registration of voters.

In the performance of their duties, registration officers are under the supervision of the Chief Elections Officer and such of the other election officers as he or the Commission designates for the purpose.<sup>24</sup>

#### **4.04 Registration Centres**

The Commission is required to establish centres throughout every constituency in Malawi as places where voters are to be registered and for this purpose the Commission shall endeavour to adopt the centres established for the registration of voters in the last previously held poll in addition to establishing new centres.

No form of propaganda campaign material or advertisement must be exhibited at a registration centre or within a radius of 100 metres of a registration centre.<sup>25</sup>

#### **4.05 Voters' Registers**

Voters' registers must be in the prescribed form and the Commission must procure sufficient copies thereof for the registration of voters throughout Malawi and for distribution to registration officers at every registration centre and for that purpose may adopt existing voters' registers which shall, as necessary, be updated by registration officers with new registrations.<sup>26</sup>

#### **4.06 Evidence of Eligibility to Vote**

An eligible person wishing to be registered as a voter in an election must in person state that he is not registered at any other registration centre and must present to a registration officer sufficient and cogent proof of his eligibility and may do so by producing –

- (a) a passport, driver's licence, even if expired, tax certificate or marriage certificate, an employment identity card or employment discharge certificate or a birth certificate or similar alternative document of identity; or
- (b) written, verbal or visual testimony of –
  - (i) the chief, a village headman or a registered voter of the area; or
  - (ii) the registration officer.<sup>27</sup>

#### **4.07 Registration Certificate**

Upon a registration officer being satisfied with proof of eligibility of a person to vote, he shall –

- (a) issue to that person a voter's registration certificate in the prescribed form;
- (b) register that person in the voters' register by entering the particulars of that person as prescribed therein.

If a voter's registration certificate issued to a voter is lost, destroyed, defaced, torn or otherwise damaged, the voter shall notify the registration officer or other officer duly authorised in that behalf in writing giving proof thereof, and upon such officer being

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satisfied with such proof he shall issue to the voter a duplicate copy of that voter's original voter's registration certificate with the words "duplicate" clearly marked or printed thereon.<sup>28</sup>

#### **4.08 Updating of Voters' Registers**

In updating a voters' register the registration officer shall do so by –

- (a) adding the names and other prescribed particulars of the voters resulting from new registrations;
- (b) drawing a line, without affecting legibility, over the particulars of the persons who are known to be deceased or who have lost eligibility to vote and indicating in the margin the reasons therefor.

The registration officer making new entries in a voters' register or deleting entries therefrom shall initial every such new entry or deletion.

Upon the registration officer being satisfied with proof of loss of eligibility of a registered voter, he must immediately update the voters' register in accordance with the foregoing procedure.<sup>29</sup>

#### **4.09 Initialling of Pages in Voters' Roll**

In the case of registration in a new voters' register, the registration officer must initial both sides of every page at a point where the registration on the page ends.<sup>30</sup>

#### **4.10 Role of Political Parties**

Every political party contesting an election has the right to monitor the registration of voters and must do so through its designated representatives assigned to a specified registration centre and whose names must be notified in writing to the Commission, and in the absence of such notification by any political party it shall be presumed that such party does not desire to monitor the registration of voters at such registration centre.

The Commission is required to issue to every person designated as a representative a document of identity which shall be in the prescribed form. There may be assigned to one registration centre more than one representative of a political party.

Representatives of political parties have the following rights –

- (a) to be treated with due respect and consideration by all persons administering the registration of voters and by the representatives of other political parties;
- (b) to request and obtain information on activities relating to the registration of voters; and
- (c) to submit, to the Commission, in writing complaints and appeals about any irregularities in the registration of voters.

It is incumbent upon the representatives of political parties in exercising their rights to –

- (a) monitor the registration activities conscientiously and objectively;
- (b) co-operate in order to ensure that the registration activities proceed normally by avoiding unjustified interference in and obstacles to the work of registration officers;
- (c) refrain from submitting complaints or appeals in bad faith or with the purpose of paralysing the registration process; and
- (d) refrain from divulging any information about a voter or prospective voter obtained as a consequence of acting as a representative and which is not relevant to the registration process.

In addition to political parties and their representatives any person eligible to be registered as a voter and any registered voter may submit to the Commission in writing complaints and appeals about any irregularity in the registration of voters.

The Commission shall endeavour to determine every complaint or appeal relating to registration of voters before the polling day and to remedy any confirmed irregularity.<sup>31</sup>

#### **4.11 Period for Registration of Voters**

The period for the registration of voters is determined by the Commission and notified in the Gazette, being a period of not less than 14 days before the first polling day.

At the close of registration, every registration officer must sign off the voters' register assigned to him and must forward it for custody to the Chief Elections Officer or to such other officer as is designated by the Commission for the purpose and must submit to such officer a summary of the total number of voters registered in the area assigned to him.

A voters' register must be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and international observers, and for this purpose the Commission must make copies of voters' registers and post them for inspection at appropriate public places made known to the public.<sup>32</sup>

### **— Section 5 —**

## **PREPARATION FOR ELECTIONS**

### **5.01 Notice of Election**

Whenever a general election or a by-election is to be held, the Commission is required to issue an order, notice of which must be published in the Gazette –

- (a) declaring –
  - (i) in the case of a general election, that an election is to be held in Malawi;
  - (ii) in the case of a by-election or by-elections, the constituency or constituencies in which an election is to be held;

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- (b) appointing the place, date and time for the receipt by the returning officer of the nominations of candidates, in respect of each constituency;
  - (c) appointing the day or days on which a poll shall be taken if a poll becomes necessary in accordance with the Act.

The date appointed for the nominations must not be less than 14 days after the publication of the order.

The period appointed for the poll must commence not less than 14 days after the nomination of candidates.

Upon receipt of a copy of the order, the returning officer for each constituency named in the order must proceed to hold an election in the manner prescribed.<sup>33</sup>

### **5.02 Nomination of Candidates**

On the day or days and at the time or times and place fixed for the nomination of candidates the returning officer must attend in the open court at the place notified to receive the nomination of candidates and shall receive such nomination papers as may be tendered to him, and which appear to him to comply with the Act.

The nomination of every candidate shall –

- (a) be made by means of a nomination paper in the prescribed form;
- (b) be made by at least ten voters registered in the constituency in which the person intends to be a candidate, each of whom must sign the nomination paper;
- (c) be endorsed with the candidate's consent to nomination;
- (d) if the candidate is to stand for, or is to be sponsored by, a political party, specify that fact, together with the name of the political party and the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper in conjunction with him; and
- (e) in the case of an independent candidate, specify the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper in conjunction with him.

Every nominated candidate must produce to the returning officer evidence, satisfactory to the returning officer, identifying him as the person nominated.

Where a nomination paper specifies the political party for which the candidate is running, the nomination paper must be countersigned by a person who is an officer-bearer of the political party concerned and who has authority to certify that the candidate is to stand for that political party.

The fact that subsequent to nomination the name of any person who nominated a candidate is struck off the voters' register shall not invalidate the nomination of the candidate.

No candidate may be nominated for elections in more than one constituency or, in the case of a by-election, while he is a member of the National Assembly.

A voter is not entitled to subscribe to more than one nomination paper.<sup>34</sup>

### **5.03 Procedure for Nominating Candidates**

Every candidate or his election representative must at the time of his nomination deliver to the returning officer –

- (a) a nomination paper completed and executed in the prescribed form;
- (b) evidence, or a statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidate –
  - (i) is a citizen of Malawi and has attained the maximum age required by the Constitution for election to the National Assembly; and
  - (ii) is able to speak and to read the English language well enough to take an active part in the proceedings of the National Assembly;
- (c) evidence that he is registered as a voter in the constituency.

The returning officer must, if the candidate or his election representative so requests, examine the nomination paper and supporting documents of the candidate before they are tendered and advise the candidate or his election representative whether in his opinion they are in order.

The returning officer must, at the earliest opportunity and in any case before the close of the period allowed for nominations, advise the candidate or his election representative of any defect in the candidate's nomination paper or supporting documents and the candidate or his election representative may, before the close of such period, rectify the defect.

Where a nomination paper is delivered in conformity with the Act and is not withdrawn, the candidate is deemed to stand nominated, unless the returning officer is satisfied of the candidate's death or decides that the nomination paper is invalid on one of the following grounds, namely –

- (a) that the description of the candidate is insufficient to identify him;
- (b) that the nomination paper does not comply with the Act;
- (c) that the nomination paper was not tendered within the time prescribed;
- (d) that any supporting document required to accompany the nomination paper has not been lodged with the returning officer; or
- (e) that the evidence to the returning officer identifying the candidate is insufficient.<sup>35</sup>

### **5.04 Rejected Nominations**

If, after the close of the period allowed for nominations but before the polling day, the returning officer is of the opinion that –

- (a) a candidate whose nomination paper has been lodged with him has not been duly

- nominated or is not qualified for election or has obtained nomination by fraud or false pretences;
- (b) any symbol or abbreviation specified in respect of a candidate is indecent or obscene or is too complex or elaborate to be reproduced on a ballot paper or so closely resembles the symbol of any other candidate contesting the election in the constituency concerned or the recognised symbol or abbreviation of any other candidate or of any political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him as to be likely to cause confusion; or
  - (c) where the nomination paper states that a candidate is to stand for or to be sponsored by a political party, there is reason to believe that that fact is not true; or
  - (d) the nomination paper lodged with the returning officer in respect of any candidate is for any other reason not in order; or
  - (e) the deposit was not lodged with a candidate's nomination paper; or
  - (f) a candidate is not qualified for election at that election; or
  - (g) a candidate has been duly nominated for election for another constituency,
- the returning officer must forthwith notify such candidate or his election representative giving the reasons for such opinion, and if so requested by the candidate or his election representative, the returning officer must draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the nomination paper, to the registrar of the High Court for hearing and decision by the High Court at the earliest opportunity; and a copy of the statement must, at the same time, be delivered to the candidate or his election representative and to the Commission.

If no request is made to refer the matter to the High Court, the candidate is deemed not to have been duly nominated.

The High Court may call for further information from the person making the request or from the returning officer.

The High Court shall after determination of the matter direct the returning officer either to accept or to reject the nomination and the returning officer must comply with such direction.

Where any nomination has been referred to the High Court, the nomination proceedings shall be suspended pending determination of the matter.

The returning officer is not to reject any nomination –

- (a) solely on account of any minor variation between the name of any person as it appears on the nomination and as it appears on the voters' register if the returning officer is reasonably satisfied that the variation is due to an error or is without significance;
- (b) any other imperfection in the nomination paper if the returning officer is reasonably satisfied that there has been substantial compliance with the Act.<sup>36</sup>

### **5.05 No Nomination of Candidate**

If at the end of the period allowed for nomination no candidate has been duly nominated for a constituency, the Commission is required to publish by notice in the Gazette, and extend the period for the receipt by the returning officer of nominations to a date not later than seven days before the polling day.<sup>37</sup>

### **5.06 Procedure for Uncontested Election**

If at the end of the period allowed for nomination there is only one candidate duly nominated in a constituency, the returning officer is required to publicly declare that candidate to be elected and shall immediately thereafter inform the Commission of the name of the elected candidate and the constituency for which he has been elected. Such candidate shall thereupon be a member of the National Assembly.<sup>38</sup>

### **5.07 Procedure for Contested Election**

When two or more persons have been duly nominated as candidates for election in any constituency, the returning officer in such constituency must, as soon as practicable after the close of the period for nomination, publicly declare and give public notice that a poll is to be taken stating –

- (a) the names of the candidates in alphabetical order of surnames;
- (b) the day or days and the times, as declared by the Commission on which the poll is to take place; and
- (c) the location of the polling station or stations.

The returning officer may, with the consent of the Commission, alter the provisions of a public notice for the purpose of fulfilling the requirements of the Act and any such alteration must be published in the same matter as the notice.<sup>39</sup>

### **5.08 Deposit on Nomination**

At the same time as the nomination paper for a candidate is lodged, there shall be deposited with the returning officer by or on behalf of the person nominated, such sum as may be fixed by the Commission.

If a poll takes place for the constituency concerned, the sum deposited is refundable to the payee, whether the candidate in respect of whom the sum was deposited is or is not elected in the poll, unless the number of valid votes cast for an unsuccessful candidate is less than five per cent of the total valid votes cast in the constituency in which case such sum shall be paid into the Consolidated Fund.

If a poll for the constituency concerned does not take place, the sum deposited must be refunded to the payee.<sup>40</sup>

### **5.09 Withdrawal of a Candidate**

A duly nominated candidate for election for a constituency may withdraw his nomination at any time before the polling day.

A withdrawal of a candidate must be effected by means of a written notification to the returning officer, signed by the candidate personally, and the returning officer must notify the Commission in writing.

Where a candidate has withdrawn his nomination pursuant to the provisions of the Act, the sum deposited by or on his behalf must be forfeited and paid into the Consolidated Fund.

In the event of a candidate withdrawing his nomination, the returning officer must take such steps as are reasonably practicable to ensure that –

- (a) the withdrawal is brought to the attention of voters in the constituency; and
- (b) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.<sup>41</sup>

### **5.10 Death of Candidate**

If the returning officer of a constituency is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he must stop all proceedings relating to the election in that constituency and forthwith notify the Commission of that fact.

Where –

- (a) the Commission is satisfied that a duly nominated candidate for election for a constituency died before the poll commenced or, if the poll has commenced, before the close thereof;
- (b) the proceedings relating to an election for a constituency have been stopped as a result of the death of a candidate,

the Commission shall, so far as concerns that constituency, declare that all proceedings relating to the election in that constituency are void and that all proceedings relating to that election must be commenced afresh in the same manner as if a vacancy had occurred. No fresh nomination is necessary in the case of a candidate who was duly nominated at the time when the proceedings were declared void if such candidate or his election representative notifies the returning officer of the constituency in writing of his intention to remain a candidate.<sup>42</sup>

## **— Section 6 —**

### **CAMPAIGNING**

#### **6.01 Right to Campaign**

All political parties have the right to campaign in an election.

Campaigning by or in the name of any political party must not be conducted in any public

place unless the political party has notified the District Commissioner in writing, with a copy of such notification being sent to the officer-in-charge of police.

The District Commissioner is required to stamp every notification he has received with his official stamp showing the date the notification was received by him.

Where two or more political parties have given notification to hold a public meeting at the same venue, the political party whose notification was first received by the District Commissioner shall be the party entitled to hold the public meeting at such venue.<sup>43</sup>

### **6.02 Period of Campaigning and Treatment of Political Parties**

For the purposes of the Act the period of campaigning in public by every political party is two months closing 48 hours before the opening of the poll on the first polling day. In the case of the first general election (which was held 17 May 1994) such period shall be of any duration closing 48 hours before the opening of the poll on the first polling day.

Every public officer and public entity or authority must give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely.

Every political party and every representative, member or supporter thereof is entitled to enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign and no person shall, during or after the period of campaigning, be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced, published or possessed while campaigning in the election.

Except the duty to inform the District Commissioner in writing, every political party and any representative, member or supporter thereof shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in any election.

Notwithstanding guarantees of freedom of expression, information and assembly under the Act, no person shall in campaigning in an election use language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrect, hate, violence or war.

The Commission may prescribe a code of conduct to be complied with by every political party in conducting its campaign in an election.

No person shall hold a campaign meeting in or within the premises of –

- (a) military units or police stations;
- (b) public institutions and work places during normal working hours;
- (c) educational institutions during periods of classes.<sup>44</sup>

### **6.03 News Broadcasts and Reports**

Every political party is entitled to have the substance of its campaign propaganda reported

on radio news broadcasts of the Malawi Broadcasting Corporation and in any newspaper in circulation in Malawi.

In the case of news broadcasts by the Malawi Broadcasting Corporation –

- (a) the content of the news must be professionally determined by the Malawi Broadcasting Corporation;
- (b) the Malawi Broadcasting Corporation must maintain neutrality in the manner of reporting the news of the campaign propaganda of political parties and generally in its commentaries;
- (c) the Commission is required to monitor such news broadcasts and shall ensure equal news coverage of the campaign by all political parties;
- (d) no political party or candidate is entitled to make commercial advertisement for its campaign.

The Commission may, by arrangements with the Malawi Broadcasting Corporation, allocate time on the radio during which political parties may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every political party.

For the purposes of these provisions the term “campaign propaganda” means any activity, statement or any other form of expression aiming directly or indirectly at promoting votes for any candidate or political party contesting an election.<sup>45</sup>

#### **6.04 Pamphlets, Books and Campaign Posters**

During the campaign period any political party may publish campaign materials in the form of books, booklets, pamphlets, leaflets, magazines or newspapers and shall, in any such publication, specify particulars sufficient to identify the political party.

The District Commissioner shall designate places or spaces in parts of his district on which may be posted or affixed campaign materials of political parties and every political party is entitled to equal access to such place or space.<sup>46</sup>

#### **6.05 Campaign Financing**

Every political party may, for the purpose of financing its campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organisation or other private organisation in or outside Malawi.<sup>47</sup>

### **— Section 7 —**

#### **POLLING STATIONS AND POLLING**

##### **7.01 Selection of Polling Stations**

The Commission shall establish polling stations throughout the Republic and there shall be at least one polling station for every registration centre established.

All polling stations must be established and located in public buildings, including schools, community or social halls, administrative offices of the Government or local authorities, but not –

- (a) at a military unit or police station;
- (b) in a residential building;
- (c) in a building occupied by a political party;
- (d) in premises where alcoholic drinks are ordinarily sold or consumed;
- (e) places of worship or dedication to worship; and
- (f) hospitals or other health centres.

The Commission shall before the polling day, publish in the Gazette and in more than one issue of a newspaper in general circulation in Malawi and by radio announcements and by any other appropriate means the names of all places throughout Malawi at which polling stations have been established.<sup>48</sup>

### **7.02 Polling Station Officers**

The Commission is required to appoint polling station officers in its service whose duty is to administer the proceedings at polling stations, including more particularly the casting of votes, and to count the votes cast at polling stations.

The Commission shall post at every polling station at least five polling station officers one of whom the Commission shall designate as the presiding officer for that polling station and at least one of whom must be a person able to speak the language commonly spoken in the area of the polling station.

Polling station officers may be appointed from amongst persons who served as registration officers and every person appointed as a polling station officer shall receive vocational training in his duties.

Every polling station officer shall, on polling day, report for work at the polling station not later than 30 minutes before the opening time for the casting of votes at that polling station and at any given time of the day there shall be a majority of polling station officers attending to their business at the polling station.

The Commission shall ensure, in due time, that polling station officers at every polling station are supplied with all necessary items, namely –

- (a) an authenticated copy of the voters' register of voters registered at the centre served by the polling station;
- (b) the ballot papers and accompanying envelopes for use by voters in casting their votes;
- (c) the ballot boxes;
- (d) the seals, sealing wax and envelopes for the votes;
- (e) indelible ink;
- (f) record sheets for the record required in respect of the polling process;
- (g) a special container to be positioned in the polling booth into which a voter shall deposit the ballot paper or papers he has discarded;

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- (h) a lamp or lamps to be lit and used for counting votes at the close of the poll;
  - (i) a log book in which formal complaints are recorded.<sup>49</sup>

### **7.03 Security of Work Items at Polling Station**

Presiding officers at polling stations and, in general, the Commission, are responsible for creating and guaranteeing all necessary and indispensable conditions for the custody, conservation, security and inviolability of the items required for the polling station, including more particularly the ballot papers and ballot boxes.<sup>50</sup>

### **7.04 Monitoring of Voting by Political Parties**

Every political party has the right to monitor the voting process at polling stations and must do so through its designated representatives who must be notified to the Commission in writing specifying their names and polling stations to which they are to be assigned and in the absence of such notification by any political party, it is presumed that the political party does not wish to monitor the voting process at that polling station.

The Commission is required to issue to every person designated as a representative of a political party a document of identity in the prescribed form.

Representatives of political parties have –

- (a) the following rights –
  - (i) to be present at the polling stations and to occupy the nearest seats or positions to the polling station officers so as to be able to monitor all the operations relating to the casting and counting of votes;
  - (ii) to verify and inspect before the beginning of the casting of the votes, the ballot boxes and the polling booths;
  - (iii) to request and obtain from the polling station officers any information which they consider necessary relating to the voting process and the counting of the votes;
  - (iv) to be consulted about any question raised on the operation of the polling station whether during the casting or the counting of the votes; and
  - (v) to consult the voters' registers at any time;
- (b) the following duties –
  - (i) to act conscientiously and objectively in the exercise of their rights;
  - (ii) to co-operate with polling station officers in the operations relating to the casting and counting of votes;
  - (iii) to refrain from interfering unjustifiably and in bad faith with the duties of the polling station officers so as not to disturb the process of casting and counting the votes; and
  - (iv) to maintain the secrecy of the ballot.<sup>51</sup>

### **7.05 Polling Procedure**

The right of a person to vote in the general election must be exercised individually by him

and he is required to be physically present. Voting is by secret ballot. A voter is entitled to cast his vote only once and one person has one vote.

A person shall be allowed to exercise his right to vote at a polling station located at the registration centre where he is registered.

If it is not possible for a person to vote at a polling station located at the registration centre where he is registered, the registration officer of that centre or other duly authorised officer may, on the request of such person, grant him written authorisation in the prescribed form to vote at a polling station located in the place where he will be present on polling day and in that case the polling station officers at such other polling station must record in the manner prescribed by the Commission instructions in writing his name, the number of his voter's registration certificate and the place of his registration.

The registration officer or other duly authorised officer may at his sole discretion refuse to grant the request.

The Commission must arrange for the printing in sufficient quantities of distinctly identifiable ballot papers for –

- (a) each candidate for election as a member of Parliament; and
- (b) each candidate for election as President,

on which shall be printed clearly and legibly his name or an abbreviation thereof and his election symbol or the election symbol of his political party and such other particulars as the Commission may determine to identify him distinctly from other candidates. The Commission is required to procure specially printed envelopes for use by voters in casting their votes.

The Commission is required to establish one voting booth or more at each polling station and a voting booth must be constructed in such a way as to screen a voter from observation when he is selecting and discarding ballot papers according to his choice consistent with the doctrine of secret ballot.

The Commission is required to procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.

On the polling day the presiding officer of a polling station shall position in respect of each voting booth at that polling station one ballot box in such a way when voters cast their votes in the ballot box they shall do so in the full view of the polling station officers and other officials present thereat.

All persons in paid employment, including those working by shift, shall have the right to be released for the necessary time to exercise their right to vote.

On the polling day voting begins at 6 o'clock in the morning and closes at 6 o'clock in the evening, but before voting begins the presiding officer, together with the other polling station officers and representatives of political parties, must verify that there are no

irregularities with the voting booth and the working documents of the polling station officers and, shall, in particular, exhibit in front of all present the ballot box to verify that it is empty after which the ballot box must be closed and sealed.

The first persons to be allowed to vote are the presiding officer, the other polling station officers, representatives of political parties and all officers responsible for ensuring order and security at the polling station after whom all other persons shall vote according to the order of their arrival at the polling station and, to this end, they must form a line; but subject thereto, the presiding officer must exercise general powers for keeping order at the polling station and for regulating the number of persons to be admitted to vote at any time and may, if circumstances so require, use his discretion to allow certain persons to vote inconsistently with the order of priority required by this provision.<sup>52</sup>

#### **7.06 Adjournment of Polls in Certain Cases**

Voting at any polling station may be adjourned to another day to be fixed by the Commission if –

- (a) the polling station officers are unable to assemble at that polling station in accordance with the Act;
- (b) there occurs some commotion which causes voting to be interrupted for more than three hours;
- (c) in the area where the polling station is located there has occurred some public disaster or a serious disturbance of public order, not being the death of any person, which affects the voting.

Where voting has been adjourned to another day –

- (a) the hours of voting on that day shall be the same as for the original day;
- (b) the voting process must be conducted afresh and not as continuing from the original day; and
- (c) the votes cast on the original day shall be null and void and shall be classified as such in the records of that polling station.<sup>53</sup>

#### **7.07 Manner of Casting the Vote**

For a person to be allowed to vote he must first present to the polling station officers his voter's registration certificate and must not yet have exercised his right to vote.

To be able to cast a vote at any polling station, a voter must present himself to the polling station officers at the first desk as he approaches the polling station and hand to them his voter's registration certificate whereupon the polling station officers must proceed to verify his identity by examining the voters' register.

If the polling station officers are satisfied with the identity of a voter in accordance with the above provision, they shall –

- (a) mark his voter's registration certificate and record his name and registration number and hand back the certificate to him;
- (b) dip the right index finger of the voter in indelible ink provided for the purpose to the polling station officers after which the presiding officer or other polling station officer authorised in that behalf shall hand to the voter one ballot paper for each candidate in the constituency for election as member of Parliament and one specially printed envelope for use by the voter and direct the voter to the voting booth for the poll for election of a member of Parliament.

The voter shall, while in the voting booth, enclose in the envelope handed to him with the ballot papers, the ballot paper corresponding to the candidate whom he favours for election as member of Parliament for the constituency and discard the other ballot papers into a container positioned in the voting booth and must then emerge from the voting booth and cast, in full view of the polling station officers and other officials present, the envelope in the ballot box positioned thereat for the poll for election of a member of Parliament.

After a voter has cast his vote with respect to the election of a member of Parliament, he shall immediately be led to the next desk of polling station officers who, on verifying that the voter has had his right index finger dipped in indelible ink, shall dip the voter's left index finger in indelible ink and hand to him one ballot paper for each candidate for election to the office of President and one specially printed envelope for use by the voter and then direct the voter to the voting booth for the poll for election to the office of President.

The voter shall, while in the voting booth for the poll for election to the office of President, enclose in the envelope handed to him with the ballot papers, the ballot paper corresponding to the candidate whom he favours for election to the office of President and discard the other ballot papers into a container positioned in the voting booth and shall then emerge from the voting booth and cast, in full view of the polling station officers and other officials present, the envelope in the ballot box positioned thereat for the poll for election to the office of President.<sup>54</sup>

### **7.08 Voting by Blind and Disabled Persons**

A voter who is blind or is affected by disease or other physical disability may vote accompanied by another registered voter of his own choice or, failing such voter, by a polling station officer who shall assist such person casting his vote and shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person.<sup>55</sup>

### **7.09 Null and Void Votes**

A vote cast is null and void if –

- (a) the ballot paper has been torn into two or more parts; or
- (b) has been classified as such where the polling has been adjourned;
- (c) the envelope used for casting the vote contains two or more ballot papers.

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A null and void vote shall not be regarded as valid and must not be counted in determining the results of the elections.<sup>56</sup>

### **7.10 Complaints**

In addition to representatives of political parties, any voter present at a polling station may raise doubts and present in writing complaints relating to the voting at the polling station and shall have the right to obtain information from the polling station officers and from relevant documents available at the polling station.

No polling station officer shall refuse to receive a complaint presented to him and shall initial every such presentation and annex it as part of the official record of the polling station.

Any presentation received by polling station officers must be deliberated upon among, and be resolved by, the polling station officers who may, if necessary in their opinion, postpone such deliberation or resolution until the end of the voting process to enable the process to proceed.<sup>57</sup>

## **— Section 8 —**

### **DETERMINATION OF RESULTS OF THE ELECTIONS**

#### **8.01 Unused Ballot Papers**

At the close of the poll at any polling station, the presiding officer must proceed by first collecting together and separately all unused ballot papers and placing them in a separate envelope provided to him for the purpose and then sealing the envelope and initialling or stamping it over the sealed area.<sup>58</sup>

#### **8.02 Classification of Votes Cast**

For the purposes of determining the results of the elections at a polling station and, in particular, in counting the votes thereat, the votes cast at a polling station shall be separately classified into –

- (a) null and void votes;
- (b) votes for each of the candidates for election as members of Parliament;
- (c) votes for each of the candidates for election to the office of President.<sup>59</sup>

#### **8.03 Counting of the Votes**

After the close of the poll at any polling station, and only thereafter, the presiding officer shall, in the presence of other polling station officers and representatives of political parties if any be present, open the ballot box and order the counting of the votes to proceed separately according to procedure entailing the polling station officers –

- (a) picking out of the ballot box one envelope at a time and then opening the envelope and displaying the ballot paper or papers to all present and announcing aloud the classification of the vote;
- (b) recording on a sheet of paper provided to the polling station officers for the purpose showing the classification of votes, the votes cast for each classification;
- (c) displaying the already announced ballot papers and separating them into lots corresponding to each classification; and
- (d) announcing, through the presiding officer, the number of votes cast at the polling station under each classification.

The presiding officer shall cause to be prepared by the polling station officers –

- (a) a record of the entire polling process at his polling station containing –
  - (i) the full particulars of the polling station officers and representatives of political parties;
  - (ii) the total number of voters;
  - (iii) the total number of votes for or under each classification of votes;
  - (iv) the number of unused ballot papers;
  - (v) the number of ballot papers which have been the subject of complaints, if any;
  - (vi) the discrepancies, if any, between votes counted and the number of voters;
  - (vii) the number of complaints and responses thereto and decisions taken thereon by the polling station officers;
  - (viii) any other occurrence which the polling station officers consider to be important to record; and
- (b) a brief summary of the final result,  
and such record and summary shall be legibly signed by the presiding officer and each of the other polling station officers and, if any be present, at least one representative of each political party.

Representatives of political parties at a polling station shall be entitled to a copy of the duly signed summary of the final result of the poll at that polling station.

The presiding officer shall post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner of his district under conditions of absolute security against loss, tampering or interference –

- (a) the record prepared as required;
- (b) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;
- (c) all unused ballot papers; and
- (d) all voters' registers and other work items provided to that polling station.<sup>60</sup>

## 8.04 Compilation of the Results

On receipt of records from polling stations, the District Commissioner or an officer of the Commission duly authorised in that behalf shall, at the office of the District Commissioner, compile the results of the elections in his district on the basis of the duly signed summaries received with such records and shall prepare, on the appropriate sheets in the prescribed form provided for the purpose by the Commission, a record in respect of each constituency in the district and also in respect of the entire district showing –

- (a) the total number of persons who registered as voters;
- (b) the total number of persons who voted;
- (c) the total number of votes for or under each classification of votes;
- (d) the discrepancies, if any, between the votes counted and the number of persons who voted; and
- (e) the complaints, if any, received by him and his decision thereon.

Representatives of political parties duly designated for the purpose are entitled to observe the entire procedure followed at the office of the District Commissioner in compiling the district results of the elections.

The record must be legibly signed by the District Commissioner or other officer supervising the compilation thereof and, if any be present, by at least one representative of a political party which shall in addition, be entitled to receive a copy of the record.

The District Commissioner or an officer of the Commission duly authorised in that behalf shall publicly announce the result of the election in each constituency and in the entire district.

The District Commissioner or a duly authorised officer of the Commission must, with all dispatch, deliver to the Chief Elections Officer under conditions of absolute security against loss, tampering or interference –

- (a) the record prepared as required;
- (b) all items received from all polling stations in the district concerned.

The Commission shall determine and publish the national result of a general election based on the records delivered to it from the districts and polling stations.

The determination of the national result of a general election must begin immediately after the Commission has received records from all districts and shall continue uninterrupted until concluded.

If a record from any district or other element necessary for the continuation and conclusion of the determination of the national result of the election is missing, the Chairman of the Commission shall take necessary steps to rectify the situation and may, in such case, suspend the determination for a period not exceeding twenty-four hours.

Representatives of political parties designated in writing to the Commission are entitled to observe the determination of the national result of the election.

In any election the candidate who has obtained a majority of the votes at the poll shall be declared by the Commission to have been duly elected.

At the beginning of determining the national result of a general election, the Commission is required to take a decision on any matter which has been a subject of a complaint and must examine the votes which have been classified as null and void and may affirm or correct the determination thereof at the polling stations and at the offices of District Commissioners but without prejudice to the right of appeal.

The Commission shall summarise its determination of national result of a general election in a written record indicating –

- (a) the national result of the election as determined;
  - (b) the complaints and responses thereto and the decisions taken on them,
- and the Chairman of the Commission shall legibly seal the national result of the election by signing the summary and every political party is entitled to receive a signed copy of the summary.<sup>61</sup>

### **8.05 Publication of the Results**

The Commission shall publish in the Gazette and by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi the national result of an election within eight days from the last polling day and not later than 48 hours from the conclusion of the determination thereof and shall, in such publication, specify –

- (a) the total number of voters registered for the election;
- (b) the total number of voters who voted;
- (c) the total number of null and void votes; and
- (d) the total number of valid votes cast for each classification of votes.<sup>62</sup>

## **— Section 9 —**

### **ELECTION PETITION**

#### **9.01 Undue Election**

A complaint alleging an undue return or an undue election of a person as a member of the National Assembly or to the office of President by reason of irregularity or any other cause whatsoever must be presented by way of petition directly to the High Court within 48 hours, including Saturday, Sunday and a public holiday, of the declaration of the result of the election in the name of the person –

- (a) claiming to have had a right to be elected at that election; or
- (b) alleging himself to have been a candidate at such election.

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In proceedings with respect to a petition under the foregoing provisions, the Commission shall be joined as a respondent.

If, on the hearing of a petition presented under the provisions set out above, the High Court makes an order declaring –

- (a) that the member of the National Assembly or the President, as the case may be, was duly elected, such election shall be and remain valid as if no petition had been presented against his election; or
- (b) that the member of the National Assembly or the President, as the case may be, was not duly elected, the Registrar of the High Court must forthwith give notice of that fact to the Commission which shall publish a notice in the Gazette stating the effect of the order of the High Court.

Pursuant to an order of the High Court declaring that the member of the National Assembly or the President, as the case may be, was not duly elected, a fresh election for the seat of the member of the National Assembly or to the office of President, as the case may be, shall be held in accordance with the Act.

A declaration by the High Court shall not invalidate anything done by the President before that declaration.<sup>63</sup>

## **9.02 Complaints**

Any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved at a lower level of authority, must be examined and decided on by the Commission which must take necessary action to correct the irregularity and the effects thereof.

An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal must be made by way of a petition, supported by affidavits of evidence, which must clearly specify the declaration the High Court is being requested to make by order.

On hearing a petition, the High Court –

- (a) shall make such order or orders as it thinks fit;
- (b) in its absolute discretion, may or may not condemn any party to pay cost in accordance with its own assessment of the merits of the complaint.

An order of the High Court shall not declare an election or the election of any candidate void except on the following grounds which are proved to the satisfaction of the court –

- (a) that voters were corruptly influenced in their voting contrary to any provision of the Act; or had their ballot papers improperly rejected, or voted more than once;
- (b) that persons not entitled to them were improperly granted ballot papers; or
- (c) that persons entitled to them were improperly refused ballot papers,

provided that the court must not declare an election void if it is satisfied that the number of votes involved under (a), (b) or (c) above could not have affected the result of the election;

- (d) non-compliance with the Act in the conduct of the election – however if the court is satisfied that any failure to comply with the Act did not affect the result of the election, it shall not declare the election void;
- (e) that the candidate was at the time of his election a person not qualified for election or that he was not properly nominated, or that a duly qualified candidate had his nomination improperly rejected by the returning officer.

The court has power to direct scrutiny and recount of votes if it is satisfied, during proceedings on an election petition, that such scrutiny and recount are desirable.

At the conclusion of the trial of an election petition the court must determine whether the member whose nomination or election is complained of, or any and what person was duly nominated or elected, or whether the election was void, and must report such determination to the Commission.

Upon such report being given such determination is final.<sup>64</sup>

## — Section 10 —

### OFFENCES

#### 10.01 Offences

A person who –

- (a) in relation to registration of voters –
  - (i) obtains his registration by giving false information;
  - (ii) gives false information to obtain his registration or the registration of another person;
  - (iii) obtains registration in more than one registration area;
  - (iv) registers another person knowing that that other person is not eligible for registration;
  - (v) prevents the registration of another person knowing that that person is eligible for registration;
  - (vi) having the authority to do so, does not delete a registration which he knows to be incorrect;
  - (vii) falsifies a register;
  - (viii) with fraudulent intent, modifies or substitutes a voter's registration certificate;
  - (ix) through violence, threat or fraudulent intent, prevents the registration of another person;
  - (x) knowingly obstructs the detection of incorrect registration or the verification of voters' rolls;

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- (b) in relation to campaigning for elections –
- (i) holds a public meeting without notifying the District Commissioner thereof in writing;
  - (ii) prevents the holding, or interrupts the proceedings of a public meeting;
  - (iii) denies any political party equal treatment with any other political party;
  - (iv) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in an authorised place or space or superimposes thereon any other material concealing the earlier material;
  - (v) is entrusted, by virtue of his office or functions, with displaying or depositing in an authorised place or space any campaign material, and fails to display or deposit such campaign material or misplaces, steals, removes or destroys such material;
  - (vi) contravenes the provision of the Act which prohibits inflammatory language, etc, during an election campaign;
  - (vii) because another person attended or did not attend any campaign meeting, directly or indirectly, dismisses that other person from any employment or other gainful occupation or prevents or threatens to prevent that other person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to that other person;
- (c) in relation to voting –
- (i) not being otherwise authorised to be present or not being a registered voter, knowingly presents himself at a polling station;
  - (ii) knowing that he is not eligible to vote, casts a vote at any polling station;
  - (iii) fraudulently uses the identity of another person in order to exercise the right to vote;
  - (iv) consciously allows the right to vote to be exercised by a person who does not have that right;
  - (v) votes more than once;
  - (vi) accompanying a blind or a disabled person to vote, fraudulently and faithlessly expresses a vote not according to the wish of that person;
  - (vii) within a radius of 100 metres of a polling station, reveals his vote or procures another person by force or deceit to reveal that other person's vote;
  - (viii) uses or threatens violence or uses false information or other fraudulent means to coerce or induce another person to vote for or against a particular candidate or a candidate of a particular political party or to abstain from voting;
  - (ix) being a public officer, uses his office to coerce or induce another person to vote for or against a particular political party or candidate or abstain from voting;
  - (x) directly or indirectly, dismisses or threatens to dismiss another person from any employment or other gainful occupation or prevents or threatens to prevent another person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to another person in order to induce that other person to vote for a particular candidate or a candidate of a particular political party or because that other person voted for or did not vote for a particular candidate or a
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- candidate of a particular political party or because that other person abstained from voting;
- (xi) being a presiding officer of a polling station, fails to display a ballot box in accordance with the requirements of the Act;
  - (xii) illicitly introduces ballot papers in a ballot box before, during or after the voting;
  - (xiii) fraudulently takes possession of or conceals a ballot box with uncounted ballot papers or removes an uncounted ballot paper from a ballot box;
  - (xiv) being a polling station officer, purposely neglects his duty with a view to occasioning an irregularity;
  - (xv) being a polling station officer, unjustifiably refuses to receive a complaint, or a response to a complaint about the proceedings at his polling station or to examine and seek to resolve such a complaint;
  - (xvi) disturbs the regular functioning of a polling station;
  - (xvii) refuses to leave a polling station after being asked to do so by a polling station officer;
  - (xviii) being an officer-in-charge of police requested to assign a police officer to keep order at a polling station, fails, without justification, to do so within a reasonable time;
  - (xix) being a police officer assigned to keep order at a polling station wilfully neglects his duties;
- (d) uses or threatens to use any force or restraint to induce or compel another person to sign or refrain from signing any nomination paper;
  - (e) in any manner, fraudulently spoils, substitutes, conceals, destroys, amends or falsifies any document relating to the election;
  - (f) in bad faith, submits a complaint, or a response to a complaint or challenges or questions the decisions thereon by a competent person or body; and
  - (g) without justification neglects to fulfil obligations imposed on him by or under the Act, is guilty of an offence.<sup>65</sup>

### **10.02 Maintenance of Secrecy**

Every election officer, candidate, election representative of a political party or other person in attendance at a polling station must maintain and aid in maintaining the secrecy of the voting at such station, and must not communicate, except for some purpose authorised by law, to any person any information as to the name of any voter who has or has not applied for any ballot paper or voted at that station; and no such officer, candidate, representative or other person shall interfere with a voter after he has received a ballot paper and before he has placed a ballot paper in a ballot box.

No person, other than a person aiding a blind or an incapacitated voter in accordance with the Act, shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted.

Any person who contravenes the foregoing provisions is guilty of an offence.<sup>66</sup>

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— *Section 11* —

**INTERNATIONAL OBSERVATION**

**11.01 Scope of International Observation**

International observation is defined to mean the verification of the various stages of the elections by international organisations, non-governmental organisations, foreign governments and foreign personalities duly recognised for the purpose.

International observation consists of the following activities –

- (a) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with the Act;
- (b) to verify and monitor the impartiality and legality of the decisions taken by the Commission and its officers in settling disputes;
- (c) to verify and monitor the registration of voters;
- (d) to observe the course of the campaigning for elections;
- (e) to verify and monitor the voting process;
- (f) to verify and monitor the determination of the results of the elections at all stages of determination;
- (g) to observe access to and the use of the media.

Any irregularities noted by international observers must be reported to the Commission or to the competent officers of the Commission and the Commission or such officers of the Commission shall examine the activities reported as irregularities and shall, where the irregularities are confirmed, take corrective measures necessary to bring the elections into conformity with the Act.<sup>67</sup>

**11.02 Invitation of International Observers**

The Commission may send invitations for international observation and may do so on its own initiative or on request by a political party or by any government, organisation or person competent to undertake international observation.

International observation begins with the appointment of the Commission and ends with the determination of the national result of the election or the settlement thereafter of all election disputes.

It is the duty of the Commission, every officer thereof and every competent public officer or other competent authority in Malawi to co-operate with international observers in their role and to offer to them the guarantees and other facilities necessary to fulfil their role.<sup>68</sup>

**11.03 Categories of Observers**

For the purposes of the Act, international observers are categorised as follows –

- (a) observers from the United Nations Organisation and its agencies, the Organisation of

- African Unity and its agencies, the Commonwealth and other international organisations;
- (b) observers from non-governmental organisations constituted and operating in any foreign country;
  - (c) observers from foreign governments; and
  - (d) individual observers.

A person is not recognised as an international observer unless –

- (a) in the case of the first three categories specified, he has been designated by the relevant organisation or foreign government in writing to the Commission disclosing his particulars and credentials;
- (b) in the case of the category of individual observers, he is a person of recognised international experience and prestige.

Recognition of international observers on arrival in Malawi shall be granted by the Commission which, for that purpose, shall –

- (a) establish adequate administrative procedures for the proper and timely recognition of the observers;
- (b) devise an identity card for each category of international observers and issue to every recognised observer the card corresponding to his category;
- (c) devise a common and easily identifiable badge for all international observers and issue the badge to every recognised international observer.

Every international observer recognised under the Act shall, while exercising his functions, use the identity card and badge issued to him.<sup>69</sup>

#### **11.04 Right of International Observers**

International observers in Malawi have the right –

- (a) to obtain a multiple entry visa to enter Malawi for the duration of the period of international observation;
- (b) to have unimpeded access to all election events and to observe all aspects of the civic education programmes, the registration of voters, the nomination of candidates, the campaign, the voting and the counting of votes at all stages;
- (c) to enjoy freedom of circulation throughout Malawi;
- (d) to seek and obtain information on official organs involved in the conduct of an election and regarding the election itself;
- (e) to communicate freely with any political party and with any organisation or person;
- (f) to have access to information transmitted by or to the Commission and its officers;
- (g) to have access to complaints and responses about any occurrence or matter relating to the conduct of elections;
- (h) to open offices within Malawi for the performance of their functions;
- (i) to communicate any specific concerns they may have to members and officers of the Commission; and
- (j) to communicate to the local and international media.<sup>70</sup>

### 11.05 Obligations of International Observers

International observers have the following obligations –

- (a) to exercise their role with impartiality, independence and objectivity;
- (b) to respect the Constitution and the laws of Malawi;
- (c) not to interfere in, or to impede, the normal course of the election;
- (d) to maintain the secrecy of the ballot;
- (e) to provide to the Commission copies of written information and statements which they have produced; and
- (f) to return the identity cards, the badge and any other identification material issued to them by the Commission after the end of their mission as observers.

The Commission may revoke the accreditation of any international observer who persistently violates the obligations laid down in the Act and thereupon his status as an international observer ceases.<sup>71</sup>

### 11.06 Position of Diplomats

Diplomats accredited to Malawi who are designated and recognised as international observers shall exercise their functions as such international observers without prejudice to their status and positions as diplomats.<sup>72</sup>

### 11.07 Joint Operation

International observers may operate separately or jointly with other international observers of the same or different categories.<sup>73</sup>

## NOTES

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|---|-----------------------------------|
| 1. National Consultative Council Act, see sections 3 and 4            | 14. Ibid., see section 5          |
| 2. Ibid., see section 5   | 15. Ibid., see section 7          |
| 3. Ibid., see sections 6 and 7  | 16. Ibid., see section 8          |
| 4. Ibid., see section 4   | 17. Ibid., see section 9          |
| 5. Ibid., see section 5   | 18. Ibid., see section 11         |
| 6. Ibid., see section 13  | 19. Ibid., see section 13         |
| 7. Ibid., see section 17  | 20. Ibid., see section 14         |
| 8. Ibid., see section 19  | 21. Ibid., see section 6          |
| 9. Ibid., see section 21  | 22. Ibid., see sections 15 and 16 |
| 10. Constitution (Amendment) (No. 3) Act 1993, see sections 6J and 6K | 23. Ibid., see sections 17 and 19 |
| 11. See section 30 of the Constitution as amended                     | 24. Ibid., see section 20         |
| 12. See section 31 of the Constitution as amended                     | 25. Ibid., see section 21         |
| 13. Parliamentary and Presidential Elections Act, see section 4       | 26. Ibid., see section 22         |
|   | 27. Ibid., see section 23         |
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31. Ibid., see sections 27 and 28
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66. Ibid., see section 116
67. Ibid., see sections 101 and 102
68. Ibid., see sections 103-105
69. Ibid., see sections 106-108
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## INTRODUCTION

Mozambique did not become a Commonwealth member until November 1995, but, under a special programme of assistance by the Commonwealth, that country received limited technical assistance on electoral matters between 1991 and 1994.

The transition from a one-party to a multi-party system, culminating in the first multi-party elections in October 1994 threw up some interesting electoral structures which are worth a brief examination in this compilation.

A new Constitution came into force in 1990. The Peace Agreement which ended the Mozambique civil war provided for multi-party election with United Nations assistance.

A new Electoral Law came into force in 1993 (referred to herein as “the Act”).

The basic legal framework which was laid down to govern the first multi-party elections – presidential and National Assembly – will be presented herein.

### — *Section 1* —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### **1.01 The Franchise**

All citizens have the right and the duty to participate in the process of extending and consolidating democracy at all levels of State and society.

Citizens 18 years of age and over shall have the right to vote and to be elected to office, with the exception of those legally deprived of this right.

The right to vote is personal and constitutes a civic duty.<sup>1</sup>

##### **1.02 Right to Form Political Parties**

All citizens shall have freedom to form and to participate in political parties. Party membership shall be voluntary, and shall derive from the freedom of citizens to associate on the basis of the same political ideals.<sup>2</sup>

##### **1.03 Participation in Political Life of the State**

The Mozambican people have the right to exercise political power through electing their representatives by universal, direct, secret and periodic suffrage, through referenda on major

national issues, and through permanent democratic participation by citizens in the affairs of the nation.<sup>3</sup>

#### **1.04 Political Parties**

Political parties are the expression of political pluralism, competing to form and express popular will, and are the fundamental instruments for the democratic participation of citizens in the governing of the country.

The internal structure and the operation of political parties shall be democratic.

In profound respect for national unity, political parties are bound by the principles enshrined in the Constitution and in the Law.

The formation and operation of political parties shall, in particular:

- (a) be national in scope;
- (b) uphold national interests;
- (c) contribute to the formation of public opinion, especially on major national issues; and
- (d) strengthen the patriotic spirit of citizens and the consolidation of the Mozambican nation.

Parties shall contribute, through the political and civic education of citizens, towards peace and stability in the country.

The formation, structure and operation of parties shall be regulated by law.

Political parties shall be prohibited from advocating or resorting to violence in order to change the political and social order of the country.<sup>4</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 National Electoral Commission**

The National Electoral Commission is the body responsible for the organisation, direction, co-ordination, carrying out, conduct and implementation of the electoral registration and all activities relating to the electoral process.

The National Electoral Commission (“the Commission”) is an autonomous body and is independent of all state authorities.<sup>5</sup>

#### **2.02 Composition**

The Commission consists of twenty-one members whose professional and personal qualities

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afford guarantees of balance, objectivity and independence vis-à-vis all political parties, and has the following composition:

- (a) ten members proposed by the Government;
- (b) seven members proposed by Renamo;
- (c) three members proposed by the political parties, other than Frelimo and Renamo;
- (d) one personality, who shall be the President of the Commission.

The President of the Commission shall be appointed by the President of the Republic on the recommendation of the members of the Commission.

In the absence of a consensus as to the recommendation referred to in the preceding paragraph, it is incumbent upon the President of the Republic to appoint the President of the Commission from a list of five persons proposed by the members of the Commission.

The President of the Commission shall be assisted by two vice-presidents, one of whom will be proposed by the Government and the other by Renamo.

The political parties may indicate one representative to be present at the session of the Commission, without speaking or voting rights.

ONUMOZ (United Nations Operation in Mozambique) may indicate one representative as an observer at the sessions of the Commission, without speaking or voting rights.

The exercise of the office of member of the Commission and its organs is incompatible with the condition of candidate for President of the Republic and for deputy to the Assembly of the Republic.<sup>6</sup>

### **2.03 Powers of the Commission**

The Commission shall have the following powers:

- (a) to take measures to ensure that the electoral process takes place under conditions of complete freedom, justice and transparency;
- (b) to organise and direct the electoral registration and electoral process;
- (c) to guarantee equal treatment to all citizens in all the acts of electoral registration and all the electoral proceedings;
- (d) to guarantee equal opportunities and equal treatment of all the candidatures;
- (e) to register coalitions of parties for electoral purposes;
- (f) to approve the models of the registration form, the electoral register, the voter's card, the ballot paper and the record of the polling process at the polling stations and any other printed forms or other materials which will be used during the electoral process;
- (g) to approve the regulations, instructions, and directives relating to the conduct of electoral registration and the election procedure which shall be published in the Government Gazette;

- (h) to draw lots for the list of candidates;
- (i) to decide, in accordance with the proposals of the local electoral organs, on the locations where polling stations will be set up and function;
- (j) to promote through the Press and other mass media civic education and information for citizens on matters concerning the electoral process;
- (k) to allocate broadcasting time on public sector radio and television to the different candidatures;
- (l) to ensure that the competent authorities create the necessary security conditions for the elections to take place throughout the national territory;
- (m) to carry out the operations for determining the electoral results;
- (n) to transmit to the Department of Public Prosecution any act of electoral misdemeanour of which it takes cognizance;
- (o) to propose to the President of the Republic the dates for the elections;
- (p) to perform any other function which may be conferred on it by the law.

With regard to the judicial supervision of the electoral process, the powers of the Commission are:

- (a) to watch over the implementation of the Constitution and legal provisions regarding the electoral process;
- (b) to receive, examine and decide on complaints and claims as to the validity of the elections, and to appraise the observations of the international observers;
- (c) to validate and to declare the election results, and to order the publication of the election results in the Gazette;
- (d) to check the correctness of the electoral accounts.

In the exercise of its powers and functions, the Commission may not take decisions which contradict the provisions relating to the electoral process contained in the General Peace Agreement, adopted by Law No. 13, of 14 October 1992.<sup>7</sup>

#### **2.04 Status of Members of Commission**

The members of the Commission are irremovable and shall not be answerable during their term of office for the acts performed while discharging their functions, except for those that may affect the results of the elections.<sup>8</sup>

#### **2.05 Term of Office**

The terms of office of the members of the Commission shall commence with their investiture, and shall expire within the presentation of the final report, one hundred and twenty days after the publication of the official chart of the election results.

The members of the provincial electoral commissions shall take the oath of office before the President of the Commission.

The members of the district electoral commissions shall take the oath of office before the chairperson of their respective provincial electoral commission.

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The terms of office of the members of the provincial electoral commissions and district electoral commissions shall commence with their investiture and shall expire one hundred and twenty days after the elections.<sup>9</sup>

### **2.06 Technical Secretariat for the Administration of the Elections**

In the exercise of its powers and functions, the Commission shall be assisted by a permanent organ, called Technical Secretariat for the Administration of the Elections, the functioning of which shall be regulated by decree of the Council of Ministers, on the proposal of the Commission.

During the period of operation of the Commission, the Technical Secretariat for the Administration of the Elections (“Secretariat”) shall be subordinated to it.

The Secretariat shall be headed by a Director-General, who shall be appointed by the President of the Republic.

The Director-General of the Secretariat shall be assisted by two deputy directors-general, one of whom shall be proposed by Renamo and the other by the other political parties.

The Director-General and the two deputy directors-general of the Secretariat shall have seats on the Commission, with the right to speak but without voting rights.

The provisions of the three immediately preceding paragraphs apply, with the necessary adjustments, to the local organs of the Secretariat.<sup>10</sup>

### **2.07 Assistance to Commission**

Public institutions and their agents, private bodies and the political parties must give the Commission and its organs the necessary assistance and collaboration for the efficient exercise of its duties and must provide it with information about the electoral process.

The organs of the central administration of the State, as well as the local administrative authorities, are obliged to give the Commission and its organs the necessary assistance and collaboration for carrying out the electoral registration and the poll.

The law enforcement agencies are obliged to take all the necessary steps for the maintenance of public order and safety during the electoral period.<sup>11</sup>

### **2.08 Organs of the Commission**

The organs of the Commission are:

- (a) the provincial electoral commissions;
- (b) the district electoral commissions.

The Commission also has a permanent executive organ, the composition and operating procedures of which shall be laid down in the internal rules and regulations.<sup>12</sup>

## **2.09 Provincial Electoral Commissions**

The provincial electoral commissions shall have the following composition:

- (a) three members designated by the Government, one of whom shall be the chairperson of the commission;
- (b) two members designated by Renamo;
- (c) one member indicated by each of the political parties registered at the date of the coming in force of the present electoral law.

The chairperson of the commission shall be assisted by a vice-chairperson, who shall be indicated by Renamo from among the two members of the commission appointed by that party.

ONUMOZ (United Nations Operation in Mozambique) may indicate one representative. The powers of the provincial electoral commissions are:

- (a) to co-ordinate at their level the implementation of the present law;
- (b) to supervise the electoral process and to ensure compliance with the Constitution and the provisions of the present law during electoral registration and the voting;
- (c) to transmit to the Department of Public Prosecution all acts of electoral misdemeanour of which they take cognizance;
- (d) to count the votes and to record the results of the election at their level;
- (e) to receive complaints about the electoral process and to forward them to the Commission;
- (f) to forward to the Commission the records containing the election results.

It is also incumbent upon the provincial electoral commissions to implement the instructions and directives issued by the Commission.<sup>13</sup>

## **2.10 District Electoral Commissions**

The district electoral commissions shall have the following composition:

- (a) three members designated by the Government, one of whom shall be the chairperson of the commission;
- (b) two members designated by Renamo;
- (c) one member indicated by each of the political parties registered at the date of the coming into force of the present law.

The chairperson of the commission shall be assisted by a vice-chairperson, who shall be indicated by Renamo from among the two members of the commission designated by that party.

ONUMOZ may indicate one representative.

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The powers of the district electoral commissions are:

- (a) to supervise the electoral process and to ensure compliance with the Constitution and the provisions of the present law;
- (b) to organise and direct the electoral process and in particular to distribute to the polling stations ballot papers, the ballot boxes, seals and other indispensable requisites for the act of voting;
- (c) to make public the lists of candidatures, using the most effective means of communication;
- (d) to establish, record and sign the results of the vote and to forward the respective records to the provincial electoral commissions;
- (e) to receive complaints about the electoral process and to forward them to the provincial electoral commission for all legal purpose.<sup>14</sup>

### **2.11 Election Court**

The Election Court is the judicial body with the power to give final rulings concerning appeals in electoral disputes against decisions taken by the Commission.

The Election Court (“the Court”) is a body which is independent of all state authorities.<sup>15</sup>

### **2.12 Composition of Election Court**

The Court shall consist of five members, who shall be designated in the following way:

- (a) two judicial magistrates with more than five years service, indicated by the Supreme Council of the Judiciary Magistrature;
- (b) three judges of proven technical and professional competence, with over five years service, indicated by the Secretary-General of the United Nations on the proposal of the Security Council.

The members of the Court shall elect a president from among themselves in a session which shall take place not more than eight days after the members of the Court are sworn in.<sup>16</sup>

### **2.13 Rules of Procedure**

The appeal shall be lodged by means of a petition delivered at the registry of the Court within forty-eight hours of notification of the disputed decision.

The petition shall contain a detailed exposition of the subject matter and the basis of the appeal, and shall conclude with the application, which shall specify the terms in which the applicant wishes the sentence to be delivered, and with a request for the issuing of a summons or a formal notice of complaint to the interested parties, if any.

All documents substantiating the application shall be presented with the petition, and cannot be accepted thereafter. The petition, having been deposited and registered, shall immediately be distributed.

Upon receipt of the documents, the rapporteur shall issue, if required, a summons or notice to the interested parties, giving a time limit of twenty-four hours to present their reply.

The reply of the summonsed or notified parties, presented within the time limit stipulated, shall constitute the pleading or defence against the application, and shall for all purposes serve as contradictory hearing.

Before submitting the draft decision for consideration, the rapporteur may order the Commission to supply relevant information or to make available any document which may be relevant for the full knowledge of the matter.

The decisions of the Court shall take the form of a judgment and shall be given within twenty-four hours following the expiry of the time for presentation of the reply of the defending parties.

The decisions of the Court shall be taken by majority of the votes of the members present. Members who do not agree in whole or in part with the vote of the majority shall sign dissenting.

The proceedings shall be free of costs or any charges.

The Court shall only be able to take decisions when, in addition to its president, at least two of its members are present.<sup>17</sup>

## **2.14 Effect of Decisions**

For all citizens and other legal persons compliance with the decisions of the Court shall be obligatory and they must be executed immediately.<sup>18</sup>

# **— Section 3 —**

## **ELECTORAL REGISTRATION**

### **3.01 Universality of Registration**

All citizens of Mozambique, residing in the country or abroad, and who on polling day shall have attained the age of eighteen years, shall be entitled to register as a voter.

In their geographical areas, the electoral registration brigades shall promote registration in the electoral registers of all persons possessing voting rights and not yet registered of whom they have knowledge.

Each citizen may only register once.

Registration of a citizen in the electoral register implies the presumption of his or her electoral capacity. This presumption can only be refuted through documentary evidence in

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the possession of the registration unit or presented to it, of the death of the elector or a change of his or her electoral capacity.<sup>19</sup>

### **3.02 Place and Validity of Registration**

Citizens entitled to vote shall register at the place of operation of the registration unit of the geographical area of their ordinary place of residence.

Registration of citizens in the military forces or members of the law enforcement agencies shall take place at the geographical unit close to their unit.

The electoral registration of citizens shall be valid for an indeterminate period, subject to periodical updating.<sup>20</sup>

### **3.03 Administrative Structure for Registration**

At the central level, electoral registration shall be organised and directed by the Commission, through the Technical Secretariat for the Administration of the Elections, and its execution shall be done by the public administration through its local institutions.

In the provinces, the provincial electoral commissions shall be responsible for the organisation and direction of electoral registration.

At the level of districts, the district electoral commissions shall be responsible for the organisation and direction of the electoral registration.

In urban neighbourhoods, villages and localities, electoral registration for the multi-party general elections shall be carried out by the local organs through electoral registration brigades, under the co-ordination of the Secretariat.

Electoral registration abroad shall be carried out by the diplomatic and consular missions under the direction of the Commission.

Electoral registration brigades shall be fixed or mobile, and shall be identified by a number. Brigades shall be formed in function of the expected number of voters and their geographical distribution.

The electoral registration brigades shall be composed of electoral officials, employees of private institutions and other citizens of or over eighteen years of age, with a minimum educational qualification corresponding to the sixth grade of general education or equivalent, and they shall be selected by the local organs of the public administration with the assistance of the Secretariat.

Electoral registration brigades shall have a minimum of five and a maximum of seven members, not precluding a different composition which may be determined by the electoral commissions in accordance with the specific local conditions. At least one member of the brigade must speak the local language of the area of the registration centre.

The electoral registration brigades shall be responsible, in the areas of the geographical subdivisions, for carrying out the electoral registration of the citizens.

The electoral registration centre is the place where the registration brigade shall carry out its activities.

Wherever possible, the location of the electoral registration centre shall coincide with the place where the polling station will function.

No registration centre shall be established or operate in:

- (a) police stations;
- (b) military units;
- (c) residences of ministers of religion;
- (d) buildings of any political party or religious organisation;
- (e) premises where alcoholic beverages are sold;
- (f) places of worship or destined for worship;
- (g) health posts.<sup>21</sup>

### **3.04 Role of Political Parties in Electoral Registration**

Any legally constituted political party may co-operate with the electoral registration brigades, who shall have the power to define, without discrimination, the need and the extent of such co-operation.

Political parties shall co-operate through individuals who they shall indicate to the district electoral commissions up to five days before the beginning of the registration period.

The legally constituted political parties may monitor electoral registration acts in order to verify their conformity with the law.

Political parties shall carry out their monitoring through monitors whom they designate and whose names shall be notified to the provincial electoral commissions and the district electoral commissions up to ten days before the beginning of the electoral registration.

In the absence of such notification, it shall be understood that the political parties do not wish to designate any persons to represent them during the electoral registration.

The provincial electoral commissions and the district electoral commissions shall issue credentials for the monitors and shall deliver them to the concerned political party within five days following their request.

The political parties shall be represented by one monitor in each brigade, without prejudice to the possibility of several brigades being monitored by the same person.

Monitors of the political parties shall have the rights and duties:

- 
- (a) to request and obtain information on activities relating to the electoral registration process;
  - (b) to submit in writing complaints and appeals about decisions concerning electoral capacity;
  - (c) to perform objective inspection; and
  - (d) to refrain from submitting complaints or appeals in bad faith.<sup>22</sup>

### **3.05 Electoral Registers**

The registration numbers and names of the citizens entitled to vote shall be recorded in electoral registers in the prescribed form. There shall be a sufficient number of registers for each one of them to contain approximately one thousand voters.

The registration brigade must initial every of the electoral registers, which shall contain an opening and a closing statement, which must be signed by the brigade.

The number in the electoral register shall be the same as the number on the registration form and the voter's card.

During the registration period, the registration brigades or the local administrative authorities shall correct factual errors that may have occurred during the registration process.

After the completion of the registration exercise, the registration brigades shall immediately communicate the number of voters registered in their geographical subdivisions to the district electoral commissions and send them all the documents pertaining to the electoral registration process. After the expiration of the period specified for the submission of complaints, the district commissions shall communicate the number of voters to the provincial electoral commissions and send them the copies of the corresponding electoral registers.

Between the fourth and the thirteenth day following the expiry of the period, true copies of the electoral registers shall be affixed at the seats of the local administrative authorities of the geographical subdivisions of the electoral registration, for the purpose of consultation and submission of claims.

The definitive electoral registers must be ready and made public by the date of the beginning of the election campaign and may not be altered after the beginning of the election campaign.<sup>23</sup>

### **3.06 Complaints and Appeals**

During the exhibition of the copy of the electoral registers and within five days after they have been put on display, any elector or political party may submit in writing to the competent district electoral commission complaints regarding omissions or improper registrations in the electoral registers.

Upon receipt of the complaint, the district electoral commission shall immediately notify the

elector whose registration is deemed irregular by the complainant, if such is the case, in order to allow her/him, if she/he so wishes, to give her/his opinion within three days, together with the evidence she/he thinks fit.

Within two days after the expiration of the time limit established in the preceding paragraph, the district electoral commission shall then complete the file, with the necessary information and all the elements of proof submitted, to the Commission, and inform the competent provincial electoral commission of the fact.

The Commission shall decide within a period of ten days on the complaint submitted.

Notice of the decision of the Commission on the complaint submitted to it shall immediately be given to:

- (a) the district electoral commission, which shall inform the competent provincial electoral commission;
- (b) the complainant;
- (c) all other interested parties.<sup>24</sup>

## — *Section 4* —

### ELECTION CAMPAIGN

#### **4.01 Freedom to Campaign**

The election campaign shall commence forty-five days prior to the date of the elections and shall terminate forty-eight hours before the opening of the polls.

The election campaign shall be conducted by the candidates and their proponents, without prejudice to the participation of citizens. The election campaign shall be conducted freely throughout the territory of the Republic of Mozambique, under equal conditions for all candidates. The candidates, political parties or coalitions of political parties, as well as the groups of electors shall have the right to equal treatment by public and private bodies, so that they may conduct their election campaign freely and under the best of circumstances.

In the course of the election campaign no limitation whatsoever may be imposed on the expression of political, economic and social principles.

During the period of the election campaign, no sanctions may be applied to the media companies or their agents for acts forming part of the campaign.

Processions and marches may be held on any day and at any time, within the limits imposed by the maintenance of law and order, traffic rules and the rest period of citizens.

Only the authorised representatives of a candidate may request the presence of agents of the public authority at meetings and demonstrations organised by that candidate;

if no such request is made, the organising body is responsible for the maintenance of public order.

The publication of opinion polls or surveys on the attitudes of the voters towards the candidates shall be forbidden from the beginning of the election campaign to the first day after the closing of the polling stations.

During the election campaign, appeals to disorder or miscorrection or incitement to hatred, violence or war shall be forbidden.

It is forbidden to carry out political propaganda in:

- (a) military and militarised units;
- (b) public institutions and workplaces during normal working hours;
- (c) educational institutions during periods of classes;
- (d) places of worship.

Without prejudice to the internal regulations of the institutions, the use of public places for electoral purposes shall be equitably shared amongst the various candidatures, in accordance with the provisions of regulations to be drawn up by the Commission.

For the purposes of election campaigning, the local administrative authorities shall ensure the availability of public buildings and spaces belonging to the State and other corporate bodies governed by public law, in accordance with the number of candidates nominated by each party, for use by the different candidates.<sup>25</sup>

#### **4.02 Election Propaganda and Civic Education**

Election propaganda means any activity, whether by the candidates, the political parties, officials of their organs or their agents, or by any other person, which directly or indirectly seeks to promote candidatures, in particular the publication of texts or images which express or reproduce the contents of such activity.

The candidates for the office of President of the Republic, the political parties and the coalitions of parties competing in the elections shall have the right to use the public radio and television broadcasting service during the official period of the election campaign.

It shall be incumbent upon the Commission to regulate the broadcasting rights.

Regular public informational publications shall give equal treatment to the various candidatures. (This provision does not apply to party publications.)

During the election campaign, the candidates and their nominating organs shall be allowed to publish books, magazines, pamphlets, stickers and other materials, in addition to their current propaganda, and shall also be allowed to make use of the Press, radio and television.

The entity supporting a candidature shall be identified on all the election propaganda material it publishes.

No authorisation from or communication to the administrative authorities shall be required for making propaganda through the use of acoustic means; such propaganda shall only be permitted between 07:00 and 21:00 hours.

No authorisation from or communication to the administrative authorities shall be required for affixing posters. No posters or mural paintings shall be put on national monuments, temples and religious buildings, seats of the organs of the State at central and local level or where polling stations will operate, traffic lights or road or railroad signs and inside government offices or public buildings.

The print media owned by or dependent on public bodies, must include electoral news in their publications. Whenever the print media publish information relating to the electoral process, they must be guided by the criteria of total impartiality and rigour, and refrain candidatures, both in the way they treat them journalistically and in the amount of space dedicated to them.

The printed publications belonging to or controlled by the State have the obligation to include material relating to the electoral acts in every edition published during the period of the election campaign, and they shall be guided by the principles specified in the preceding paragraph of these provisions.

The candidates may agree between themselves to share or exchange broadcasting time or publication space belonging to them.

Through the media, the Commission shall promote the education of citizens on the objectives of the elections, the electoral process and the manner in which each voter casts her/his vote.

The communiqués, semi-official statements and other acts of the Commission shall be published by the public sector media free of charge and as a matter of priority.

After the expiry of the campaign period (48 hours before polling), no election propaganda activities shall be allowed.<sup>26</sup>

## — *Section 5* —

### DETERMINATION OF NATIONAL RESULTS OF ELECTIONS

#### **5.01 Role of Commission**

The Commission shall be responsible for the centralisation of the results from each province, the count and the announcement of the global results of the elections, as well as the distribution of the seats.

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The determination of the national results shall be based on the records and other documents relating to the provincial count, received from the provincial electoral commissions.

At the beginning of its work, the Commission shall decide on the ballot papers which have been the object of complaint or protest, examine the ballot papers considered invalid and reassess them using a uniform criterion, with the possibility of this operation resulting in the correction of the count of the provincial electoral commissions, but without prejudice to the provisions relating to judicial appeals.

The national count operation shall consist in:

- (a) verification of the total number of registered electors, of voters who voted and their percentage in relation the first number;
- (b) verification of the total number of votes obtained by each presidential candidate and by each list, the number of blank votes and or invalid votes;
- (c) determination of the presidential candidate elected;
- (d) verification of the need for a second ballot for the presidential elections;
- (e) distribution of the seats of the deputies by constituency;
- (f) determination of the candidates elected for each list.<sup>27</sup>

## **5.02 Publication of National Results**

The President of the Commission shall, within a period of fifteen days following the date of the close of the polls, announce the results of the national count, and order their publication through the media and through a public notice which shall be affixed at the entrance of the office of the Commission.

A record of the national count shall immediately be prepared, containing the established results, the complaints, protests and counter-protests submitted, and the decisions taken on them. A copy of the record of the national results shall be sent by the President of the Commission to the President of the Republic.

At the end of its mandate, the Commission shall hand over the records of the provincial electoral commissions and the records of the national results to the Ministry of State Administration, which shall decide on their custody and conservation.<sup>28</sup>

## **5.03 Official Chart of Election Results**

The Commission shall prepare an official chart of the election results, which must contain:

- (a) the total number of registered electors;
- (b) the total number of voters who voted and of those who did not vote, with their respective percentages in relation to the total number of registered electors;
- (c) the total number of blank votes, of invalid votes and of valid votes, with their respective percentages in relation to the total number of voters.
- (d) the total number of votes obtained by each candidate, and, if necessary, also by each coalition of candidatures, with their percentages in relation to the valid votes;

- (e) the names of the elected candidates, with the indication of the names of their respective lists, as well as those of the proponent political parties, in the case of a coalition.

The chart for the election of deputies to the Assembly of the Republic shall contain the information relating to each constituency.

The Commission shall cause the charts of the election results to be published in the Government Gazette, within seven days of the announcement of the results of the count at national level.<sup>29</sup>

## — Section 6 —

### THE ELECTORAL SYSTEM

#### 6.01 Mode of Election of Deputies

The election of deputies to the Assembly of the Republic shall be based on multi-national lists of parties or coalitions of parties in each constituency, with voters having a single list vote.

The lists shall be presented to the electors by their proponents during the election campaign.<sup>30</sup>

#### 6.02 Distribution of Deputies in Each Constituency

The number of deputies who shall be elected by each constituency of the national territory shall be established in the following way:

- (a) the total number of registered electors in the national territory shall be established.
- (b) the total number of registered electors in the national territory shall be divided by two hundred and forty-seven, in order to obtain the quotient corresponding to each deputy to be elected;
- (c) the total number of registered electors in each constituency shall be established;
- (d) the total number of registered electors in each constituency shall be divided by the quotient established in these provisions.

If the remainder from the division is larger than half the quotient, the corresponding constituency shall have the right to elect an additional deputy.<sup>31</sup>

#### 6.03 Distribution of Seats Within Lists

Seats shall be distributed within the lists according to the order of precedence shown on each list.

The existence of an incompatibility between the function exercised by a candidate and the exercise of the function of deputy shall not prevent the allocation of the seat.

In the case of death or an illness causing physical incapacity of the candidate, the seat shall be allocated to the next candidate on the list, in accordance with the order of precedence.<sup>32</sup>

#### **6.04 Minimum Number of Votes**

Each nomination list can only win a seat if at the counting of the votes it receives five per cent of the votes cast nationwide.<sup>33</sup>

#### **6.05 Election Criterion**

The conversion of votes into seats shall be done in accordance with the d'Hondt proportional representation method, obeying the following rules:

- (a) the number of votes obtained by each list in a constituency shall be counted separately;
- (b) the number of votes counted for each list shall be divided successively by 1, 2, 3, 4, 5, 6, 7, 8, etc, and the quotients shall be aligned in descending order to form a series of as many terms as there are seats attributed to the respective constituency;
- (c) the seats shall belong to the lists to which the terms of the series established by the preceding rule correspond, and each list shall receive as many seats as its terms in the series;
- (d) if there remains only one seat to be distributed and if the next terms in the series are equal but belonging to different lists, the seat shall be allocated to the list which has obtained the lowest number of votes.<sup>34</sup>

#### **6.06 Mozambicans Abroad**

The election of the three deputies representing Mozambican communities abroad shall be done according to the criteria and rules established under the preceding section.<sup>35</sup>

Candidatures shall be presented by political parties, individually or as a coalition, provided that they are registered by the beginning of the nomination period, and the list may include citizens who are not members of the respective parties.

No party may present more than one list of candidates in the same constituency.<sup>36</sup>

#### **6.07 Coalitions for Electoral Purposes**

Coalitions of political parties for electoral purposes shall be formed in accordance with the relevant law.

Political parties making coalition pacts for electoral purposes shall communicate the fact to the Commission, before the actual delivery of nomination papers, in a document signed jointly by the competent organs of the respective political parties.

Such communication shall contain:

- (a) a definition of the planned scope of the coalition;
- (b) indication of the name, abbreviation and symbols of the coalition;
- (c) designation of the office holders in the executive or co-ordinating bodies of the coalition;
- (d) the deed confirming the approval of the coalition pact.

Coalitions shall constitute a single parliamentary bench and they shall cease to exist at the end of each legislature.<sup>37</sup>

### **6.08 Mode of Presenting Candidatures**

Political parties or coalitions of political parties shall present candidatures by submitting to the Commission on application in the form of a petition, accompanied by lists of candidates. The list of candidates must contain the full name and the number of the voter's card of each candidate and shall be accompanied by the following documents:

- (a) photocopy of the identity card of each candidate;
- (b) certificate of the criminal record of each candidate (if any);
- (c) declaration of individual or collective candidature, signed by each candidate and notarised;
- (d) documentary evidence of the electoral registration of each candidate;
- (e) documentary evidence of the electoral register of the election agent of each list.

In the declaration referred to in sub-paragraph (c), the candidates shall explicitly declare:

- (a) that they are not affected by any form of ineligibility;
- (b) that they do not appear on any other list of candidates;
- (c) that they accept the nomination presented by the proponent;
- (d) that they agree with the name of the election agent of the list.<sup>38</sup>

## **— Section 7 —**

### **ELECTORAL DISPUTE**

#### **7.01 Competent Body**

The petition for an appeal shall specify the relevant points of law and fact and shall be accompanied by all the elements of proof.

The judicial appeal shall be lodged with the Commission on the day following the counting of the votes, and a decision shall be reached during the following two days.

Before making a decision on the appeal, the Commission shall give notice to the election agents of the candidatures, in order to allow them, if they so wish, to give their opinion within twenty-four hours.

Notice of the decision shall be given to the appellant or appellants in the fastest possible way.

The vote at any polling station shall only be considered null and void if irregularities have been observed that can substantially affect the result of the elections.

If the voting at one or more polling station has been declared null and void, the corresponding polling process shall be repeated on the second Sunday following the decision.

The proceedings shall be free of charge and take priority over the other business of the Commission.<sup>39</sup>

## **7.02 Judicial Appeal**

Irregularities which have occurred during the polling and the partial global counting of the votes may be examined through a judicial appeal, provided that they have been the object of a complaint or protest submitted at the moment they were verified.

In addition to the person lodging the complaint, protest or counter-protest, the candidates and their election agents, as well as the political parties contesting the elections in the constituency concerned, may also appeal against the decision on the complaint or protest.

The petition shall specify the points of law and fact of the appeal and shall be accompanied by all the elements of proof, including a photocopy of the record of the polling process of the polling station where the irregularity is alleged to have occurred.<sup>40</sup>

## **— Section 8 —**

### **ELECTORAL OFFENCES**

#### **8.01 Offences Relating to Electoral Registration**

A person who registers without having electoral capacity is guilty of an offence, punishable with imprisonment (up to six months) and a stipulated fine.

A person who registers more than once is guilty of an offence punishable with imprisonment and a fine.

Any citizen who makes false statements or gives false information in order to obtain registration is guilty of an offence.

Any person who, through violence, threat or fraudulent ruse induces a citizen not to register in the electoral register or to register after the expiry of the period established by law is guilty of an offence.

Any person who wrongly issues a certificate of physical or mental health, with implications for electoral registration, commits an offence.

Any person who refuses to register in the electoral register an elector who has taken the correct steps for registering, is guilty of an offence.

A person who, through negligence, fails to discharge her/his obligations regarding registration is guilty of an offence.

Any person who does not prepare, organise and correct the electoral registers in the terms stipulated in the law, is guilty of an offence.

Any person who, with fraudulent intent, modifies or replaces a voter's card, is guilty of an offence.

Any person who, in any manner, alters, spoils, replaces or conceals electoral registers, is guilty of an offence. A person who does not affix copies of the electoral registers or prevents their inspection by registered electors during the period prescribed by law, is guilty of an offence.

Members of the electoral registration brigades who, through negligence, do not correct the electoral registers or do so contrary to the provisions of the law, are guilty of an offence.<sup>41</sup>

## **8.02 Offences Relating to Election Campaign**

A person who, during the election campaign, uses the name, abbreviation or symbol of a party or coalition of parties with the intention of damaging or insulting it, is guilty of an offence.

Political parties or coalitions of parties and their respective members who, through radio and television and in the exercise of their broadcasting rights for the purpose of election propaganda during election campaigns, instigate to disorder or insurrection or incite to hatred, violence or war, shall be immediately suspended from exercising this right for a period of one day to the number of days that the campaign lasts, according to the gravity of the offence and the frequency of its repetition, without prejudice to their civil or criminal liability.

The suspension shall apply to the exercise of broadcasting rights on all radio and television stations, even if the event determining it has been verified in only one of them.

The Commission shall, on its own initiative or that of a citizen or any agency or institution, decide to apply the suspension referred to above.

Radio and television stations shall record any broadcasts made in the exercise of the broadcasting rights conferred on the political parties, and keep the recordings as possible evidence of their contents, until the validity of the elections and with the obligation to hand them over to the Commission.

The Commission shall announce its decision before the next scheduled broadcast on any radio or television station by the political party to which the offender belongs, except when it has taken cognizance of the infringement less than twenty-four hours before that time, in which case it shall take a decision within such period.

The decision referred to in the preceding paragraph shall always be preceded by a written hearing of the political party to which the offender belongs, which, if necessary, shall be requested by a telegram addressed to the seat of the said party containing a summary indication of the offending facts and a notification that the response may be transmitted in the same manner within the time limit which shall be established for this purpose.

Only the submission of documentary evidence, delivered to the Commission within the period granted for the response, shall be accepted.

The Commission shall reach its decision by consensus.

A person who prevents the holding, or interrupts the proceedings of an election propaganda meeting, rally, procession or march, is guilty of an offence.

A person who steals, robs, destroys, tears or in any manner causes to be totally or partially useless or illegible any displayed election propaganda material, or defaces it or superimposes therein any material for the purpose of concealing it, is guilty of an offence.

The acts referred to in the preceding paragraph shall not be punishable if the propaganda material has been displayed on the person's own house or establishment without her/his consent or if its contents are clearly outdated.

A person who misdirects, retains, or does not deliver to the addressee leaflets, posters or election propaganda papers from any list, is guilty of an offence.

A person who makes election propaganda in any manner on polling day or the day before, is guilty of an offence. A person who, on polling day, makes propaganda inside a polling station or in the surrounding area of five hundred metres, is guilty of an offence.<sup>42</sup>

### **8.03 Offences Relating to Voting**

A person who, without having electoral capacity, presents herself/himself to vote, is guilty of an offence, punishable with a stipulated fine.

A citizen who exercises the right to vote without having electoral capacity, is guilty of an offence, punishable with imprisonment (for up to one year) and a stipulated fine.

A person who fraudulently uses the identity of another duly registered citizen in order to exercise that right, is guilty of an offence, punishable with imprisonment (up to two years) and a stipulated fine.

A person who contributes to allowing the right to vote to be exercised by someone who does not have that right or to excluding someone who has that right, and a physician who falsely attests about incapacity to exercise the right to vote, is guilty of an offence.

A person who votes more than once or allows someone to vote more than once, is guilty of an offence.

A person who accompanies a blind or disabled person for the purpose of voting and with fraudulent intent unfaithfully expresses her/his choice, is guilty of an offence.

A person who, at the polling station or in its surrounding area of five hundred metres, uses coercion or deceit of any nature or her/his ascendancy over a voter to make that voter reveal her/his vote, is guilty of an offence.

A person who, at the polling station or in its surrounding area of five hundred metres, reveals for which list she/he intends to vote or has voted, is guilty of an offence.

A person who uses violence or threats or fraudulent ruses against any voter in order to coerce or induce her/him to vote for a particular candidate or abstain from voting, is guilty of an offence.

The same penalty specified in the preceding paragraph shall be increased, according to the terms of the prevailing penal code, if the threat is made with the use of a weapon or the violence perpetrated by two or more people.

If the same offence is committed by a citizen invested with public power, a civil servant or agent of state or another public corporate body or a minister of any religion, the punishment shall be imprisonment for eight months to two years and a fine of up to 1,000,000.00 M.T.

A person who dismisses or threatens to dismiss a citizen from her/his employment, prevents or threatens to prevent someone from obtaining employment, or applies any other sanction in order to force her/him to vote or not to vote, or because she/he voted for or did not vote for a particular candidate, or because she/he abstained from voting or from not participating in the election campaign, is guilty of an offence.

A person who, in order to induce someone to vote or refrain from voting for a particular list, offers, promises or procures public or private employment or any other goods or advantages to one or more voters, or, in agreement with them, to a third person, even if the goods or advantages used, promised or obtained, are disguised as being a monetary compensation given to the voter for travel or accommodation expenses, or payment for food or drinks, or a payment for election campaign expenses, is guilty of an offence.

The presiding officer of a polling station who, with fraudulent intent, fails to exhibit the ballot box in front of the voters at the opening of the poll, is guilty of an offence.

If ballot papers are found in the ballot box which has not been exhibited, the punishment shall be imprisonment for up to two years and a fine of up to 200,000.00 M.T.

A person who, with fraudulent intent, deposits ballot papers in the ballot box before or after the start of the voting, or takes possession of the ballot box with the not yet counted ballot papers inside it, or takes possession of a ballot paper at any time after the opening of the polling station until the global counting of the votes of the elections, is guilty of an offence.

A polling station officer who, with fraudulent intent, puts a confirmation mark for a voter who has not voted, or allows it to be put, or who in reading a ballot paper changes the list indicated or during the counting of the votes adds or substitutes votes to a list, or in any other manner falsifies the result of the election, is guilty of an offence.

A person who prevents delegates of candidatures from entering the polling stations or leaving them, or in any other manner prevents them from exercising the powers which the law bestows on them, is guilty of an offence, punishable with imprisonment for up to six months.

In the case of the presiding officer, the punishment shall never be less than one year.

A presiding officer of a polling station who unjustifiably refuses to receive complaints, protests or counter-protests, is guilty of an offence.

A person who disrupts the normal functioning of a polling station through insults, threats or acts of violence, causing a commotion, is guilty of an offence.

A person who enters a polling station carrying arms, shall be subject to the immediate confiscation of the weapons and shall be punished with imprisonment for up to two years and a stipulated fine.

A candidate, election agent, representative or delegate of a candidature, who disrupts the normal functioning of the electoral operations, is guilty of an offence.

Any person who has been designated to act as a polling station officer, and without justification neglects to perform or abandons these functions, is guilty of an offence.

A person who, in any manner, fraudulently spoils, replaces, conceals, destroys or amends electoral registers, ballot papers, records of the polling process at the polling stations or any document relating to elections, is guilty of an offence.

A person who without cause, fraudulently accuses any other person of the practice of any offence considered in the law, shall be punished according to the provisions for malicious prosecution of the prevailing penal code.

Any person who, in bad faith, lodges a complaint, appeal, protest or counter-protest or who contests the decisions of the organs through unfounded appeal, is guilty of an offence.

If a police force has been requested by the competent authorities for guaranteeing the normal progress of the voting operations, and this force does not arrive and no proper justification is presented within a period of twenty-four hours, its commander shall be punished with imprisonment for up to six months and a stipulated fine.<sup>43</sup>

### 8.04 Suspension of Political Rights

A prison sentence for a malicious electoral offence under the law shall entail a mandatory suspension of political rights for a period from one to five years.

### NOTES

1. Constitution of Mozambique 1990, see section 73
2. Ibid., see section 77
3. Ibid., see section 30
4. Ibid., see sections 31-33
5. Electoral Law of Mozambique 1993, see sections 13 and 14
6. Ibid., see section 15
7. Ibid., see section 16
8. Ibid., see section 17
9. Ibid., see section 18
10. Ibid., see section 19
11. Ibid., see sections 20 and 21
12. Ibid., see section 23
13. Ibid., see sections 24 and 25
14. Ibid., see sections 26 and 27
15. Ibid., see sections 30 and 31
16. Ibid., see section 32
17. Ibid., see sections 34 and 35
18. Ibid., see section 36
19. Ibid., see sections 39-42
20. Ibid., see sections 44 and 45
21. Ibid., see sections 46-49
22. Ibid., see sections 50-53
23. Ibid., see sections 54-69
24. Ibid., see sections 70 and 71
25. Ibid., see sections 84-92
26. Ibid., see sections 93-103
27. Ibid., see sections 159-172
28. Ibid., see sections 173-175
29. Ibid., see section 176
30. Ibid., see section 199
31. Ibid., see section 200
32. Ibid., see section 201
33. Ibid., see section 203
34. Ibid., see section 204
35. Ibid., see section 205
36. Ibid., see section 206
37. Ibid., see section 208
38. Ibid., see section 211
39. Ibid., see sections 216-219
40. Ibid., see section 215
41. Ibid., see sections 224-233
42. Ibid., see sections 237-246
43. Ibid., see sections 249-269

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## INTRODUCTION

The transitional arrangements that paved the way for non-racial multi-party elections which were supervised by the United Nations enabled a Constituent Assembly to decide on the Constitution under which Namibia became independent. That Constitution provided for multi-party elections to be held periodically.

Namibia has a dual system of elections – with the use of a proportional party lists system and a constituency/polling wards arrangement which allows for the polling according to such polling wards and constituencies for regional council elections and local authority council elections.

Elections for these various bodies and within the framework of the different systems were provided for in the 1992 Electoral Act of Namibia. This Act established an independent Electoral Commission with a chief executive, the Director of Elections. The 1992 Act was extensively amended by the Electoral Amendment Act of 1994.

### — Section 1 —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 Political Activity

All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form or join political parties and, subject to such qualification prescribed by law as would be acceptable in a democratic society, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.

Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office. The right guaranteed by this provision may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are acceptable in a democratic society.<sup>1</sup>

##### 1.02 Elections

The election of members of the National Assembly shall be in accordance with the principles of proportional representation and on party lists as set out in Schedule 2 of the Constitution.<sup>2</sup>

### **1.03 Election of Members of the National Assembly**

For the purpose of filling the seventy-two (72) seats in the National Assembly the total number of votes cast in general election for these seats shall be divided by seventy-two (72) and the result shall constitute the quota of voters per seat.

The total number of votes cast in favour of a registered political party which offers itself for this purpose shall be divided by the quota of voters per seat and the result shall constitute the number of seats to which that political party shall be entitled to in the National Assembly.

A political party which qualifies for seats shall be free to choose in its own discretion which persons to nominate as members of the National Assembly to fill the seats concerned.

Where the formula yields a surplus fraction not absorbed by the number of seats allocated to the political party concerned, such surplus shall compete with similar surpluses accruing to any other political party or parties participating in the elections, and any undistributed seat or seats (in accordance with the formula) shall be awarded to the party or parties concerned in sequence to the highest surplus.

Provision shall be made by Act of Parliament for all parties participating in an election for the National Assembly to be afforded a reasonable opportunity for scrutinising the counting of the votes cast in such election.<sup>3</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 Establishment of Electoral Commission**

A commission, known as the Electoral Commission is empowered with the exclusive authority to direct, supervise and control in a fair and impartial manner any election held under the Electoral Act.

The Commission shall in particular –

- (a) supervise and control the registration of voters for the purposes of any election;
- (b) supervise the preparing, publication and maintenance of a national voters' register and local authority voters' register;
- (c) supervise and control the registration of political parties;
- (d) supervise, direct and control the conduct of elections;
- (e) perform any other functions conferred upon it by the Act.<sup>4</sup>

#### **2.02 Constitution of Commission**

The Commission shall consist of –

- 
- (a) a judge or former judge of the Supreme Court or the High Court, who shall be the chairperson of the Commission; and
  - (b) four persons as the other members of the Commission, appointed by the President, with the approval, by resolution, of the National Assembly.<sup>5</sup>

### **2.03 Conditions of Service of Members of Commission**

A member of the Commission holds office, with effect from the date of approval, for a period not exceeding five years, but may be reappointed in a like manner at the expiration of that period.

A member of the Commission who is not employed in the public service on a full-time basis shall be paid such remuneration and allowance, if any, and in respect of any journey undertaken for the purposes of the business of the Commission, such subsistence and travelling allowances as the President may from time to time determine.

The remuneration and allowances may differ according to the office held by the member of the Commission concerned or the functions performed by him or her.<sup>6</sup>

### **2.04 Vacation of Office and Filling of Vacancies**

A member of the Commission must vacate his or her office if –

- (a) such member, by writing under his or her hand addressed and delivered to the President resigns from his or her office as a member of the Commission;
- (b) such member is convicted of any offence and sentenced to imprisonment without the option of a fine;
- (c) such member is by reason of his or her physical or mental illness or for any other reason incapable of acting as a member of the Commission;
- (d) such member is removed from office by reason of his or her misconduct by the President, with the approval, by resolution, of the National Assembly.

Any casual vacancy on the Commission caused by the death or vacation of office by any member of the Commission shall, with due regard to the provisions of the Act, be filled for the unexpired portion of the period of office of the member of the Commission who has died or vacated his or her office, as the case may be.<sup>7</sup>

### **2.05 Procedure and Meetings of Commission**

The Commission may in its discretion establish one or more committees which shall consist of two or more members of the Commission nominated for such purpose by the Commission to advise it on any of its functions.

The Chairperson of the Commission may determine the time and place of a meeting of the Commission.

The Chairperson of the Commission must on a reasoned request in writing of at least

three members of the Commission convene a special meeting of the Commission. The majority of the members of the Commission shall form a quorum for a meeting of the Commission.

The Chairperson of the Commission is required to preside at all meetings of the Commission at which he or she is present.

When the Chairperson of the Commission is absent from a meeting of the Commission the members of the Commission present shall elect a chairperson from among their number to act as chairperson at that meeting, and while acting as such he or she shall have the powers and shall perform all the duties and functions of the chairperson.

A decision of the majority of the members of the Commission shall be a decision of the Commission: provided that in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

No decision taken by the Commission or act performed under the authority of the Commission shall be invalid by reason only of a vacancy on the Commission, or by reason only of the fact that any person who is not entitled to sit as a member of the Commission sat as a member of the Commission when the decision was taken or the act was authorised by the requisite majority of the members of the Commission who were present at the time and entitled to sit as such members.

The Commission is required to keep a record of the proceedings of the meetings of the Commission, and to make rules in relation to the procedure at such meetings.<sup>8</sup>

## **2.06 Reports by Commission**

The Commission shall, not later than 60 days after the end of June in every year, submit to the President and the Speaker of the National Assembly a report in respect of its activities performed during the preceding year or in respect of any other matter relating to elections which it deems necessary in the public interest to report thereon.

The Speaker of the National Assembly shall within 14 days as from the date on which the report has been submitted to him or her table such report in the National Assembly or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.<sup>9</sup>

## **2.07 Directorate of Elections**

There shall be a division in a ministry as defined in the Public Service Act 1980, designated by the President, to be known as the Directorate of Elections which shall be responsible for the administration and clerical work involved in the performance of the functions of the Commission.

The head of the Directorate is known as the Director of Elections and is the secretary to the Commission. The Director of Elections is appointed by the President and performs, subject

to the direction and control of the Commission, the other powers, duties and functions conferred or imposed upon him or her by or under the Act.

The Director is assisted by such other officers as may from time to time be designated by the Permanent Secretary of the Ministry responsible for elections. These officers are required to exercise or perform, subject to the direction and control of the Director, the powers, duties and functions conferred or imposed upon the Director by or under the provisions of the Act and such other functions as may be imposed upon any of them by the Director.

The Commission may, in consultation with the Permanent Secretary of the Ministry concerned, obtain the services of any person, being an officer referred to in the foregoing provision, for the purposes of the functions of the Commission on such conditions as may be determined by mutual agreement with such persons.<sup>10</sup>

## **2.08 Powers of Commission in Relation to Demarcation of Polling Wards<sup>11</sup>**

### **— Section 3 —**

#### **REGISTRATION OF VOTERS**

##### **3.01 Qualification for Registration**

Subject to these provisions, every person who, by virtue of the provisions of the Constitution, is entitled to vote shall be entitled to be registered as a voter:

- (a) in the case of an election of the President or of members of the National Assembly or of any member of a regional council, in the constituency in which he or she is resident;
- (b) in the case of an election of a member of a local authority council, in the local authority area, or where such area is divided into wards, in the particular ward of the local authority area in which he or she is resident, but subject to Article 111(3) of the Constitution.

No person is entitled to be registered as a voter if:

- (a) he or she is subject to an order of a court declaring him or her to be of unsound mind or mentally disordered or defective; or
- (b) he or she is detained as a mentally ill person under any law.

For the purposes of these provisions, a person shall be regarded as being resident in a constituency or ward if his or her home or the place where he or she returns regularly after any period of temporary absence is within such constituency or ward.<sup>12</sup>

##### **3.02 Appointment of Registration Officers**

The Commission shall, for the purposes of the registration of voters, appoint:

- (a) a person as supervisor of registration:
- (i) in the case of registration for elections for the President, the National Assembly or a regional council, for each constituency;
  - (ii) in the case of registration for elections for a local authority area, for each local authority area,
- who shall, subject to the direction and control of the Director, exercise and perform the powers, duties and functions conferred upon or assigned to him or her by the Act;
- (b) one or more registration officers:
- (i) in the case of registration for elections for the President, the National Assembly or a regional council, for each constituency;
  - (ii) in the case of registration for elections for a local authority area, for each local authority area or, where such area is divided into wards, for each ward in that area,
- who shall, subject to the direction and control of the supervisor of registration appointed for the constituency or local authority area in question, whichever is applicable, perform the duties and functions assigned to him or her by the Act, provided that a person may hold more than one appointment under these provisions.

The Commission may appoint such other persons, as it deems fit, to assist a supervisor of registration or registration officer in the performance of his or her duties and functions, as the case may be.

There shall be appointed for each constituency or local authority area, as the case may be, as many registration officers as may in the case of the constituency or local authority area in question be determined from time to time by the Commission or, to the extent authorised by it, by the Director.

Any person appointed –

- (i) who is not in the full-time service of the State, is entitled to the remuneration determined by the Commission, in consultation with the Permanent Secretary of the Ministry responsible for elections;
- (ii) may, under the circumstances so determined be entitled to the allowance or allowances so determined.

Different tariffs for remuneration and allowances may be determined in respect of the different offices, or in respect of persons appointed to such offices who are in the full-time service of the State and persons so appointed who are not in the full-time service of the State under different circumstances or in different areas.

The Commission may delegate any power conferred on it to the Director who may, to the extent determined by the Commission, authorise any supervisor of registration or registration officer concerned to exercise any power so delegated to him or her.

Each supervisor of registration, registration officer and his or her assistant shall, by virtue of his or her appointment and whether or not he or she is by or under the provisions of any

other law a justice of the peace or a commissioner of oaths, be deemed to be, for the duration of such an appointment, a justice of the peace or a commissioner of oaths, as the case may be, for the purposes of the carrying out of the provisions of the Act.

Any appointment may at any time be withdrawn by the authority who made the appointment in question.

A registration officer may, with the necessary staff, vehicles and equipment, enter upon any land for which he or she is appointed and on which there is or is suspected to be any person who is qualified for registration, for the purpose of registering any such person who may wish to apply for registration: provided that a registration officer may not enter upon any land or enter any building or structure on such land without the permission of its owner or occupier, or of the person in control of such land between the hours 19.00 hours and 07.00 hours.

The Director may by notice in writing to any person who employs or accommodates on any land any person who is or may be entitled to registration, or to the person in charge of any such persons employed or accommodated on such land, require that person to cause the persons so employed or accommodated to be present at a time specified in the notice, at a place on such land to be determined by that person and notified by him or her before a time and to a registration officer and in a manner so specified, to enable a registration officer to register any person so employed or accommodated, or any other person, who may be entitled to apply for such registration.

A notice under the foregoing provisions may be signed on behalf of the Director by a supervisor of registration for the constituency or local authority area in question, authorised by the Director to do so.

The Commission shall as soon as is practicable after an appointment has been made, give or cause to be given public notice of the name and official address of a person so appointed.<sup>13</sup>

### **3.03 General Registration of Voters**

General registration takes place at intervals of not more than ten years during a period determined by the President by proclamation in the Gazette: provided that the President may from time to time, determine that a supplementary registration of voters must take place during any period determined in a like manner by him or her in respect of Namibia or any part thereof.

The President may by proclamation in the Gazette, alter any registration period or any part thereof.<sup>14</sup>

### **3.04 Application for Registration as Voter**

When for the purposes of the first or any subsequent general registration of voters a period is determined, every person who during that period is entitled or qualified to be registered as

a voter may, whether or not his or her name has previously been included in a voters' register in terms of the Act or any other law, apply –

- (a) to any registration officer appointed for the constituency in question or, where a constituency is divided into polling districts, for the polling district in question;
- (b) to any registration officer appointed for the local authority area in question, as the case may be, in the manner prescribed by the Act, to be registered as a voter –
  - (i) in the case of (a) above, for the elections of either the President, members of the National Assembly or any member of a regional council;
  - (ii) in the case of paragraph (b) above, for an election in a ward of a local authority area.

Any person who may apply for registration shall, if he or she desires to apply –

- (a) appear in person before the registration officer concerned;
- (b) submit to such registration officer the prescribed application form duly completed by the applicant or by some person on his or her behalf;
- (c) when required by such registration officer to do so, affirm on oath the declaration which appears on the application form and which is required to be made by the applicant;
- (d) in the presence of such registration officer and in accordance with his or her instructions –
  - (i) sign the application form in question; or
  - (ii) if the applicant cannot, for any reason whatsoever, write or sign his or her name, place any fingerprint or mark as such registration officer may require, on that application form.

A registration officer shall not register any applicant as a voter under the Act, unless such applicant has, to the reasonable satisfaction of such registration officer –

- (a) identified himself or herself;
- (b) proved that –
  - (i) he or she has reached the age of 18 years; and
  - (ii) he or she is a Namibian citizen; and
- (c) complied with any requirement or qualification in relation to any residence, and such registration officer may require him or her to furnish such explanation, information or further particulars as may be necessary to establish the correctness of the particulars entered or to be entered on the relevant application form.

An applicant is deemed to have complied with the provisions of the foregoing paragraph, if he or she –

- (a) in the case of sub-paragraph (a) of that paragraph, identifies himself or herself by means of –
  - (i) any identity document containing a recent photograph of him or her issued under any law governing the identification of persons in Namibia or any such official document of identity issued by the government of any other country;

- 
- (ii) a driving licence or permit containing a recent photograph of him or her, whether issued in or outside Namibia; or
  - (iii) sworn statements made by two other persons having identified themselves to the registration officer concerned by producing any document in which proof of the identity of the first-mentioned person is furnished;
- (b) in the case of sub-paragraph (b) (i) of the paragraph above –
- (i) submits to the registration officer concerned –
    - (aa) any official certified extract from any official birth register in Namibia or of any other country from which it appears that the applicant has reached the age of 18 years; or
    - (bb) a sworn statement made by either one of his or her natural parents declaring that he or she has reached the age of 18 years; or
  - (ii) has, in the absence of any documentary proof, in the opinion of the registration officer concerned, apparently reached the age of 18 years;
- (c) in the case of sub-paragraph (b) (ii) of the paragraph above, submits to the registration officer –
- (i) a certificate of Namibian citizenship issued under the Namibian Citizenship Act 1990;
  - (ii) a Namibian passport, other than an official passport;
  - (iii) any official certified extract from any official birth register or any similar official document from which it appears that the applicant was born in Namibia; or
  - (iv) sworn statements made by two other persons declaring that –
    - (aa) the applicant is known to him or her; and
    - (bb) to the best of his or her knowledge, such applicant was born in Namibia and he or she is a Namibian citizen as contemplated in the Constitution; or
    - (cc) to the best of his or her knowledge, either one of such applicant's parents was born in Namibia and he or she is a Namibian citizen as contemplated in the Constitution; and
  - (v) a sworn statement made by the applicant declaring that he or she has not voluntarily renounced his or her Namibian citizenship in accordance with the Namibian Citizenship Act 1990, or having so renounced it, he or she remained a Namibian citizen;
- (d) in the case of sub-paragraph (c) of the paragraph above, submits to the registration officer any document, statement, certificate or account as may be prescribed.<sup>15</sup>

### **3.05 Rejection of Application Form**

A registration officer must reject an application form if the applicant concerned fails to comply with the relevant provisions of the Act.<sup>16</sup>

### **3.06 Refusal to Register Applicant**

A registration officer shall, after considering an application duly made, refuse to register the applicant for the election in respect of which he or she has so applied, if the registration officer is not reasonably satisfied that the applicant, on the strength of his or her application, is entitled or qualified to be so registered.

If a registration officer refuses to register an applicant, he or she shall –

- (a) record the refusal and the reason for it, the date of the refusal and –
  - (i) in the case of an application to the registration officer for the constituency, for which he or she has been appointed;
  - (ii) in the case of an application to the registration officer for the local authority area or ward, as the case may be, for which he or she has been appointed, on the application form in question, and sign the record;
- (b) return the application form to the applicant concerned and inform him or her that he or she may appeal against the refusal to the magistrate.<sup>17</sup>

### **3.07 Appeal against Refusal to Register**

Any person whose application for registration has been refused and who desires to appeal against such refusal, may, on the day, at the time and place determined and of which he or she shall be notified in writing, appeal against such refusal to the magistrate designated for that purpose by the Permanent Secretary: Justice by notice in the Gazette, in respect of the constituency or local authority area, as the case may be, in which such person has applied for registration, in the manner prescribed.

The magistrate shall determine the day, which shall not be later than 15 days after the date of the refusal, and the time and place for the hearing of an appeal.

This provision shall not prohibit the magistrate from hearing an appeal at any place or time determined by him or her and communicated to the person who wishes to appeal, or at any place where both the magistrate and that person are at any time.

On a day, at a time and place determined, the person who wishes to appeal (the appellant), shall –

- (a) appear in person before the magistrate concerned;
- (b) submit his or her application returned to him or her to such magistrate;
- (c) state the grounds on which he or she appeals against the refusal of his or her application; and
- (d) adduce such proof and make such statements he or she may wish to be considered in support of his or her appeal.

The hearing of the appeal may be conducted by the magistrate in such manner as in his or her opinion is best calculated to enable him or her to arrive at a just decision in the matter.

The magistrate may –

- (i) call any person who is present to appear before him or her and require or allow such person to give such oral evidence or produce such other proof as in the opinion of the magistrate may assist him or her in deciding the matter;
- (ii) administer an oath or affirmation to any person appearing before him or her;
- (iii) examine or allow the examination of any person so appearing;

- 
- (iv) postpone the hearing at any stage of the proceedings to a day determined by him or her.

The magistrate must keep a record of the proceedings and such record must be attached to and form part of the relevant application form.

The hearing of an appeal is open to the public.

A magistrate may allow an appeal heard by him or her, or may dismiss such appeal, and may also dismiss it if the appellant fails to appear before him or her on any day determined for the hearing or further hearing.

The magistrate must record his or her decision on the relevant application form.

If the magistrate dismisses the appeal, he or she shall keep the application in his or her office.

If the magistrate allows the appeal, he or she must forthwith refer the appellant to the registration officer concerned, and cause the application to be submitted to that registration officer.<sup>18</sup>

### **3.08 Registration of Applicant**

If the registration officer concerned does not refuse to register an applicant, or if the applicant is a person referred to the registration officer concerned by the magistrate, the registration officer shall register the applicant in respect of the election for which he or she has applied for registration by –

- (a) completing the prescribed registration form in respect of the applicant concerned in accordance with the information contained in that application form;
- (b) requiring the applicant –
  - (i) to sign the form so completed in the space provided for that purpose; or
  - (ii) if the applicant cannot write his or her name, to place his or her fingerprint or, as the case may be, a mark placed by the applicant on the application form, on the registration form in the space provided for that purpose or in accordance with the instructions of the registration officer concerned;
- (c) if the applicant has complied with sub-paragraph (b) above, signing that form in the space provided for that purpose and recording the date of registration and the constituency or the local authority area and, where such area is divided into wards, the ward in question, as the case may be, in which such applicant is entitled or qualified in terms of the Act to be so registered; and
- (d) after so signing that form, issuing the original of that registration card to the applicant in respect of the election for which he or she so applied.

If the applicant is a person who has been referred to the registration officer concerned by the magistrate, the registration officer concerned shall comply with the reference even if he or she is not the registration officer who has refused the application in the first place.

The application and duplicate registration card of a voter shall, as soon as is practicable after his or her registration be forwarded by the registration officer concerned to the supervisor of registration appointed for the constituency or for the local authority area in question, as the case may be.

As soon as is practicable after the close of the period determined for the registration of voters, the supervisor of registration concerned shall –

- (a) in the prescribed form compile from the records referred to in the preceding paragraph, received from the registration officer or officers for a constituency, local authority area or, where applicable, ward, as the case may be, a voters' list containing the names, residential addresses and registration numbers of all persons registered in respect of the constituency, local authority area or ward concerned;
- (b) forward such voters' lists to the Director to be dealt with.<sup>19</sup>

### **3.09 Publication of Provisional Voters' Registers**

Upon receipt of the voters' lists, the Director must –

- (a) in the prescribed form, cause to be prepared:
  - (i) in respect of the voters' lists for constituencies and/or polling districts, a provisional national voters' register; and
  - (ii) in respect of the voters' lists for a local authority area or a ward in that area, a provisional local authority voters' register;
- (b) publish a notice in the Gazette specifying the places at, and time during, which copies of such provisional registers shall be available for inspection by the public and the period within which objections may be made in respect of the names of voters appearing on any such register; and
- (c) furnish, free of charge:
  - (i) to every political party registered in terms of the Act, a copy of such provisional national voters' register and provisional local authority voters' register;
  - (ii) to every association or organisation registered in terms of the Act for the purpose of participating in any election for members of a local authority council, that part of such provisional local authority voters' register which relates to the local authority area in question.<sup>20</sup>

### **3.10 Objections**

Any person whose name appears on the relevant provisional voters' register may, within the period stipulated, lodge an objection in writing to the inclusion of the name of any other person on that register with the magistrate designated for the constituency or local authority area, as the case may be, in respect of which the name of such other person is so included, on the grounds that he or she –

- (a) is not entitled or qualified to be registered as a voter; or
- (b) is not complying with the requirements in relation to residence.

When an objection is lodged against any name of a person being included in the relevant provisional voters' register, the magistrate concerned must, unless he or she is satisfied that the ground of the objection is not a ground on which the name could be excluded from that register, forthwith serve or cause to be served a notice on the person whose registration is objected to, informing him or her of the objection and the nature thereof, and that he or she may make representations to the magistrate concerned in regard thereto within a period of 15 days after the date of the notice.

When an objection has been lodged, the magistrate must, upon the expiration of the stipulated period, determine the objection.

The magistrate may –

- (a) allow the objection and direct the Director to exclude the name of the person against whom the objection was made, from the relevant provisional voters' register; or
- (b) dismiss the objection.

The magistrate is required to notify in writing any person who lodged an objection and made representations in connection with such objection and the Director, of his or her decision regarding the objection.

If an objection has been allowed and a request for the submission of a statement of the case is not made within three days after the date on which the objection was allowed, or if so made, is refused, the relevant registration card issued to the respondent shall cease to be valid, and whereupon the magistrate concerned shall forthwith transmit that registration card endorsed by him or her to the effect that it has ceased to be valid, to the Director.<sup>21</sup>

### **3.11 Statement of Case for Decision by Judge**

The magistrate who dismissed the appeal of an appellant or allowed or dismissed an objection shall at the request of the appellant, respondent or objector, as the case may be, made in writing, transmit a statement of the case to the registrar of the court for submission to a judge of that court in chambers.

The magistrate must refuse a request made by the appellant, or if the respondent was present when the objection was allowed or the objector when the objection was dismissed, by the respondent or objector, as the case may be, unless it is received by the magistrate within three days after the date on which the appeal was dismissed or the objection was allowed or dismissed, as the case may be.

The statement of the case shall include an indication of the magistrate's decision in the relevant appeal or objection, as the case may be, and shall be signed by the magistrate and by the appellant or the respondent or the objector, as the case may be.

The judge to whom the statement of the case is submitted may, if the statement of the case appears to him or her to be defective, call for further information and may, in open court, confirm or set aside the decision of the magistrate.

The registrar of the court is required to forward two certified copies of the decision of the court to the magistrate who transmitted the statement of the case, and one copy to the Director.

A decision of the court setting aside the decision of the magistrate shall, for all purposes, where the magistrate had, by the decision so set aside, dismissed an appeal, be deemed to be a decision of the magistrate concerned allowing such appeal.<sup>22</sup>

### **3.12 Cancellation of Registration Card**

If an objection has been lodged against the inclusion of the name of a person on the relevant provisional voters' register, such person shall, unless the objection has been dismissed, surrender his or her registration card to the magistrate to whom the objection was submitted or to any other magistrate or to any supervisor of registration or registration officer –

- (a) if at any time it comes to such person's knowledge that the objection has been allowed; or
- (b) if ordered to do so by the said magistrate.

If such person fails to comply with an order, the magistrate, any supervisor of registration, registration officer or police officer may without a warrant seize the registration card in question or cause it to be seized.

The magistrate, supervisor of registration, registration officer or police officer to whom the registration card is surrendered or who seizes it or causes it to be seized shall forward the registration card without delay to the Director.

The Director shall cancel every registration card which ceased to be valid if such registration card comes into his or her possession at any time, unless the magistrate's decision as a result of which such registration card ceased to be valid has been set aside.<sup>23</sup>

### **3.13 Replacement of Registration Card**

The Director may, upon application by a person whose registration card has been lost, destroyed or has for any reason become illegible, issue to such person a duplicate registration card in the prescribed form, if he or she is reasonably satisfied –

- (a) as to the identity of such person; and
- (b) as to the facts and circumstances relating to its loss, destruction or its becoming illegible: provided that a duplicate registration card must not be issued on any day determined as a polling day in respect of any election in question.

If the application is made by reason of the illegibility of the registration card, the Director must not consider it, unless the registration card is surrendered to him or her.

If the Director decides to issue a duplicate registration card, he or she must cancel any registration card surrendered to him or her.<sup>24</sup>

### 3.14 Publication of Voters' Registers

As soon as practicable after the expiration of the period provided for the lodging of objections against the inclusion of the names of persons on the relevant provisional voters' register, the Director shall –

- (a) in the prescribed form, cause, with due regard to any registration card which has ceased to be valid, to be prepared –
  - (i) in respect of any election for the Presidential election or for a member of the National Assembly or any member of a regional council, a national voters' register; and
  - (ii) in respect of any election of a member of a local authority council, a local authority voters' register;
- (b) certify the relevant voters' register in the prescribed manner.

If any appeal or objection has not been disposed of at the time of the certification, the Director shall –

- (a) in the case of such appeal, upon notification that such appeal has been allowed, include the name of the applicant in the relevant voters' register;
- (b) in the case of such objection, endorse that register to the effect that an objection to the inclusion of the name of the person concerned has been lodged, and upon notification that the objection was allowed, remove the name of that person from the register.

The Director shall as soon as is practicable after the certification of the relevant voters' register forward a copy thereof to the Commission, whereupon the Commission shall –

- (a) publish a notice in the Gazette to the effect that a relevant voters' register has been completed and certified, and specifying the places where copies thereof shall be kept for inspection by the public;
- (b) cause to be transmitted to every supervisor of registration:
  - (i) for a constituency, a copy of the relevant part of the national voters' register applicable to that constituency;
  - (ii) for a local authority area, a copy of the relevant part of the local authority voters' register applicable to that local authority area.

Upon the date of publication by the Commission of a notice, every voters' list and every provisional voters' register ceases to be of any force and effect, and thereupon the relevant voters' register shall be the voters' register for the respective constituencies or local authority areas or, where such areas have been divided, for the respective wards.<sup>25</sup>

### 3.15 Original Voters' Register for Inspection by Public

The national voters' register and the local authority voters' register shall be kept for inspection by the public at the offices of the Commission.

Any person desiring to inspect or make copies or take extracts from any such register is entitled to do so during the normal office hours of the Commission.<sup>26</sup>

### **3.16 Supplementary Registration of Voters**

For the purposes of the inclusion in any voters' register of persons who qualify to be registered as voters and who have not or could not so have registered in the last general registration in respect of which that register was prepared, a supplementary registration may be determined in the manner prescribed, and thereupon the relevant provisions of the Act shall apply in relation to such registration, as if it were a general registration determined in respect of such persons.

Persons who are entitled and qualified to be registered as voters in respect of any new local authority area established, after the last general registration of voters in respect of which a relevant voters' register was prepared, shall be deemed to be persons who, for the purposes of the inclusion in that voters' register, have not or could not so have registered in that last general registration.<sup>27</sup>

#### **3.16A Continuous Registration of Voters**

For the purposes of the inclusion in any voters' register of persons who are qualified for registration as voters but are not so registered, any such person may make application for his or her registration, if not during any subsequent general registration or supplementary registration, at any other time, except during a period of suspension in respect of the holding of elections.

The relevant provisions applicable to application for registration made during a general registration of voters, apply.

A voters' list shall be compiled by the supervisor of registration for each month and be forwarded to the Director not later than the fifteenth day of the following month.

The continuous registration of voters shall be suspended during any election (general election or by-election) from the date that the proclamation in relation to such election or by-election is published in the Gazette, up to and including the second day after the close of the poll at such election or by-election, whichever is applicable, and shall be so suspended:

- (a) in the case of a general election, for the whole of Namibia; and
- (b) in the case of a by-election, for every constituency or local authority area or, where applicable, ward in respect of which the by-election is held.

The Director shall keep every provisional voters' register available for inspection by the public at his or her office and, if the Commission so determines, at such other place or places as shall be specified by the Director by notice in the Gazette, during the first seven working days of the second month following on the month in respect of which such provisional voters' register was prepared.

Where a suspension of continuous registration occurs:

- (a) every supervisor of registration concerned shall immediately upon the commencement of that period of suspension compile and forward to the Director

the voters' list for the portion of the month preceding the date of such commencement and, unless it has already been forwarded to the Director, also the voters' list for the preceding month;

- (b) the Director shall keep every provisional voters' register available for inspection by the public at his or her office and, where applicable, at such place or places as may have been specified, for a period of seven days commencing on the first working day following on the expiry of the period of fourteen days from the date on which such suspension of the continuous registration commenced.

The period of seven days during which a provisional voters' register is available for inspection shall be the period within which an objection may be lodged.<sup>27A</sup>

### **3.17 Change of Residence**

When there has been a change in the place of residence or home, with reference to which a voter has been registered in any given local authority area, and as a result thereof he or she is not entitled to the continuance of his or her registration in that local authority area, such voter shall as soon as is practicable after such a change notify the Director in respect thereof.<sup>28</sup>

### **3.18 Application for Registration in Another Constituency, Local Authority Area, etc**

Any voter who, because of a change in the place of his or her residence or home, becomes entitled or qualified for registration in any other constituency or in any other ward within the same local authority area, may apply to the registration officer concerned, in the form determined by the Director, for his or her registration in such other constituency or ward, and shall, when such an application is made by him or her, surrender to that registration officer the registration card previously issued to him or her.

No application for registration shall be made during a period of suspension of continuous registration.<sup>29</sup>

### **3.19 Registered Deaths**

Any registrar of deaths or any other officer designated by him or her, shall not later than the fifteenth day of each month, transmit to the Director a return in which are furnished in respect of any person whose death during the preceding month was registered by or under any law governing the registration of deaths in Namibia, his or her last residential and postal address and such other particulars as may be determined by the Director after consultation with the said registrar or officer.<sup>30</sup>

### **3.20 Amendment of Voters' Registers**

The voters' registers may be amended by the Director by –

- (a) adding the name, registration number and particulars of any person –

- (i) whose inclusion in the relevant voters' register has subsequently been accepted by virtue of any supplementary registration or in accordance with the process of continuous registration;
- (ii) whose name was erroneously or contrary to the Act omitted or removed from or refused to be included in the register in question; or
- (iii) whose application for registration is accepted by the Director;
- (b) removing the name and particulars of any deceased voter or any person –
  - (i) who since his or her name was included in the register in question has ceased to be entitled to registration as a voter in the particular local authority area, under which his or her name appears in the local authority voters' register;
  - (ii) whose name was erroneously or contrary to the Act included in the register in question;
  - (iii) whose name was in terms of sub-paragraph (a) (iii) added under another constituency or ward in the register in question;
- (c) transferring the name and particulars of any person whose name was erroneously or contrary to the Act included in the register in question, under any particular constituency, local authority area, or ward, to the appropriate constituency, local authority area, or ward, as the case may be;
- (d) correcting any error on the register in question on the name, registration number or particulars of a person, supplying any omission in such a name, number or particulars or recording any change in such name, number or particulars; or
- (e) removing any superfluous entry in the register in question where the name of the same person appears more than once in that register; or
- (f) arranging the local authority voters' register into appropriate parts according to wards upon the division of local authority areas into wards by virtue of the provisions of the Local Authorities Act 1992.

If the Director removes from the register in question a name which is not the name of a fictitious or deceased person, he or she must inform the person concerned by notice directed to the address of that person appearing in that register and state his or her reasons for such removal.<sup>31</sup>

### **3.21 Return or Surrender of Registration Cards**

When the name, registration number and particulars of any person –

- (a) are added to a relevant voters' register, the Director shall, if no registration card has been issued to such person, issue or cause to be issued a registration card to such person or, if a registration card has already been surrendered by such person cause it to be returned to such person;
- (b) are removed from a voters' register, the Director shall request such person, if he or she is not a deceased person, by notice served upon such person, to surrender the registration card in question within a period determined by the Director and specified in such notice, to him or her or any supervisor of registration, registration officer or magistrate so specified;
- (c) are transferred in terms of the Act, the Director shall request such person by notice served upon such person, to surrender his or her registration card within the period so determined by the Director and specified in such notice, to him or her, to any

- supervisor of registration, registration officer or magistrate so specified, in order to correct or complete the particulars on such registration card;
- (d) are compiled for the purposes of preparing the register in question in the manner prescribed, the Director may by notice in the Gazette request persons affected thereby, to surrender their registration cards within a period specified in such notice and at such places and to such persons as may be so specified, in order to correct or complete any particulars on such registration card, or to issue a new registration card.<sup>32</sup>

### **3.22 Voter to Verify Name on Register**

It is the duty of any person who has applied for registration and is qualified to be registered to ascertain whether his or her name has been included in a voters' register, and if it is not the case, to take the necessary steps to have it so included.<sup>33</sup>

### **3.23 Closing of Voters' Registers<sup>34</sup>**

#### **3.24 Registers Not Invalidated by Reason of Errors**

If through accident, inadvertence or oversight, anything required by law to be done in the preparation of any voters' register is erroneously done or omitted to be done, the voters' register in question shall not be invalidated thereby and the Director may at any time take or cause to be taken such steps as are necessary to rectify the error or omission.<sup>35</sup>

#### **3.25 Effect of Alteration of Constituencies or Wards**

If by reason of any new determination or division of constituencies, or wards, any portion of a constituency, or ward, as existing before the determination or division, is allocated to another constituency, or ward, respectively, the Director must prepare from the current voters' register in question which was prepared on the basis of the last previous determination or division, as amended from time to time, a voters' register of the altered constituencies, or wards, as the case may be.

The relevant voters' register prepared pursuant to the above provision shall come into operation on the date on which the alteration of the constituencies, or wards, as the case may be, comes into operation at the next general election in respect of which the current voters' register in question was prepared.

The voters' register prepared on the basis of the last previous determination or division shall be retained and shall be the relevant voters' register to be used at any by-election in question until the alteration of the constituencies, or wards, as the case may be, comes into operation at the next general election in question.<sup>36</sup>

#### **3.26 Director May Demand Particulars**

The Director may by notice in writing at any time require any person, whether he or she is registered or not, to furnish, in the manner and within the period specified in the notice,

such particulars as the Director may demand in the notice and which are relevant to the registration or continued registration of such person or any other person.<sup>37</sup>

**— Section 4 —**

**REGISTRATION OF POLITICAL PARTIES**

**4.01 Application for Registration**

The Commission shall on the written application in the prescribed form of a political party, direct the Director to register it as a political party, if –

- (a) the Commission is satisfied –
  - (i) that it is the principal object of that political party to participate in and promote elections under the Act, including –
    - (aa) the nomination of persons as candidates for any such elections;
    - (bb) the canvassing for votes for a candidate at any such elections;
    - (cc) the devotion of any funds or any part thereof to the election expenses of any candidate or the funds of any other political party taking part in any such elections;
  - (ii) that any object of that political party is not prejudicial to the safety of the State, the public welfare or the peace and good order; and
  - (iii) that membership of that political party is not excluded or restricted on the ground of sex, race, colour, ethnic origin, religion, creed or social or economic status; and
- (b) the application is accompanied by –
  - (i) the amount for registration as may be prescribed;
  - (ii) the constitution of that political party; and
  - (iii) a declaration signed by at least 500 members of the political party in question whose names appear on the national voters' register to the effect that these voters support the registration of that political party, and which is in the prescribed form.

If a political party applies for registration as a political party before the voters' registers, which are to be prepared after the first general registration, have come into operation, it shall be deemed to be sufficient compliance with the relevant provision of the Act if the declaration contains the registration numbers of, and has been signed by, at least 500 members to whom a registration card was issued for inclusion in the provisional national voters' register, for use in connection with the first election of members of regional councils after the commencement of the Act and by-elections for such councils to be held after that first election but prior to any general election.

The application shall contain –

- (a) the name of the political party;
- (b) the abbreviated name of the political party which may, for the purposes of any election

in terms of the Act, appear on the ballot paper for that election if the political party desires an abbreviation of its name to so appear;

- (c) the full names and the signature of the person who is the authorised representative of the political party;
- (d) a complete list of the names and addresses of its other office-bearers;
- (e) the business address and postal address in Namibia of the office which is the office of the authorised representative of the political party;
- (f) the distinctive symbol of the political party which may appear on the ballot paper, if the political party desires such symbol to so appear.

The declaration shall contain –

- (a) the full names and registration numbers of the persons who have signed the declaration; and
- (b) the names or numbers, as the case may be, of the regions and constituencies in respect of which such signatories are registered.

If a change occurs in relation to the name, abbreviated name, distinctive symbol, the authorised representative or the business or postal address of the office of the authorised representative of any political party, the political party concerned shall notify the Commission in writing of such change within 30 days after the date on which the change has occurred and, in the case of a change of the name or abbreviated name of the political party, transmit the political party's registration certificate together with such notification.

After the Commission has directed the Director to register a political party, the Director shall issue to such political party a registration certificate in the prescribed form.

If, on the receipt of a notification of change, the Commission is satisfied that the said change will not result in the name or distinctive symbol or abbreviated name of a political party being changed into a name or abbreviated name or distinctive symbol on account whereof the registration of the political party would have been prohibited or bring about any other circumstance on account of which the registration of the political party could originally have been refused, it shall direct the Director to effect the change in respect of the registration of the political party and –

- (i) in the case of a change of the name or abbreviated name of the political party, to issue an amended registration certificate to that political party; or
- (ii) in the case of any change other than of a change of name, to issue to that political party a written confirmation that the change in respect of its registration has been effected.

Any person who makes a false statement or furnishes false particulars in an application for registration of a political party as a political party, knowing such statement or particulars to be false, is guilty of an offence and on conviction be liable to penalties prescribed by law for the crime of perjury.<sup>38</sup>

#### **4.02 Prohibition of Registration**

The Commission must not direct the Director to register a political party as a political party, if the name, abbreviated name or distinctive symbol of the political party –

- (a) is identical to the name, abbreviated name or distinctive symbol under which any other political party has already been registered as a political party, or so closely resembles it that voters may be misled or confused thereby; or
- (b) is indecent or obscene or offensive or harmful to public morals.<sup>39</sup>

#### **4.03 Cancellation of Registration as Political Party**

The Commission shall direct the Director to cancel the registration of a political party as a political party –

- (a) if it is notified in a letter signed by any authorised representative of the party in question of a resolution taken by that party in congress that that party has been dissolved or is going to be dissolved on a date which shall be specified in such letter; or
- (b) if it is proved to the satisfaction of the Commission that any political party has at any time after its registration failed to comply with any relevant provision of the Act or guidelines issued thereunder.<sup>40</sup>

#### **4.04 Registration of Association for Elections of Local Authority Councils**

The Commission must on the written application in the prescribed form of any association or organisation, incorporated or unincorporated, which does not comply with the requirements for registration as a political party, and which desires to participate in any election for members of a local authority council, register it for that purpose in respect of that council, if –

- (a) the Commission is satisfied that it complies with the basic requirement of the Act applicable to the registration of a political party;
- (b) the application is accompanied by –
  - (i) the amount for registration as may be prescribed;
  - (ii) the constitution of that association or organisation; and
  - (iii) a declaration signed by at least 250 members of the association or organisation in question whose names appear on the local authority voters' register, in respect of the local authority area in question, to the effect that such voters support the registration of the association or organisation for that purpose, and, in relation to such voters, any reference to the provisional national voters' register or regional councils is deemed to be a reference to the provisional local authority voters' register or local authority councils, respectively.<sup>41</sup>

#### **4.05 Conduct of Political Parties**

No political party shall conduct its political activities on the grounds of race, colour or ethnic origin.

The Commission may by notice in the Gazette, and not inconsistent with the Act or the Namibian Constitution, issue guidelines for the conduct of political activities by political parties in respect of any election.<sup>42</sup>

#### **4.06 Inspection of Documents**

A copy of each document which has been handed in at the Commission for the purposes of the registration of a political party, shall be kept at the office of the Commission for inspection by the public and any person wishing to inspect such document may do so during office hours without payment.<sup>43</sup>

#### **4.07 Appeal Against Decision of Commission**

Any political party which is aggrieved by a decision of the Commission in connection with its application for registration, or its cancellation as a political party, may within 30 days after the political party has been notified of the said decision, appeal against that decision by way of application or notice of motion to the court.

The court shall enquire into and consider the matter and may confirm or set aside the decision of the Commission, and may make such order as to costs as it may deem fit.

Any judgment given or order made by the court shall be subject to appeal to the Supreme Court of Namibia on the same conditions as if it were a judgment given or order made in a civil proceeding in the court.<sup>44</sup>

#### **4.08 Disclosure of Foreign Financing of Political Parties**

No political party or other body or institution or any member of such party, body or institution and no other person shall from outside Namibia receive within Namibia, or bring or cause to be brought into Namibia, any money or anything which can be cashed or converted into money, which on the ground of a donation or on any other ground, is intended to be used, or in the discretion of such political party, body, institution, member or other person may be used, to further the interest of any political party or the candidature of himself or herself or any other person who has been nominated or may be nominated as a candidate for any election or to canvass or combat any aim or principle of a political party, unless such money is disclosed to the public within which such period after having received it and in such manner and subject to such conditions as may be prescribed.

If any political party, body, institution, member or other person uses any money in contravention of the provisions of the Act, the Commission shall cancel the registration of that political party unless it is proved to the satisfaction of the Commission that the money was so used by such body, institution, member or other person without the knowledge, sanction or connivance of the political party.<sup>45</sup>

— *Section 5* —

**PREPARATION FOR ELECTIONS – NOMINATIONS**

**5.01 General Elections and By-elections**

A general election shall take place –

- (a) for the election of the President –
  - (i) on a date not later than the date on which his or her term of office expires by effluxion of time; or
  - (ii) in the event of the dissolution of the National Assembly, on a date within the period required by the Constitution that a national election shall take place;
- (b) for the election of members of the National Assembly –
  - (i) on a date not later than the date on which its term expires by effluxion of time as contemplated by the Constitution; or
  - (ii) in the event of the dissolution of the National Assembly as contemplated in the Constitution, on a date within the period required by the Constitution that a national election shall take place;
- (c) for the election of members of regional councils –
  - (i) in the case of an election for the first regional councils, on a date fixed in accordance with the Constitution; or
  - (ii) in the case of any subsequent election for such members, on a date determined in accordance with the Regional Councils Act 1992;
- (d) for the election of members of local authority councils –
  - (i) in the case of an election for the first local authority councils, on a date fixed in accordance with the Constitution; or
  - (ii) in the case of any subsequent election for such members, on any date determined in accordance with the Local Authorities Act 1992.

When a casual vacancy occurs –

- (i) in the office of the President and any vacancy which so occurred is required to be filled by election, a by-election shall take place on a date determined within the period stipulated;
- (ii) in any regional council and any vacancy which so occurred is required to be filled by election, a by-election shall take place in the constituency in respect of which the vacancy in that council occurred, on a date determined within the period stipulated;
- (iii) in any local authority council and any vacancy which so occurred is required to be filled by election, a by-election shall take place in the ward in respect of which the vacancy in that council occurred, on a date determined in accordance with the Local Authorities Act 1992.

When any vacancy in the office of the President has occurred, the Commission shall, upon being satisfied of the fact of such vacancy, forthwith give notice in the Gazette that a vacancy in the office of the President has occurred, the date on which it occurred and the cause thereof.<sup>46</sup>

## 5.02 Nominations of Candidates

When a general election or by-election is to take place, the President shall by proclamation in the Gazette make known –

- (a) in the case of any such election –
  - (i) for the President or members of the National Assembly, in respect of Namibia;
  - (ii) for any member of any regional council, in respect of each constituency in which such an election is to take place;
  - (iii) for any member of any local authority council, in respect of the local authority area or, where such an area is divided into wards, for the ward in which such an election is to take place,
 a date determined by him or her upon which the submission of nominations of candidates shall take place and the place at which it shall so take place;
- (b) any day determined by him or her upon which a poll shall be taken at such election; and
- (c) the name or office of the person appointed as returning officer at such election, and if the nomination of candidates shall be submitted to any person or body other than the returning officer so referred to, then also the name or office of that person or body, as the case may be.

Any day determined for submission of nominations of candidates shall be any day not less than 15 days and not more than 20 days after the day on which the proclamation is published in the Gazette.

Any day determined as polling day shall be any day not less than 30 days and not more than 40 days after the nomination day.

An election is deemed to commence on the day on which the proclamation is published in the Gazette in relation to that election.<sup>47</sup>

## 5.03 Appointment of Election Officers

The Commission shall appoint –

- (a) in the case of any election –
  - (i) for the President or members of the National Assembly, for every constituency and for a polling station outside Namibia;
  - (ii) for any member of a regional council, for a constituency;
  - (iii) for any member of a local authority council, for a local authority area or, where such area is divided into wards, for a ward,
 a returning officer who shall, subject to the direction and supervision of the Director, have such powers, duties and functions as may be conferred or imposed upon him or her by the Act;
- (b) as counting officers such number of persons as it may deem necessary for the purpose of assisting any person who in terms of the Act is charged with the determination of the result of the poll in any such election;

- (c) a presiding officer for each polling station who shall be in control thereof;
- (d) as many polling officers as may be necessary to facilitate the taking of the poll at that polling station,

provided that the same person may be appointed returning officer for a constituency and a local authority area or ward referred to in sub-paragraph (a) or for more than one polling station referred to in this paragraph.

Any person appointed under these provisions is entitled to remuneration or allowances or both in respect of such services rendered by him or her and at such tariffs, as may from time to time be determined by the Commission, in consultation with the Permanent Secretary of the Ministry responsible for elections.

Different circumstances, bases, services or tariffs may be determined in respect of the different offices or in respect of persons appointed to such offices who are in the full-time service of the State and persons so appointed who are not in the full-time service of the State, or in respect of work done under different circumstances or in different areas.

The Commission may delegate any power conferred upon it to the Director who may, to the extent determined by the Commission, authorise any returning officer or presiding officer concerned to exercise any power so delegated to him or her.

Any appointment made may at any time be withdrawn by the authority who made the appointment in question.

The Commission shall as soon as is practicable after an appointment has been made, give or cause to be given public notice of the name and official address of a person so appointed.

Every returning officer, presiding officer or polling officer shall be competent to take an oath or affirmation from any other person for the purposes of the Act.<sup>48</sup>

#### **5.04 Agents of Political Parties and Candidates**

A political party or, in the case where the nomination of an independent candidate is permitted in terms of the provisions of the Act, such candidate, may appoint subject to the final paragraph below, such number of persons as may be prescribed, as election agents for a polling station at an election in question and shall furnish, not later than fifteen days after the nomination day for that election, or such later day as the Director in a particular case may allow, the returning officer concerned, in writing, of the name and address of such election agent and polling station at which such election agent is appointed.

As soon as is practicable after expiration of the period referred to above, the returning officer concerned must give public notice of the name and address of every election agent furnished to him or her in terms of that provision and the polling station in respect of which such election agent is appointed.

An election agent for a polling station shall be entitled to attend at that polling station as the

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representative and observer of the political party or such candidate by whom he or she was appointed such agent.

A political party or such candidate may at any time revoke the appointment of any election agent.

When the appointment of an election agent has been revoked or, if any election agent dies or becomes incapacitated, the political party or such candidate shall inform the returning officer concerned in writing of such revocation, death or incapacity, and such political party or candidate may appoint any other person as election agent in his or her place and shall forthwith notify in writing the returning officer concerned of the name and address of such person so appointed who shall, in so far as is practicable, give likewise public notice of such name and address of such election agent.

A political party or such candidate shall be entitled to be represented at any place where the determination of the result of the poll for an election occurs, by such number of persons as may be prescribed, appointed, subject to the final paragraph below, by such political party or candidate not later than seven days before the election in question, as counting agents.

A political party or such candidate shall not later than three days before the election in question furnish the returning officer concerned and, in the case of the determination of the poll in accordance with Section 87A, the Director, in writing, of the names and addresses of such counting agents who shall give public notice thereof.

Where any officer is required to seal anything in an election, an election agent or counting agent who is entitled to be present, and is present, is entitled to place the seal of the political party or candidate which appointed him or her, on that thing, and before anything which has been sealed may be opened, any such agent shall be entitled to inspect such seals.

No person shall be appointed or act as an election agent or counting agent if he or she:

- (a) is a candidate for the election in question; or
- (b) is not a Namibian citizen.<sup>49</sup>

### **5.05 Declaration of Secrecy**

Every returning officer, presiding officer, polling officer or counting officer and every agent appointed under the preceding provisions shall, before assuming his or her duties or performing any function or attending at any polling station or where the result of an election is determined, make, in a form determined by the Director, a declaration of secrecy under oath or affirmation.

Every candidate for any election shall make the declaration of secrecy referred to in these provisions before attending a place where the result of such election is determined.<sup>50</sup>

### **5.06 Nomination of Presidential Candidates**

A person must not be nominated as a candidate for any election to the office of President, unless he or she –

- (a) qualifies to be elected as President under the Constitution;
- (b) is a registered voter; and
- (c) is nominated, in a manner prescribed, either –
  - (i) as a representative of a political party, by such political party; or
  - (ii) as an independent candidate whose nomination is supported by at least 300 registered voters, from each of at least ten regions in Namibia.

Upon nomination day and at the place determined in respect of the election in question, the Chairperson of the Commission shall hold a public sitting for the submission of nominations of candidates for that election: provided that a nomination may be submitted to the Chairperson of the Commission at any time after publication of the appropriate proclamation and before the close of the sitting.

No candidate for the election of President shall be regarded as having been duly nominated, unless –

- (a) his or her nomination is made in the prescribed form and –
  - (i) in the case of a candidate nominated by a political party, duly signed by the authorised representative of the political party or any other office-bearer of such political party authorised thereto in writing by the authorised representative; or
  - (ii) in the case of an independent candidate, duly signed by any two persons supporting the nomination;
  - (iii) is accompanied by a photo of the candidate in such form and of such colours as may be acceptable to the Chairperson of the Commission, but subject to any requirements laid down by the Commission.
- (b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and
- (c) in the case of a nomination by a political party such nomination is accompanied by –
  - (i) a copy of the registration certificate of the political party, and certified as such by a justice of the peace or commissioner of oaths; and
  - (ii) a receipt that an amount of N\$10,000 has been deposited with the State Revenue Fund, by or on behalf of the political party in question; or
- (d) in the case of a nomination as an independent candidate –
  - (i) such nomination is accompanied by a receipt that an amount of N\$5,000 has been deposited with the State Revenue Fund, by or on behalf of such candidate; and
  - (ii) there is submitted to the Chairperson of the Commission a list, not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate, and none

of whom has already signed in support of any other candidate in respect of the election in question.

The amount deposited by or on behalf of a political party or candidate, as the case may be, shall be forfeited to the State if the candidate concerned recorded in the election less than ten per cent of the total number of votes cast for all the candidates at that election: provided that no such forfeiture shall follow if at such election no candidate recorded the requisite majority of votes cast as contemplated in the Constitution.

At any time before the close of the sitting determined for the submission of nominations –

- (a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or
- (b) the consent to nomination may be withdrawn by a candidate concerned, by submitting to the Chairperson of the Commission any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.

If the office of the Chairperson of the Commission is vacant or the Chairperson is for any reason unable to perform the functions assigned to him or her, the members or remaining members of the Commission, as the case may be, shall elect from among their number any other member to act in the place of the Chairperson of the Commission, and who shall, while so acting, be competent to perform any of those functions.<sup>51</sup>

### **5.07 Duration of Session on Nomination Day**

A sitting for the submission of the nomination of candidates shall be from 09.00 hours until 11.00 hours: provided that if at such last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the Chairperson of the Commission shall continue the sitting for such period as will enable such candidate to be duly nominated.<sup>52</sup>

### **5.08 Declaration of Duly Nominated Presidential Candidate**

If the Chairperson of the Commission is satisfied that the Act has been complied with, he or she shall declare, as soon as is practicable after the close of the sitting, the candidate concerned to be duly nominated for the election of the President, and shall thereupon notify the candidate concerned by any instrument in writing of such declaration.

As soon as is practicable after the close of the sitting the Commission shall by notice in the Gazette make known:

- (a) the full names, registration number and residential address of each duly nominated candidate and the political party by whom he or she was nominated or indication “independent” if a candidate has been so nominated;
- (b) any polling day of the election in question;
- (c) the allocation of every polling station in a constituency.

When the Chairperson of the Commission rejects a nomination of a candidate for the

election in question, he or she must forthwith by any instrument in writing, notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection has been made, and shall afford the political party or the persons by whom the nomination in question was submitted, an opportunity, at any time before the close of the sitting, to rectify the nomination or to nominate any other qualified person as candidate for that election.<sup>53</sup>

### **5.09 Lack of Nomination or Death of Candidate**

If no candidate is declared duly nominated, the Commission shall immediately terminate the election, and all proceedings relating to the said election shall be commenced afresh in the same manner as if a vacancy had occurred in the office of President.

If a duly nominated candidate for the election of President dies before the poll for that election has commenced or while the poll for that election is taking place, the Commission shall immediately terminate the election, and all proceedings relating to the said election shall be commenced afresh in the same manner as if a vacancy had occurred in the office of President: provided that no fresh nomination is necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.<sup>54</sup>

### **5.10 Nomination of Candidates for National Assembly Elections – Party Lists**

A political party shall take part in the election for members of the National Assembly by submitting to the Commission a list of candidates in writing at any time after the publication in the Gazette of the appropriate proclamation, but not later than 11.00 hours on the day determined and which shall contain the names, and residential addresses of at least 24 but not more than 72 candidates nominated with a view to the filling of any seats in the National Assembly to which that political party may become entitled.

The names on a list of candidates must appear in such order as the registered party may determine. The registration number of each candidate must be stated on the list after his or her name. A person shall not be nominated as a candidate on a list of candidates, unless he or she –

- (a) qualifies to be elected as a member of the National Assembly;
- (b) is a registered voter;
- (c) is a member of the political party submitting the list of candidates in question.

A list of candidates shall be accompanied by –

- (a) a declaration by the authorised representative of the political party that each person whose name appears on the said list of candidates has consented to his or her nomination as a candidate of that political party and that every such person complies with the requirements of the Act;
- (b) a copy of the registration certificate of the political party and certified as such by a justice of the peace or a commissioner of oaths;
- (c) a photo of the head of the political party in question, in such form and of such colours as may be acceptable to the Commission.

Any person whose name appears on more than one list of candidates shall be deemed not to be nominated as a candidate for any political party which submitted the list in question.

A copy of each list of candidates must be kept for inspection by the public at the offices of the Commission, and at such places in any constituency as the Commission may deem necessary.<sup>55</sup>

### **5.11 Publication of Party Lists**

The Commission is required to publish a notice in the Gazette –

- (a) stating, in alphabetical order, the names of all the political parties;
- (b) setting out the list of candidates of each such political party for the election in question, as drawn up by the registered party and declaring that the persons whose names appear on the list have been duly nominated as the candidates of the political party in question for that election.

If –

- (a) any person whose name appears on a list of candidates in a notice published in the prescribed form, dies or is found not to qualify to be a member of the National Assembly; or
- (b) the candidature of such person is withdrawn by him or her or by the political party which submitted that list of candidates by submitting to the Commission in any instrument in writing such withdrawal,

at any time before any polling day in the election in question, the Commission shall amend such notice by further notice in the Gazette by the deletion from that list of the name and registration number of such person and by the addition or insertion, as may be required by the political party in question on that list of the name and registration number of any person who so qualifies and has been nominated in writing by the political party whose list of candidates it is and consented to his or her nomination in writing.

A person whose name has –

- (a) been deleted from the list of candidates of a political party, shall cease to be a candidate for that election;
- (b) been added or inserted, as the case may be, to the list of candidates of a political party, shall thereby become a candidate for such political party for that election.<sup>56</sup>

### **5.12 Nomination of Candidates for Regional Councils**

A person must not be nominated as a candidate for election as a member of a regional council, unless he or she –

- (a) qualifies to be a member of a regional council pursuant to the Regional Councils Act 1992;
- (b) is nominated, in a manner either –

- (i) as a member of a political party, by that political party; or
- (ii) as an independent candidate whose nomination is supported by at least 100 registered voters in the constituency for which such nomination is intended.

No person shall at a general election or, where more than one by-election for members of regional councils take place on the same day, be nominated as a candidate in more than one constituency.<sup>57</sup>

### **5.13 Submission of Nomination as Candidate for Regional Council Elections**

Upon the nomination day and at the place and time determined in respect of any constituency, the returning officer for the constituency shall hold a public sitting for the submission of the nomination of candidates for that constituency: provided that a nomination may be submitted to the returning officer at any time after the publication of the appropriate proclamation and before the close of the sitting.

No candidate for election as a member of a regional council shall be regarded as having been duly nominated, unless –

- (a) his or her nomination is made in the prescribed form and –
  - (i) in the case of a candidate nominated by a political party, duly signed by the authorised representative of the political party or any other office-bearer of such political party authorised thereto in writing by the said authorised representative; or
  - (ii) in the case of an independent candidate, duly signed by any two persons whose names appear on the list referred to in paragraph (e) below; and
  - (iii) is accompanied by a photo of the candidate, in such form and of such colours as may be acceptable to the returning officer, but subject to any requirements laid down by the Commission; and
- (b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and
- (c) such nomination is accompanied by a receipt that an amount of N\$1,000 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and
- (d) in the case of a nomination by a political party, such nomination is accompanied by a copy of the registration certificate of the political party and certified as such by a justice of the peace or a commissioner of oaths; or
- (e) in the case of a nomination as an independent candidate, there is submitted a list to the returning officer concerned, not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate, and none of whom has already signed in support of any other candidate in respect of the election in question.

The amount deposited by or on behalf of a political party or candidate, as the case may be, shall be forfeited to the State if the candidate concerned recorded in the constituency less than ten percent of the total number of votes cast for all the candidates in that constituency.

Subject to the preceding paragraph, the amount deposited by or on behalf of a political party or candidate, as the case may be, shall, as soon as is practicable after the poll in the constituency has been taken, be returned to the depositor.

If the nomination as a candidate is rejected or withdrawn or a candidate is declared duly elected, the amount deposited by or on behalf of the political party or the person nominated as candidate shall as soon as is practicable be returned to the depositor.

At any time before the close of the sitting determined for the submission of nominations-

- (a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or
- (b) the consent to nomination may be withdrawn by the candidate concerned, by submitting to the returning officer concerned any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.<sup>58</sup>

#### **5.14 Duration of Session on Nomination Day**

A session for the submission of the nomination of candidates shall be from 09.00 hours until 11.00 hours: provided that if at such last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the returning officer for the constituency shall continue the sitting for such period as will enable such candidate to be duly nominated.<sup>59</sup>

#### **5.15 Candidates Duly Nominated for Regional Councils**

If, after examining every nomination as a candidate, the returning officer for the constituency is satisfied that the provisions of the Act have been complied with, he or she shall declare, as soon as is practicable after the close of the sitting, a candidate concerned to be duly nominated for that constituency, and thereupon the candidate concerned must be notified by any instrument in writing of such declaration.

If at the close of the sitting for the submission of nominations only one person has been duly nominated in respect of a constituency, the returning officer shall forthwith declare him or her to be the duly elected member of the regional council for the constituency in question with effect, in the case of any general election, from any polling day determined in respect of the election in question, or, in the case of a by-election, from the date on which the declaration is made, as the case may be.

The returning officer shall immediately, by any instrument in writing, notify the Commission of such declaration.

If at the close of the sitting for the submission of nominations more than one person has been nominated in respect of a constituency, a poll shall take place in accordance with the provisions of the Act.

When in respect of a constituency more than one person has been declared duly nominated

as a candidate, the returning officer for that constituency shall notify the Commission by any instrument in writing of –

- (a) the full names, registration number and residential address of each candidate declared to be duly nominated in respect of the constituency in question; and
- (b) the name of the political party which has nominated the candidate, or an indication “independent” if a candidate has been so nominated.

After receipt of a notification, the Commission shall, as the case may be, by notice in the Gazette, make known –

- (a) the full names, registration number and residential address of each person who has been declared as duly elected member of the regional council in question, and the name and number of the constituency in respect of which he or she has been so declared;
- (b)
  - (i) the full names, registration number and residential address of each candidate and the political party or indication “independent”;
  - (ii) the constituency in respect of which such candidates are nominated;
  - (iii) any polling day for the election in question;
  - (iv) the location of every polling station in a constituency.

The Commission must also cause to be displayed the notification referred to above at such places in a constituency as it may deem necessary.

When the returning officer for a constituency rejects a nomination as a candidate for the election of any member of a regional council, he or she shall forthwith by any instrument in writing notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection has been made, and shall afford the political party or the persons by whom such nomination was submitted an opportunity, at any time before the close of the sitting, to rectify the nomination or, to duly nominate any other qualified person as candidate for that constituency.<sup>60</sup>

### **5.16 Death of Candidate after Nomination**

If any duly nominated candidate at an election for a member of a regional council in any constituency dies before the poll has commenced, the President shall, upon being satisfied of the fact of the death, withdraw so far as it concerns that constituency, the proclamation determining any polling day which has been published in the Gazette.

If any duly nominated candidate at such election in any constituency dies while the poll in that constituency is taking place, the returning officer shall, upon being satisfied of the fact of the death, immediately terminate the polling and notify the Commission thereof.

When an election in a constituency has been terminated, all proceedings relating to the said election shall be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that constituency at the time of such termination: provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.<sup>61</sup>

### **5.17 Lack of Nomination**

If after the close of a sitting in a constituency no candidate has been duly nominated, all proceedings relating to the election in question shall be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that constituency at the time of the close of that sitting.

If the registration of a political party in respect of which a candidate for the election of a member of a regional council has been declared duly nominated in a constituency, is cancelled before the poll has commenced or while the poll is taking place in that constituency, all proceedings relating to such election shall continue as if such candidate were nominated as an independent candidate.<sup>62</sup>

### **5.18 Nomination of Candidates for Local Authority Elections**

A person shall not be nominated as a candidate for election as a member of a local authority council, unless he or she –

- (a) qualifies to be a member of that local authority council; and
- (b) is nominated as provided –
  - (i) in the case of elections for members of local authority councils to be held on party lists, as a member of a political party, by that political party; or
  - (ii) in the case of any election for any member of a local authority council required to be held otherwise than on party lists, either –
    - (aa) as a member of a political party, by that political party; or
    - (bb) as an independent candidate whose nomination is supported by at least 50 registered voters in the ward for which such nomination is intended.<sup>63</sup>

### **5.19 Submission of Nomination as Candidate for Local Authority Council Elections**

For the purposes of any election on party lists, a political party is required to take part in the election for members of a local authority council by submitting to the returning officer for the local authority area in question, a list of candidates in writing at any time after the publication in the Gazette of the appropriate proclamation, but not later than 11.00 hours on the day determined, and which shall contain the names and residential addresses of candidates, numbering not less than the number of members required to fill the seats in such council to which that political party may become entitled. Where any election for any member of a local authority council is held otherwise than on party lists, the returning officer for the ward in respect of which the election is to take place, shall, upon the nomination day and at the place and time determined in respect of that ward, hold a public sitting for the submission of the nomination of candidates for that ward.

No candidate for an election is regarded as having been duly nominated, unless –

- (a) his or her nomination is made in the prescribed form and –
  - (i) in the case of a candidate nominated by a political party, duly signed by the authorised representative of the political party or other office-bearer of such

- political party authorised thereto in writing by the said authorised representative;  
or
- (ii) in the case of an independent candidate, duly signed by any two persons whose names appear on the list referred to in sub-paragraph (e) below; and
  - (iii) is accompanied by a photo of the candidate, in such form and of such colours as may be acceptable to the returning officer, but subject to any requirements laid down by the Commission; and
- (b) he or she consents to the nomination by any instrument in writing before the close of the sitting; and
  - (c) such nomination is accompanied by a receipt that an amount of N\$1,000 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and
  - (d) in the case of a nomination by a political party, such nomination is accompanied by a copy of the registration certificate of the political party and certified as such by a justice of the peace or a commissioner of oaths; or
  - (e) in the case of a nomination as an independent candidate, there is submitted a list to the returning officer concerned not later than four o'clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate, and none of whom has already signed in support of any other candidate in respect of the election in question.

The amount deposited by or on behalf of a political party or a candidate, as the case may be, shall be forfeited to the State if the candidate concerned recorded in the ward less than ten percent of the total number of votes cast for all the candidates in that ward.

Subject to the foregoing provisions, the amount deposited by or on behalf of a political party or a candidate, as the case may be, shall as soon as is practicable after the poll in the ward has been taken, be returned to the depositor.

If the nomination as candidate is rejected or withdrawn or a candidate is declared duly elected, the amount deposited by or on behalf of the political party or the person nominated as candidate shall, as soon as is practicable, be returned to the depositor.

At any time before the close of the sitting determined for the submission of nominations for a ward –

- (a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or
- (b) the consent to the nomination may be withdrawn by the candidate concerned, by submitting to the returning officer concerned any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.<sup>64</sup>

## **5.20 Duration of Session on Nomination Day in Case of Wards**

A session for the submission of the nomination of candidates for a ward shall be from 09.00 hours until 11.00 hours: provided that if at such last-mentioned hour any person present is

then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the returning officer for the ward shall continue the sitting for such period as will enable such candidate to be duly nominated.<sup>65</sup>

### **5.21 Declaration of Candidates in Wards**

If, after examining every nomination submitted, the returning officer for the ward is satisfied that the provisions of the Act have been complied with, he or she shall declare, as soon as is practicable after the close of the sitting, a candidate concerned to be duly nominated for that ward, and thereupon the candidate concerned shall be notified by any instrument in writing of such declaration.

If at the close of the sitting for the submission of nominations only one person has been duly nominated in respect of a ward, the returning officer shall forthwith declare him or her to be the duly elected member of the local authority council for the ward in question with effect, in the case of a general election, from the polling day determined for the election in question or, in the case of a by-election, from the date on which the declaration is made, as the case may be.

The returning officer shall immediately, by any instrument in writing, notify the Commission of such declaration.

If at the close of the sitting for the submission of nominations more than one person has been nominated in respect of a ward, a poll shall take place.

When in respect of a ward more than one person has been declared duly nominated as a candidate, the returning officer for that ward shall notify the Commission by any instrument in writing of –

- (a) the full names, registration number and residential address of each candidate declared to be duly nominated in respect of the ward in question; and
- (b) the name of the political party which has nominated the candidate, or an indication “independent” if a candidate has been so nominated.

After receipt of a notification, the Commission shall, as the case may be, by notice in the Gazette, make known –

- (a) the full names, registration number and residential address of each person who has been declared as duly elected member of the local authority council in question, and the name or number of the ward in respect of which he or she has been so declared;
- (b)
  - (i) the full names, registration number and residential address of each candidate and the political party or indication “independent”;
  - (ii) the ward in respect of which such candidates are nominated;
  - (iii) any polling day for the election in question;
  - (iv) the location of every polling station in a ward.

When the returning officer for a ward rejects a nomination as a candidate for the election of

members of a local authority council he or she shall forthwith by any instrument in writing notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection has been made, and shall afford the political party or the persons by whom the nomination in question was submitted an opportunity, at any time before the close of the sitting, to rectify the nomination or, to duly nominate any other qualified person as a candidate for that ward.<sup>66</sup>

### **5.22 Death of Candidate for a Ward**

If any duly nominated candidate at an election for a member of a local authority council in any ward dies before the poll has commenced, the President shall, upon being satisfied of the fact of the death, withdraw so far as it concerns that ward, the proclamation determining the polling day which has been published in the Gazette.

If any duly nominated candidate at such election in any ward dies while the poll in that ward is taking place, the returning officer shall, upon being satisfied of the fact of the death, immediately terminate the polling and notify the Commission thereof.

When an election in a ward has been terminated, all proceedings relating to the said election shall, unless otherwise provided in the Local Authorities Act 1992, be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that ward at the time of such termination: provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the election was so terminated.<sup>67</sup>

### **5.23 Lack of Nomination**

If after the close of a sitting in a ward no candidate has been duly nominated, all proceedings relating to the election in question shall, unless otherwise provided in the Local Authorities Act 1992, be commenced afresh in precisely the same manner as if a vacancy had occurred in respect of that ward at the time of the close of that sitting.

If the registration of a political party in respect of which a candidate for the election of a member of a local authority council has been declared duly nominated in a ward, is cancelled before the poll has commenced or while the poll is taking place in that ward, all proceedings relating to such election shall continue as if such candidate were nominated as an independent candidate.<sup>68</sup>

## **— Section 6 —**

### **FURTHER ELECTION PREPARATIONS**

#### **6.01 Polling Stations**

The Commission shall for the purpose of facilitating the taking of a poll in any election, establish one or more polling stations at convenient places for each constituency or local authority area, or, where applicable, each ward of a local authority area.

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The allocation of polling stations shall be determined with due observance of –

- (a) the distribution of voters in Namibia;
- (b) the availability of suitable places for the establishing of polling stations;
- (c) access routes leading to such places;
- (d) traffic density at or in the vicinity of such places;
- (e) distances to be travelled to such places;
- (f) parking facilities;
- (g) the geography and topography of the area; and
- (h) any other relevant factor.

In order to enable voters outside Namibia to record their votes by way of tendered votes at an election for the President or members of the National Assembly, the Commission may establish polling stations outside Namibia at any Namibian diplomatic mission or at such other convenient places as may be determined by the Commission after consultation with the Minister of Foreign Affairs.

The Commission may authorise the Director, to the extent determined by the Commission, to provide one or more mobile polling stations for the purpose of facilitating the taking of a poll in any election.

A mobile polling station shall be under the general control of the returning officer designated by the Director and shall for the purposes of the Act be regarded as a polling station.

The returning officer shall, in such manner as he or she thinks fit and in so far as it may be practicable to do so, make known the places to be visited by a mobile polling station during the polling period and the times at which it shall visit such places.

The presiding officer in control of, and any polling officer and agent for, a mobile polling station may enter upon any land with such mobile polling station and the necessary equipment for the purpose of taking a poll of registered voters on that land, or for the purposes of ascertaining whether there are any registered voters on that land.

Additional polling stations may be established at any time after the commencement of the poll in any election and every political party concerned and, where applicable, every independent candidate shall be notified thereof as soon as is practicable.<sup>69</sup>

## **6.02 Provision of Equipment**

For the purposes of any election the Director shall provide every returning officer with:

- (a) polling booths, ballot boxes, ballot papers, instruments for stamping ballot papers with the official mark, seals and any other requisites as may be considered necessary; and

- (b) a list of unrecovered registration cards of persons whose names:
- (i) were included in the provisional voters' register but not in subsequent voters' register;
  - (ii) were removed from the voters' register in terms of Section 32,
- and a returning officer shall do such acts and make such arrangements to facilitate the taking of the poll as may be deemed advisable for effectually conducting the election.

The returning officer may depute any person under his or her control to perform on his or her behalf any of the duties imposed upon him or her in regard to the arrangements for the taking of the poll.<sup>70</sup>

### **6.03 Polling Booth**

The polling booths in or at a polling station shall be arranged in such a way as to permit voters to record their votes in secrecy and shall be so positioned that a person can neither enter nor leave it without being observed.

The presiding officer and a polling officer shall take care that, except in accordance with the provisions of the Act, no other person enters the polling booth while a voter is in it for the purpose of recording his or her vote.

For the purposes of the Act, the expression "polling booth" means any place or surface in or at a polling station that is screened off in such a way that voters may record their votes in secrecy.<sup>71</sup>

### **6.04 Ballot Box**

Not more than 30 thirty minutes before the commencement of the poll on a polling day at any polling station, the presiding officer shall –

- (a) satisfy himself or herself that all ballot boxes to be used at such polling station are empty;
- (b) permit the inspection of the interior of all such empty ballot boxes by such persons entitled to attend at the polling station, and as are present; and
- (c) immediately thereafter close and seal all such ballot boxes in the prescribed manner.

If for any reason it becomes necessary at any time during the polling period to use any additional ballot box at any polling station, such additional ballot box must be made available for inspection, closed and sealed before being made available for the deposit of ballot papers.

A ballot box closed and sealed, as aforesaid, may not be opened, and the seal shall not be broken, except under the circumstances contemplated in the Act.

The presiding officer at a polling station shall at the closing of the poll on a polling day,

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close and seal the aperture in any ballot box at the polling station, in a manner as may be prescribed, and in the presence of such persons entitled to attend at the polling station, and as are present.

All sealed ballot boxes used in or at a polling station shall be placed in a position where they can be seen at all times during polling hours at that polling station by the presiding officer or a polling officer designated by him or her.

The presiding officer and a police officer shall be responsible for the safe-keeping of all ballot boxes used at his or her polling station until they are delivered to the person responsible for the determination of the result of the election in question.<sup>72</sup>

### **6.05 Commencement and Closing of Poll**

Subject to the provisions below, the poll for any election shall:

- (a) at polling stations in Namibia, commence at 07.00 hours and shall close at 21.00 hours on any polling day; and
- (b) at polling stations outside Namibia, on polling day referred to in the proviso to section 80(3), commence and close at times as the Commission may determine in respect of each such polling station.

The Commission may by notice published in the Gazette at any time before the commencement of the poll, alter the polling hours mentioned in sub-paragraph (a) above in relation to any polling station in Namibia in respect of any polling day of an election.

Notwithstanding the foregoing, the presiding officer shall permit every voter who at the time of the closing of the poll is inside the room or other enclosure of the polling station to record his or her vote.<sup>73</sup>

### **6.06 Powers of Presiding Officers**

The presiding officer and other officers at a polling station shall keep order thereat, shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except –

- (a) a member of the Commission or the Director;
- (b) the returning officer concerned;
- (c) any election agent entitled to attend at the polling station;
- (d) the polling officers or any police officer on duty; and
- (e) any other person authorised in writing by the Director.

The presiding officer may order any person, other than those mentioned above, and any person recording his or her vote, to leave the polling station.

Any person who fails to leave the polling station when so ordered shall be guilty of an offence and may, by order of the presiding officer, be arrested without a warrant.

The presiding officer, after consultation with the police officials on duty, may take any steps that he or she deems necessary for the protection of himself or herself and other officials or for stopping or preventing any violence or disturbance in or in the vicinity of the polling station.

If in the event of any public riot or violence or any other emergency situation, the taking of the poll at a polling station is interfered with to such an extent that the objects of the Act cannot be achieved, the presiding officer shall forthwith discontinue the taking of the poll, whereupon a poll shall be taken at the time, in such manner and in respect of such voters, as may be directed by the returning officer concerned, after consultation with the Director.

The powers conferred by these provisions shall not be exercised so as to prevent any voter who is entitled to vote, from having an opportunity to record his or her vote.<sup>74</sup>

### **6.07 Voting**

Subject to these provisions, no person shall record his or her vote at any place other than at a polling station established, as the case may be, for the constituency, local authority area or, where applicable, the ward in respect of which he or she is registered.

Where, at an election for a member of a regional council or a local authority council, any voter who is employed as a returning officer, presiding officer, polling officer, counting officer or police officer at such election and, by reason of such employment, will be unable to attend on any polling day at a polling station at which he or she is required to record his or her vote, the returning officer for the constituency, local authority area or, where applicable, the ward in respect of which such voter is registered, shall:

- (i) at the request of any such voter made at any time during the period allowed under these provisions; and
- (ii) upon production and surrender by him or her to the returning officer of a written authorisation issued by the Director stating that the voter concerned is by reason of such employment permitted to record his or her vote in terms of this sub-section, allow such voter to record his or her vote subject to these provisions.

An officer referred to above shall be permitted to vote at any time from 09.00 hours on the fifth day preceding the day of the election but not later than 19.00 hours on the second day preceding the said day of the election.

The written authorisation required under the above provision must be signed by the officer producing it and shall be placed in an envelope.

The ballot paper marked by a voter who has signed the written authorisation, shall not be placed in a ballot box, but shall in the presence of the returning officer concerned and without being unfolded, be placed by the voter in a blank envelope which he or she shall close and hand to that returning officer who shall place it in the authorisation envelope, which he or she shall close and set aside in a separate packet.

Where, at an election for the President or members of the National Assembly, any voter is

by reason of absence unable to attend any polling day at a polling station at which he or she is required to record his or her vote, the presiding officer of any other polling station, whether in or outside Namibia, shall, at the request of such voter, permit such voter to record his or her vote by way of a tendered vote at that polling station during the polling hours applicable to that polling station: provided that where at such an election the poll has been determined to take place over more than one day, a voter shall, at a polling station outside Namibia, be entitled to so record his or her vote only on the first day of the polling days so determined.

The voting at any election shall be by secret ballot.

Every ballot paper must be in the prescribed form and must contain –

- (a) in the case of any election on party lists:
  - (i) the names in alphabetical order of the political parties taking part in the election;
  - (ii) the abbreviated name, if any, of each such political party; and
  - (iii) the distinctive symbol, if any, of each such political party; and
  - (iv) the photo of the head of each such political party; or
- (b) in the case of an election otherwise than on party lists:
  - (i) the surnames, in alphabetical order, of all the duly nominated candidates at that election and such other names or initials of such candidates as the Commission may determine;
  - (ii) the name and, if any, abbreviated name and distinctive symbol of the political party by whom each such candidate was nominated or, if a candidate was not nominated by a political party, the word “independent”; and
  - (iii) a photo of each candidate;
- (c) such other particulars as may be prescribed.

The voting at any polling station shall be conducted substantially and as nearly as possible in accordance with the provisions of the Act.

The presiding officer or a polling officer designated by him or her for that purpose, shall on polling day in the polling station stamp on the back of every ballot paper in a ballot book the official mark before such ballot paper book is handed to a polling officer for the issue of ballot papers to voters at the election in question.

No voter shall be permitted to vote in any election, unless he or she –

- (a) produces his or her registration card for the election in question to the presiding officer or a polling officer; and
- (b) produces to the presiding officer or a polling officer in proof of his or her identity –
  - (i) any document for the purpose by the Act; or
  - (ii) if he or she is unable to produce any such document, an affidavit in the prescribed form made before the presiding officer or a polling officer by any voter who has identified himself or herself to the presiding officer or polling officer and in which proof of identity of the first-mentioned voter is furnished.

The presiding officer or a polling officer must ascertain –

- (a) by examining and by putting relevant questions relating to the particulars appearing on the registration card and identity document or statement produced to him or her by the voter, that –
  - (i) the voter is the person whose name appears on the registration card; and
  - (ii) the registration card –
    - (aa) is a registration card officially issued under the Act; and
    - (bb) has not been signed, imprinted, marked or endorsed;
- (b) in the manner prescribed, that the voter has not already voted at the election in question; and
- (c) by reference to the list of unrecovered registration cards, whether the name of the voter, registration number or other particulars which appear on the registration card produced by the voter appear on that list.

The presiding officer or a polling officer shall require the voter, and the voter when so required is obliged, to cause his or her fingers to be examined by the presiding officer or such polling officer, and if upon examination no finger or fingers of the voter display the identification mark (that is, the mark approved by the Director for the purpose of identification of a voter who has voted at an election in question), he or she shall be presumed not to have already voted at the election in question.

If upon such examination, a finger or fingers of the voter display the identification mark, the presiding officer shall give to every election agent who is present an opportunity to observe such identification mark, and shall not permit the voter to vote.

If any person has been prohibited from voting, the presiding officer shall endorse the relevant registration card produced by him or her to the effect that such person was so prohibited.

If, in accordance with these provisions, the presiding officer or polling officer establishes that the name, registration number and other particulars which appear on the registration card produced by a voter appear on the list (unrecovered registration cards), the presiding officer or polling officer must not permit such voter to vote by virtue of that registration card, and shall seize such card.

Where the prospective voter's documents are in order, he or she shall, in the presence and in accordance with the instructions of the presiding officer or polling officer –

- (i) if the registration card produced by him or her bears the signature of the person to whom it was issued, sign that registration card by placing such signature in the space on that card provided for the election in question; or
- (ii) if the said registration card bears the imprint of any finger or fingers of the person to whom it was issued, place the imprint of the corresponding finger or fingers in that space; or
- (iii) if the said registration card bears, instead of the signature or any fingerprint of the person to whom it was issued, any mark made by that person, place a similar mark in that space,

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and the presiding officer or polling officer shall return the registration card to the person concerned.

If the Commission deems it expedient, it may direct any presiding officer or polling officer, to the extent determined by it, to dispense with the requirements of signature and imprint referred to above, and to endorse in the space referred to in that paragraph the registration card to the effect that the person has voted in the election in question.

When the provisions above-mentioned are complied with, the voter shall in the presence and in accordance with the instructions of the presiding officer or a polling officer place the identification mark on the finger or fingers of his or her left hand or of his or her right hand, as may be determined by the Director for the purposes of the election in question, or cause it to be placed thereon by the presiding officer or such polling officer.

If a voter refuses that the prescribed mark be applied to his or her fingers, he or she shall not be issued with a ballot paper and shall not be permitted to vote.

When the voter has complied with the requirements, the presiding officer or polling officer shall –

- (a) enter the registration number of the voter in the ballot paper book on the counterfoil of a ballot paper which bears on the back thereof the official mark;
- (b) detach such ballot paper from its counterfoil and deliver it to the voter; and
- (c) if the voter has requested to record his or her vote by way of a tendered vote, deliver to such voter, together with the ballot paper, a tendered vote envelope on which the presiding officer or polling officer has endorsed the name of the constituency in respect of which the voter is registered.

Upon receiving the ballot paper, the voter shall:

- (a) enter a polling booth provided at the polling station;
- (b) secretly record his or her vote on the ballot paper by marking:
  - (i) in the case of an election on party lists, the ballot paper with a cross in the space opposite the name of the political party for which he or she desires to vote; or
  - (ii) in the case of an election otherwise than on party lists, the ballot paper with a cross in the space opposite the name of the candidate for whom he or she desires to vote;
- (c) while still in the polling booth, fold the ballot paper in such a way that official mark is visible and the names of the political parties or candidates, as the case may be, and the mark signifying his or her vote are not visible;
- (d) leave the polling booth and display the ballot paper to the presiding officer in such a way that the official mark can be seen and, in the case of a voter voting by way of a tendered vote, in the presence of the presiding officer or a polling officer, place the ballot paper in the tendered vote envelope and seal it; and
- (e) in the presence of the presiding officer or a polling officer, drop, as the case may be:

- (i) the ballot paper in the ballot box for ordinary votes;
- (ii) the tendered vote envelope in the ballot box for tendered voters' envelopes.

The voting at a polling station shall not be interrupted by any defect occurring in any instrument used at such polling station for the purpose of effecting the identification mark, and the vote recorded by any voter shall not be invalid merely because the provisions requiring such use of the instrument concerned were not complied with in his or her case because of such defect, whereupon the registration card shall be endorsed to that effect.

Where an election for the President and an election for members of the National Assembly have been determined to take place on the same polling day, the voting process at polling stations must be conducted jointly for both such elections and:

- (a) any political party which has nominated a candidate for the election of the President as well as candidates for the election of members of the National Assembly, is entitled to appoint as election agents for a polling station only such number of persons as is prescribed in respect of any one of such elections; and
- (b) any voter who attends at a polling station for the purpose of recording his or her vote shall, if he or she desires to record a vote in respect of both such elections, record such votes on the occasion of such attendance, and no voter shall, after such attendance, be allowed to record any vote at any polling station on any subsequent occasion, irrespective of whether he or she has, on the occasion of his or her previous attendance at a polling station, exercised a vote in respect of only one of such elections.

Where the voting process is conducted jointly for both elections, voters attending at polling stations for the purpose of recording their votes, must:

- (a) be required to subject themselves to the identification mark stipulated in the Act; and
- (b) in the application of the procedures (set out in section 82(7)(a)), sign their registration cards or place an imprint or make a mark thereon,

as they would have been required to do had the voting process been conducted in respect of only one of such elections, irrespective as to whether any such voter desires to record a vote in respect of both such elections.<sup>75</sup>

### **6.08 Spoilt Ballot Papers**

If a voter spoils any ballot paper inadvertently, he or she may return it to the polling officer concerned who, if satisfied of such inadvertence, shall –

- (a) give such voter another ballot paper;
- (b) retain the spoilt ballot paper which he or she shall immediately cancel and endorse with the word “spoilt”; and
- (c) forthwith record on the counterfoil of the ballot paper in the ballot paper book the fact that it has been cancelled.<sup>76</sup>

## 6.09 Assistance to Voters

A presiding officer or polling officer shall not assist or instruct a voter in the manner of voting at a polling station, unless –

- (a) a voter who is incapacitated by blindness or other physical disability from voting in a manner prescribed, requests in person the presiding officer or polling officer, to assist him or her in the manner directed by him or her to record his or her vote, but without interfering with the exercising of his or her franchise;
- (b) such assistance or instructions are to direct a voter to a polling booth for the purposes of recording his or her vote or, to inform a voter in respect of the procedure which he or she may follow on entering the polling booth, but without such presiding officer or polling officer interfering with the secrecy of his or her vote or with the exercising of his or her franchise;
- (c) a voter who is unable to read or to understand any written directions or instructions at a polling station, personally requests the presiding officer or polling officer to explain such directions or instructions to him or her, but without interfering with the exercising of his or her franchise.

The presiding officer, on the request in person of any voter who is incapacitated by blindness or other physical cause from voting in the manner prescribed by the Act, who has not requested to have his or her vote recorded by the presiding officer, and who is accompanied by any other person, shall, if he or she is satisfied that such person is any family relative or friend of such voter and has reached the age of 18 years, permit such voter to vote with the assistance of the person accompanying him or her, and upon such permission being granted anything which is required to be done by the said voter in connection with the recording of his or her vote may be done with the assistance of the person so accompanying him or her.

Except as permitted in the foregoing provisions, no person is allowed to converse or in any other manner interfered with a voter at any time after he or she has been handed a ballot paper until he or she leaves the polling booth.<sup>77</sup>

## 6.10 Closing of Poll

Every presiding officer shall immediately after the close of the poll and in the presence of such of the persons entitled to attend at the polling station, as may be in attendance –

- (a) close and seal in the prescribed manner every ballot box entrusted to him or her;
- (b) make up into separate packets, so sealed –
  - (i) all unused ballot papers;
  - (ii) all spoilt ballot papers;
  - (iii) the counterfoils of used and spoilt ballot papers;
  - (iv) all registration cards seized (in terms of section 82(b));
  - (v) the stamp for the official mark used at the polling station; and
  - (vi) any such other equipment or documents as may be prescribed,

and shall deliver or cause to be delivered to the returning officer concerned such sealed ballot boxes and packets –

- (aa) in the case of any Presidential election or National Assembly election or regional election, as the case may be, to the returning officer for the constituency for which that polling station has been established; or
- (bb) in the case of any local authority council election, to the returning officer for the local authority area or, where such area is divided into wards, for the ward for which the polling station has been established.

If the geographical location of the polling station or any other circumstance occasions that the presiding officer cannot deliver or cause to be delivered such ballot boxes and packets, he or she shall place such ballot boxes and packets in safe custody until he or she can deliver them or cause them to be delivered to the returning officer concerned.

The sealed ballot boxes and packets shall be accompanied by a return in which the presiding officer accounts for the number of ballot papers entrusted to him or her under the heads of ballot papers in the ballot boxes and unused and spoilt ballot papers.<sup>78</sup>

### **6.11 Determination of Result of Poll**

The Director shall inform:

- (a) in the case of an election on party lists, every political party taking part in that election;
- (b) in the case of any other election, every candidate taking part in that election, of any place where the result of the poll or any part thereof will be determined and on the day upon which and the time at which such determination shall be commenced.

Upon receipt by him or her of the ballot boxes and packets from a presiding officer, the returning officer shall take charge of them and when all the ballot boxes and packets have been received by him or her, he or she shall examine whether the seals of the ballot boxes and packets are in order and afford any counting agents and, in the case of an election other than an election on party lists, any candidates who are present an opportunity to do the same, and shall thereafter open all the packets.

The returning officer shall:

- (a) open the ballot boxes relating to a particular polling station received from the presiding officer and remove therefrom the ordinary ballot papers and the tendered vote envelopes and verify the correctness of the return furnished by the presiding officer concerned;
- (b) after such verification:
  - (i) prepare a report on the result of such verification; and
  - (ii) at the request of any counting agent or candidate, allow such counting agent or candidate to make a copy of that report;
- (c) replace all tendered vote envelopes in a ballot box, seal it in the prescribed manner

- and cause it to be delivered, together with the report referred to in sub-paragraph (b), to the Director immediately;
- (d) open the packet referred to in section 80(2)(d) and remove from the authorisation envelopes contained therein the folded ballot papers and place such folded ballot papers with the other ordinary ballot papers; and
  - (e) after ascertaining that each ordinary ballot paper bears the official mark on the back thereof, count the votes recorded on such ballot papers:
    - (i) in the case of an election on party lists, for each political party; or
    - (ii) in the case of an election otherwise than on party lists, for each candidate.

The returning officer must reject and not count any ballot paper:

- (i) which records votes to more than one political party or candidate, as the case may be;
- (ii) which does not bear the official stamp and in respect of which he or she has reasonable grounds to believe that it has not been officially issued to a voter;
- (iii) which is unmarked or on which it is impossible to determine with certainty for which political party or candidate, as the case may be, the ballot is recorded;
- (iv) which contains any writing or mark revealing the identity of the voter.

The returning officer shall not reject but shall count any ballot paper on which there is any writing or mark, by means of which a voter has clearly indicated his or her choice otherwise than by a cross on the ballot paper in question, and whether or not such writing or mark is recorded in the space provided for the marking of such ballot paper.

The returning officer shall in the presence of any counting agent or candidate as is in attendance, endorse the word "rejected" on any ballot paper rejected.

A counting agent or candidate may request a returning officer to recount the ballot papers and votes counted at polling stations until such time as he or she is satisfied of its accuracy: provided that a returning officer may refuse to do so if he or she is of the opinion that such request is at any time unreasonable.

At the time and place notified for the counting of tendered votes the Director shall:

- (a) examine the seals of all ballot boxes received by him or her and afford any counting agents or, at an election for President, also any candidates who are present an opportunity to do the same;
- (b) open such ballot boxes and verify the correctness of the report of each returning officer in relation to the tendered vote envelopes contained therein;
- (c) sort such tendered vote envelopes according to the constituencies indicated on such envelopes; and
- (d) open such tendered vote envelopes and remove therefrom the ballot papers and count the votes recorded thereon.<sup>79</sup>

## **6.12 Determination of Result in Presidential Elections**

At an election for the President:

- (a) a returning officer shall, when the counting of ordinary votes has been completed; and
- (b) the Director shall, when the counting of tendered votes has been completed, and whether or not the return (referred to in section 85(3)) or the report (referred to in section 87(2)(b)) was found to be correct, announce in the prescribed manner the result of such count and inform the Chairperson of the Commission of such result.

When the Chairperson of the Commission has received all the results and he or she has established the number of votes recorded for each candidate or, where only one candidate was nominated for election as President, for such candidate as President, he or she shall determine the candidate to be declared duly elected as President.

Upon determining the result of the election, the Chairperson of the Commission shall in the prescribed manner announce the result, by:

- (a) making known the total number of votes counted in the election and, in respect of each candidate or, where only one candidate was nominated for election as President, the number of votes recorded for him or her; and
- (b) declaring:
  - (i) the candidate duly elected as President with effect from such date as shall be determined in accordance with the Constitution of Namibia; or
  - (ii) if no candidate has received the requisite number of votes stipulated by the Constitution, that no candidate has been duly elected as President.

The Chairperson of the Commission shall as soon as is practicable after the declaration, cause a written statement of the announcement made by him or her to be transmitted to the Commission.

If no candidate is declared duly elected as President, these provisions shall apply *mutatis mutandis* in relation to the conducting of ballots until a result in the election is reached in accordance with the Constitution.<sup>80</sup>

### **6.13 Determination of Results in National Assembly Elections**

At an election for members of the National Assembly:

- (a) a returning officer shall, when the counting of ordinary votes has been completed, and whether or not the return referred to in section 85(3) was found to be correct, announce in the prescribed manner the result of such count and inform the Director of the result; and
- (b) the Director shall, when the counting of tendered votes has been completed, and whether or not the report referred to in section 87(2)(b) was found to be correct, announce in the prescribed manner the result of such count.

The Director shall in accordance with the results received by him or her from returning officers and the results determined by him or her, determine in the manner provided in the Constitution the number of candidates of each political party to be declared duly elected as members of the National Assembly.

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Upon determining the result of the election, the Director shall in the prescribed manner announce the result, by:

- (a) making known the total number of votes counted and the appropriate quota determined in accordance with the Constitution and, in respect of each political party, the number of votes recorded for it and the number of seats in the National Assembly, if any, determined in its case in accordance with the provisions of paragraph (2) of Schedule 4 to the Constitution to which that political party is entitled; and
- (b) declaring:
  - (i) the candidates on the list of candidates of each political party in which case a number of seats has been determined, as aforesaid, but subject to the provisions of paragraph (4) of that Schedule; and
  - (ii) if the number of seats determined as aforesaid, is more than the number of candidates available on the said list, a person who qualifies to be a member of the National Assembly and has been nominated in writing in the prescribed manner for that purpose by the said political party and has in writing consented to his or her nomination,  
to be duly elected as members of the National Assembly with effect from such date as shall be determined in accordance with the relevant provisions of the Constitution.

If there appears on any list of candidates the name of a person who died or was found not to be qualified in relation to the National Assembly on or before the date of the declaration, that name shall be deemed not to appear on the list in question.

The Director shall cause a written statement of the announcement made by him or her to be transmitted to the Commission.<sup>81</sup>

#### **6.14 Determination of Results in Regional Council Elections**

When all the votes in respect of all polling stations in a constituency have so been counted in respect of any candidate in an election for any member of a regional council and the number of votes recorded for any candidate has been determined in the constituency, the returning officer shall determine the candidate for that constituency to be declared duly elected as a member of the regional council in question.

The returning officer for the constituency in question shall announce in the prescribed manner the result of the election in question, by:

- (a) making known the total number of votes counted in the constituency and, in respect of each candidate, the number of votes recorded for him or her; and
- (b) declaring the candidate determined to be duly elected as a member of the regional council in question with effect from the day determined in respect of the election in question.

The returning officer concerned shall cause a written statement of the announcement made by him or her to be transmitted to the Commission.

If any candidates for election as a member of a regional council in any constituency have received an equal number of votes and the result of the election cannot by virtue thereof be determined, the returning officer for the constituency shall declare the election in question to be null and void, and in such event all proceedings relating to the election in that constituency shall be commenced afresh in precisely the same manner as if a vacancy in that regional council had occurred.<sup>82</sup>

### **6.15 Determination of Results in Local Authority Council Elections**

When all the votes in respect of all the polling stations:

- (a) in the case of any election on party lists, in a local authority area; or
  - (b) in the case of any other election, in a ward,
- have so been counted and the number of votes recorded has been determined:
- (i) in the case of any election on party lists, for each political party in that area, the returning officer concerned shall determine the number of candidates of that political party to be declared duly elected as members of the local authority council in question, as if the election for members of the National Assembly; or
  - (ii) in the case of any other election, for each candidate in that ward, the returning officer concerned shall declare the candidate who has received the greater or the greatest number of votes in that ward to be duly elected a member of the council in question.

As soon as is practicable after the foregoing provisions have been complied with:

- (a) with respect to an election relating to party lists, the returning officer for the local authority area shall announce in the prescribed manner the result of the election in question, by:
  - (i) making known the total number of votes counted and the appropriate quota determined and, in respect of each political party, the number of votes recorded for it and the number of seats in the council in question, if any, determined in its case; and
  - (ii) declaring:
    - (aa) the candidates on the list of candidates of each political party in which case a number of seats has been determined, and who, from that list, have been nominated by that political party as members of the council in question to fill the said seats; and
    - (bb) if the number of seats determined is more than the candidates available on the said list, a person who qualifies to be a member of the council in question and has been nominated in writing in the prescribed manner for that purpose by the said political party and has in writing consented to his or her nomination, to be duly elected as members of the council in question with effect from any day determined in respect of the election in question;
- (b) with respect to an election other than for party lists, the returning officer for the ward shall announce in the prescribed manner the result of the election in question, by:

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- (i) making known the total number of votes counted in that ward and, in respect of each candidate, the number of votes recorded for him or her; and
  - (ii) declaring the candidate to be duly elected as a member of the council for that ward with effect from any day determined in respect of the election in question.

The returning officer shall cause a written statement of the announcement made by him or her to be transmitted to the Commission.

If:

- (a) there appears on any list of candidates, the name of a person who died or was found not to qualify in relation to the council in question on or before the date of the declaration, that name shall be deemed not to appear on the list in question;
- (b) any candidates for an election in any ward have received an equal number of votes and the result of the election cannot by virtue thereof be determined, the returning officer for the ward shall declare the election in question to be null and void, and in such event all proceedings relating to the election in that ward shall be commenced afresh in precisely the same manner as if a vacancy in that council had occurred.<sup>83</sup>

### **6.16 Publication of Election Results**

The Commission shall cause a notice of any announcement made and transmitted to it to be published in the Gazette.

Such a notice is on its mere production in any legal proceedings prima facie evidence of the announcement to which it relates and the particulars thereof. The Commission may also cause to be published in any other manner any such announcement and the particulars contained therein.<sup>84</sup>

### **6.17 Safekeeping of Election Material**

The returning officer concerned shall enclose in separate packets:

- (a) all counted ballot papers;
- (b) all rejected ballot papers; and
- (c) all ballot paper accounts, received from any polling station for which he or she was the returning officer,

and shall seal such packets and cause them together with the packets to be delivered to the Director.

The packets shall be accompanied by a return in which the returning officer concerned accounts for the number of ballot papers received by him or her under the heads of ballot papers counted and rejected ballot papers.

The returning officer must, if requested by any counting agent or candidate furnish a copy of the return to such agent or candidate.

The Director is responsible for the safe-keeping of all packets received and shall retain them until such time as the Commission directs otherwise. Except as determined by the Commission, no person shall open or inspect the contents of the packets without an order of the court, which may be granted on the court being satisfied by evidence on oath that the inspection or production of any document contained in such packet is required for the purposes of instituting or maintaining a prosecution for an offence in relation to the election in question, and any such order may be made subject to such conditions as to persons and time, place and manner of inspection or production as that court may deem fit.<sup>85</sup>

### **6.18 Director to Verify Elections**

The Commission may direct the Director to verify or cause to be verified in accordance with the prescribed procedures any ballot paper accounts received in the election in question, and to report therein to the Commission in the prescribed manner. For the purposes of any such verification, the Director may open any sealed packet received from a returning officer.

The Commission may in the manner determined by the Commission, publish the report or any extracts therefrom, for the information of the public or for any other reason it deems necessary.<sup>86</sup>

### **6.19 Effect of Immaterial Mistakes**

No election shall be set aside by the court by reason of any mistake or non-compliance with the provisions relating to the conduct of elections, if it appears to that court that the election in question was conducted in accordance with the principles laid down and that such non-compliance or mistake did not affect the result of that election.<sup>87</sup>

## **— Section 7 —**

### **OFFENCES AND PENALTIES**

#### **7.01 Offences in Connection with Registration of Voters**

Any person who:

- (a) whether himself or herself or through an intermediary and whether directly or indirectly, with intent to dissuade, discourage or prevent any other person from causing himself or herself to be registered as a voter, irrespective of whether such other person is qualified for such registration or is not so qualified, or with intent to obtain unlawfully the possession of a registration card issued to any other person:
  - (i) uses or threatens to use violence against the person or his or her next of kin or property of any person or his or her next of kin; or
  - (ii) does or omits to do, or threatens to do or omits to do anything, to the loss, detriment, disadvantage or prejudice of any person or his or her next of kin; or

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- (b) during the hours whereupon voters may be registered, does any canvassing of persons to register or erects any poster or structure or uses any form of loudspeaker, excluding for official purposes, or organises any procession of or demonstration by persons or participates therein, within such a distance from any room, office or place where the registration of voters occurs that it disturbs, hinders or interferes with such registration; or
  - (c) with intent to defraud, duplicates, copies, forges, falsifies or fabricates any registration form or registration card or any document purporting to be a registration form or a registration card, or utters or is in possession of any document so duplicated, copied, forged, falsified or fabricated; or
  - (d) not being an officer or a magistrate or other person acting within the course of his or her duties under the Act, is in possession of a registration form or issues or purports to issue a registration form or issues or purports to issue a registration card or destroys, mutilates or defaces any registration card or places any writing or mark on any registration card; or
  - (e) is found in possession of a registration card not issued to him or her, without being able to give a satisfactory explanation for his or her possession of it, or is found in possession of more than one registration card issued to him or her for the election in question; or
  - (f) being a registered voter in relation to an election in question, applies for registration as a voter for that election or, after having ceased to be a registered voter, applies without being qualified for registration for that election or induces or procures any other person to so apply for registration or to register in fact as a voter knowing such other person or himself or herself not to be authorised to be so registered; or
  - (g) obstructs, hinders or interferes with the Director, any registration officer, supervisor of registration, magistrate or other person in the performance of his or her duties or functions or the exercise of his or her powers; or
  - (h) without being authorised thereto removes any document from any place where it is kept in terms of any provision of the Act, or destroys, mutilates, defaces, places any writing or mark upon or otherwise interferes with any document so kept in such place or any document, form, paper, instrument or other thing used for or required in connection with the carrying out of any such provision; or
  - (i) without good cause fails to comply with a notice furnished to him or her; or
  - (j) in or for the purpose of any application made to a registration officer or in any proceedings before a magistrate, makes a false statement knowing it to be false or not believing it to be true; or
  - (k) when appearing before a magistrate, fails to answer fully and truthfully any question put to him or her or to produce anything that he or she has with him or her; or
  - (l) obstructs, hinders or interferes with any person serving or attempting to serve a copy of a notice of objection in terms of the Act; or
  - (m) fails to comply with a requirement to return or surrender a registration card; or
  - (n) with intent to defraud, makes a false entry of the particulars of any person in any voters' list or register or on any registration card; or
  - (o) wilfully issues to any person a registration card knowing that such person does not qualify to be issued with a registration card,
- shall be guilty of an offence.<sup>88</sup>
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## **7.02 Offences in Connection with Nominations**

Any person who:

- (a) with intent to defraud, forges, falsifies or fabricates a nomination for any candidate in any election or utters or is in possession of any document so forged, falsified or fabricated;
- (b) wilfully defaces, destroys or mutilates a nomination for a candidate in any election;
- (c) with the intent to defraud makes any false statement or declaration in respect of qualifications to be a candidate in any election in question;
- (d) on any day that a session in an election for the nomination of a candidate sits, uses any form of loudspeaker, excluding for official purposes, within such distance that it disturbs, hinders or interferes with the proceedings at that session, or wilfully obstructs or disturbs any proceedings thereat in any other manner whatsoever or obstructs or interferes with any person in the exercise of his or her powers or the performance of his or her duties and functions at such proceedings or attending such proceedings,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4,000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.<sup>89</sup>

## **7.03 Failure to Disclose Foreign Financing**

Any person who fails to disclose within the period stipulated foreign financing of a political party or candidature is guilty of an offence and on conviction is liable to a fine not exceeding N\$12,000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.<sup>90</sup>

## **7.04 Neglect of Duty**

Any returning officer, presiding officer, polling officer or counting officer, who after having accepted an appointment as such wilfully fails to perform any of the duties which he or she is required to perform or the directions issued by the Director or Commission, shall, without derogating from the Act, be guilty of an offence and on conviction be liable to a fine not exceeding N\$2,000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.<sup>91</sup>

## **7.05 Infringement of Secrecy**

Every officer or agent to the extent determined by the Act, present at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at the polling station, and shall not communicate to any person any information likely to defeat the secrecy of the voting.

No person shall interfere with or attempt to interfere with a voter when marking his or her vote, or otherwise attempt to obtain at a polling station information as to the political party or candidate for which any voter at that polling station is about to vote or has voted, or communicate at any time to any person any information obtained at a polling station as to

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the political party or candidate for which any voter at such polling station is about to vote or has voted.

No person shall, directly or indirectly, induce any voter to display his or her ballot paper, after he or she has marked it, in such a manner as to make known to any person the name of the political party or candidate for which the voter has marked his or her vote.

Every person present at the determination of the result of a poll in any election shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such determination, or communicate any information obtained at such determination as to the manner in which any particular person marked his or her ballot paper.

No person present at the counting of the votes shall communicate to any other person any information obtained at such counting about the political party or candidate in respect of which a vote has been recorded in any spoilt ballot paper.

Except as provided in the Act, no person shall attempt to ascertain, or directly or indirectly assist in ascertaining, for which political party or candidate any voter has recorded his or her vote.

Any person who, in the carrying out of his or her duties, has obtained any knowledge as to the political party or candidate for which any person has recorded his or her vote, shall not disclose such knowledge.

No person shall, except upon the order of any court or as authorised by the Act, break the seal of a sealed packet or open such a packet.

These provisions must not be construed as preventing any person from conducting any opinion poll in relation to the support enjoyed by the several political parties taking part in any election in question or by the policies which they advocate or by respective candidates at that election, or the publishing of the result of such an opinion poll so conducted.

Any person who contravenes or fails to comply with any of these provisions is guilty of an offence and on conviction is liable to a fine not exceeding N\$4,000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.<sup>92</sup>

### **7.06 Obstruction of Officers**

Any person who:

- (a) wilfully obstructs or disturbs any proceedings at a polling station or obstructs or interferes with the Director, returning officer, presiding officer, polling officer or counting officer in the exercise of his or her powers or the performance of his or her duties and functions; or
- (b) on any polling day does any canvassing for votes or erects any poster or structure for such purposes, or uses any form of loudspeaker or organises any procession of

or demonstration by persons or participates therein, within a distance of 500 metres from any polling station, is guilty of an offence and on conviction is liable to fine not exceeding N\$4,000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.<sup>93</sup>

### **7.07 Offences in Connection with Voting**

Any person who:

- (a) for the purpose to have a ballot paper issued to him or her knowingly produces to any presiding officer or polling officer a registration card issued to or in the name of some other person, living or dead, or a fictitious person, or a registration card which has been altered with intent to deceive, or any document purporting to be but not being a registration card; or
- (b) having previously voted at the election in question, produces to any presiding officer or polling officer, for the purpose to have a ballot paper issued to him or her, a registration card, whether issued to him or her or in the name of some other person, or any document purporting to be but not being a registration card; or
- (c) forges, counterfeits or fraudulently destroys any ballot paper or the official stamp on any ballot paper; or
- (d) without due authority supplies any ballot paper to any person; or
- (e) fraudulently places into any ballot box any paper other than a ballot paper issued to him or her or into any authorisation ballot paper envelope any paper other than a ballot paper issued to him or her; or
- (f) fraudulently takes out of any polling station any ballot paper or authorisation ballot paper envelope; or
- (g) without due authority destroys, takes, opens, uses or otherwise interferes with any ballot box, polling booth, instrument, form, document or other equipment used or intended for use at any polling station; or
- (h) causes any disturbance at any polling station, or disobeys any lawful order given by the presiding officer at any polling station; or
- (i) without lawful authority destroys, mutilates, defaces or removes any notice exhibited under the Act,

is guilty of an offence.<sup>94</sup>

### **7.08 Corrupt and Illegal Practices**

“Corrupt and illegal practices” mean any of the offences of undue influence, bribery, impersonation, corrupt procurement or withdrawal of candidature and treating.<sup>95</sup>

### **7.09 Undue Influence**

Any person who, directly or indirectly, by himself or herself or by any other person:

- (a) makes use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any bodily or psychological injury, damage, hazard or loss,

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upon or against, or does or threatens to do anything to the disadvantage of, any person in order to induce or compel any person to vote or to refrain from voting at any election, or on account of any person having voted or refrained from voting at the election; or

- (b) by any such means or any fraudulent device or contrivance induces, compels or prevails upon any voter to vote or refrain from voting at any election in question or to vote in favour of a particular political party or candidate, or impedes, hinders or prevents the free exercise of the franchise by any voter at any election in question, is guilty of an offence and on conviction is liable to a fine not exceeding N\$20,000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.<sup>96</sup>

### **7.10 Bribery**

Any person who, whether himself or herself or through an intermediary and whether directly or indirectly:

- (a) corruptly gives, lends or procures, or agrees to give, lend or procure or offers, promises or promises to procure, or promises to endeavour to procure, any money or any other thing, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person:
- (i) for the purpose of inducing such voter to record or abstain from recording his or her vote in any election; or
  - (ii) on account of the fact that such voter has recorded or abstained from recording his or her vote in any election; or
- (b) makes any such gift, loan, offer or promise or effects for him or her any such procurement or enters into any such agreement to or for or with any other person for the purpose of inducing such person to vote for any particular political party or candidate; or
- (c) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages or promises or endeavours to procure the vote of any voter in the election; or
- (d) advances or pays, or causes to be advanced or paid, any money, to or for the use of any other person with the intention that such money, or any part thereof, is to be expended on bribery in the election in question, or who knowingly pays, or causes to be paid, any money or any other person in discharge or repayment of any money which has in full or in part been expended in bribery in that election; or
- (e) before or during the election in question, receives or negotiates any payment or loan on his or her own behalf or any other person in consideration for his or her voting or his or her agreeing to vote in such election, or his or her abstaining from voting or his or her agreeing to abstain from voting in such election; or
- (f) after the election has received any money on account of the fact that any other person:
- (i) has recorded his or her vote or has abstained from recording his or her vote in such election; or

(ii) has induced any further person to record or to abstain from recording his or her vote in such election,  
is guilty of an offence and on conviction is liable to a fine not exceeding N\$20,000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.<sup>97</sup>

### **7.11 Impersonation**

Any person who:

- (a) in an election in question applies for a ballot paper in the name of some other person living or dead or of a fictitious person and records a vote in the name of any such person; or
- (b) having voted once in an election in question, in such election votes again or applies again for a ballot paper; or
- (c) submits any affidavit or declaration required containing any information or allegation which he or she knows to be false,

is guilty of an offence and on conviction is liable to a fine not exceeding N\$8,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.<sup>98</sup>

### **7.12 Corrupt Procurement of Candidate**

Any person who:

- (a) corruptly induces or procures any other person to become a candidate or to withdraw as a candidate in any election in consideration of any payment or promise of any nature; or
- (b) becomes a candidate or withdraws as a candidate in such election as a result of inducement or procurement; or
- (c) for the purpose of promoting or securing the election of another political party or candidate, before or during the election in question, publishes a false statement of the withdrawal of a political party or the death or withdrawal of a candidate from such an election, knowing such statement to be false,

is guilty of an offence and on conviction is liable to a fine not exceeding N\$8,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.<sup>99</sup>

### **7.13 Treating**

Any person who:

- (a) corruptly, whether himself or herself or through an intermediary, whether before or during or after an election and whether directly or indirectly, gives or provides, or pays in full or in part the expense of giving or providing, any provisions to or for any other person:
  - (i) for the purpose of corruptly influencing such other person or any further

- person to record or abstain from recording his or her vote in such election;  
or
- (ii) on account of the fact that such other person or any further person has recorded or has abstained from recording or is about to record or to abstain from recording his or her vote in such election; or
- (b) being a voter, corruptly accepts or takes any payment, food, drink, entertainment, lodging or provisions referred to in sub-paragraph (a),  
is guilty of an offence and on conviction is liable to a fine not exceeding N\$8,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.<sup>100</sup>

## — Section 8 —

### ELECTION APPLICATIONS

#### 8.01 Powers of High Court

An application complaining of an undue return or an undue election of any person to the office of President or as any member of the National Assembly or a regional council or local authority council by reason of want of qualification, disqualification, corrupt and illegal practice, irregularity or by reason of any other cause whatsoever, shall be made to the court.<sup>101</sup>

#### 8.02 Presentation of Election Applications

An election application must be presented within 30 days after the day on which the result of the election in question has been declared.

Presentation of the application shall be made by lodging it with the registrar of the court.

At the time of the presentation of the application or within five days thereafter, security for the payment of all costs, charges and expenses that may become payable by the applicant:

- (i) to any person who may be summoned as a witness on his or her behalf; and
- (ii) to the person, or, in the case of an election on party lists, the political party whose election or return is complained of (the respondent),  
shall be furnished by or on behalf of the applicant.

The security shall be for an amount determined by the registrar of the court and shall be furnished in money or by recognizance to the satisfaction of the registrar.

If the applicant complies with the foregoing provisions, the application is deemed to be at issue, or, if there is no such compliance, no further proceedings shall be heard on the application.<sup>102</sup>

### **8.03 List of Election Applications**

The registrar of the court shall make out a list of election applications presented to the court and which are at issue, placing them in the order in which they were presented, and shall keep at his or her office a copy of such list open to inspection by the public and furnish the Commission with a copy thereof.

Election applications shall be tried in the order in which they stand on such list, unless the court otherwise directs.

When more than one application relating to the same election is presented, all such applications must be put together in the list and must be dealt with as one application, but such application must stand on the said list in the place where the last of such applications would have stood if it had been the only application presented, unless the court otherwise directs.<sup>103</sup>

### **8.04 Persons Who May Present Applications**

An election application may be presented by:

- (a) a voter registered for the election in question;
- (b) a political party which took part in the election by submitting any party lists or which nominated a candidate at any other election in question;
- (c) any person claiming to have had a right to be elected at the election in question;
- (d) any person alleging himself or herself to have been a candidate at such election;
- (e) the Attorney-General if he or she deems it expedient in the public interest.

When an office or a seat is claimed for some person other than the applicant such person shall be a party to the application as co-applicant.<sup>104</sup>

### **8.05 Service of Applications**

Notice in writing of the presentation of an election application, accompanied by a copy of the application and a certificate of the registrar of the court stating the amount determined by him or her as security has been paid or sufficient recognizance has been furnished in respect of that amount, shall within ten days after the presentation of the application, be served on the respondent.<sup>105</sup>

### **8.06 Joinder of Co-applicant**

Any person may after an application has been represented to the registrar of the court apply to that court to be joined as co-applicant in that application, and the court may allow or refuse such application and make such order as to costs as it deems just and equitable.<sup>106</sup>

### **8.07 Trial of Applications**

The trial of every election application shall take place before one judge, unless the Judge President directs the trial to take place before two or more judges of the court.

Notice of the time and place at which an election application will be heard shall be furnished by the registrar of the court to the parties concerned not less than ten days before the day on which the trial is to be commenced.

Any election application shall be heard in open court and shall be determined within 60 days from the date of the presentation of the application to the registrar of the court or within such longer period as special circumstances may require.

No election shall be set aside by the court by reason of want of qualification, disqualification, corrupt and illegal practice, irregularity or by reason of any other cause if it appears to the court that any such want of qualification, corrupt and illegal practice, irregularity or other cause did not affect the result of that election.

At the conclusion of the trial of any election application, the court shall determine whether the respondent was duly elected or whether any, and, if so, what, person other than the respondent was or is entitled to be declared duly elected.

If the court determines that the respondent was not duly elected, but that some other person was or is entitled to be declared duly elected, the respondent shall from the date of such determination be deemed to have vacated his or her office or seat, as the case may be, and the court shall forthwith certify as such its determination to the Commission and, in the case of the President or the National Assembly, to the Speaker of the National Assembly or, in the case of a regional council, to the regional officer of that council or, in the case of a local authority council, to the Chief Executive Officer of that council, and the Commission shall by notice in the Gazette, declare such other person duly elected from the date on which the respondent vacated his or her seat or office, as the case may be, and alter the announcement of the result of the election published in the Gazette, accordingly.

If the court determines that a respondent was not duly elected, and that no other person was or is entitled to be declared duly elected, the office or seat of the respondent, as the case may be, shall be deemed vacant and the court shall certify as such its determination, and the Commission shall, if satisfied that no appeal is being prosecuted against the determination of the court or that an appeal has failed, declare by notice in the Gazette that a vacancy has occurred, the cause of such vacancy and nature of such vacancy.

When any allegation is made on an election application of any corrupt and illegal practice having been committed at the election to which the application refers, the court shall, in addition to the certificate aforesaid, at the same time and in the like manner report in writing:

- (a) whether any corrupt and illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any political party or candidate at that election or by or with the knowledge and consent of its or his or her agents, and the nature of such corrupt and illegal practice;
- (b) the names of all persons who have been proved at the trial to have been guilty of any corrupt and illegal practice;
- (c) whether corrupt and illegal practices have, or whether there is reason to believe that corrupt and illegal practices have, extensively prevailed at the election in question.

The court may at the same time make a special report as to any matter, arising in the course of the trial, an account of which ought, in its judgment, to be submitted to the Commission or National Assembly or the regional council or local authority council in question.

A copy of every certificate and report made by the court shall be presented by the Speaker to the National Assembly or by the said regional officer to the regional council in question, or by the said Chief Executive Officer to the local authority council in question.<sup>107</sup>

### **8.08 Transmission of Statement to Prosecutor-General**

If the court states in the report on the trial of an election application that any person has been guilty of a corrupt and illegal practice or that there is reason to believe that corrupt and illegal practices have extensively prevailed at the election to which the application refers, that statement with the evidence taken at the trial shall be transmitted by the registrar of the court to the Prosecutor-General with a view to the institution of any prosecution in relation thereto.

A copy of every such statement and evidence shall also be transmitted by the said registrar to the Commission.<sup>108</sup>

### **8.09 Witnesses**

A witness shall be summoned and sworn in the same manner as at a trial of an action before the court, and his or her evidence shall be subject to the same rules of admissibility and to the same privileges and penalties under like circumstances in respect of the giving of false evidence, as he or she would be subject to if the evidence given by him or her at the trial of the election application had been given at the trial of an action before the court.

On the trial of an election application the court may examine any witness or any person in court although such witness or person is not called or examined by any party to the application.

After a witness has so been examined by the court, such witness or person may be cross-examined by or on behalf of the applicant and respondent or either one of them.

The reasonable expenses incurred by any person appearing to give evidence at the trial of an election application, may be allowed to such person, according to the scale usually allowed to witnesses on trial by the court for civil action, and such expenses are deemed to be costs in the application.

On the trial of an election application complaining of an undue election or undue return and claiming the office or seat, as the case may be, for some other person, the respondent may give evidence to prove that the election of that other person was undue, in the same manner as if the respondent had presented an election application complaining of such election.<sup>109</sup>

## 8.10 Withdrawal of Application

An election application shall not be withdrawn without the leave of the court, and then only after such notice has been given as the court may direct.

If there is more than one applicant, no application to withdraw an election application shall be made without the consent of all the applicants.

If an election application is withdrawn, the applicant shall be liable to pay the costs of the respondent.<sup>110</sup>

## 8.11 Costs

All costs, charges and expenses of and incidental to the presentation of an election application and the proceedings consequent thereon, shall be defrayed by the parties to the application in such manner, and in such proportions, as the court may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the opinion of the court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the applicant or the respondent, and to the discouragement of needless expense by throwing the burden of defraying it on the parties by whom it has been caused, whether such parties are or are not on the whole successful. The costs may be taxed and recovered in the same manner as the costs of an ordinary action at law in the court.<sup>111</sup>

## NOTES

- |  |   |
|--|---|
| 1. Constitution of Namibia, see article 17   | 19. Ibid., see section 20   |
| 2. Ibid., see article 49   | 20. Ibid., see section 21   |
| 3. Ibid., see Schedule 2   | 21. Ibid., see section 22   |
| 4. Electoral Act 1992 (as amended by the Electoral Amendment Act 1994), see sections 3 and 4 | 22. Ibid., see section 23   |
| 5. Ibid., see section 5  | 23. Ibid., see section 24   |
| 6. Ibid., see section 7  | 24. Ibid., see section 25   |
| 7. Ibid., see section 8  | 25. Ibid., see section 26   |
| 8. Ibid., see sections 6 and 9   | 26. Ibid., see section 27   |
| 9. Ibid., see section 10   | 27. Ibid., see section 28   |
| 10. Ibid., see section 11  | 27A. Ibid., see section 28A   |
| 11. Section 12 of the Electoral Act 1992 (repealed by the Electoral Amendment Act 1994)      | 28. Ibid., see section 29   |
| 12. Electoral Act 1992 (as amended by the Electoral Amendment Act 1994), see section 13      | 29. Ibid., see section 30   |
| 13. Ibid., see section 14  | 30. Ibid., see section 31   |
| 14. Ibid., see section 15  | 31. Ibid., see section 32   |
| 15. Ibid., see section 16  | 32. Ibid., see section 33   |
| 16. Ibid., see section 17  | 33. Ibid., see section 34   |
| 17. Ibid., see section 18  | 34. Section 35 of the Electoral Act 1992 (repealed by the Electoral Amendment Act 1994) |
| 18. Ibid., see section 19  | 35. Electoral Act 1992 (as amended by the Electoral Amendment Act 1994), see section 36 |
|  | 36. Ibid., see section 37   |
|  | 37. Ibid., see section 38   |

38. Ibid., see section 39
39. Ibid., see section 40
40. Ibid., see section 41
41. Ibid., see section 42
42. Ibid., see section 43
43. Ibid., see section 44
44. Ibid., see section 45
45. Ibid., see section 46
46. Ibid., see section 47
47. Ibid., see section 50
48. Ibid., see section 51
49. Ibid., see section 52
50. Ibid., see section 53
51. Ibid., see sections 54 and 55
52. Ibid., see section 56
53. Ibid., see section 57
54. Ibid., see section 58
55. Ibid., see section 59
56. Ibid., see section 60
57. Ibid., see section 61
58. Ibid., see section 62
59. Ibid., see section 63
60. Ibid., see section 64
61. Ibid., see section 65
62. Ibid., see section 66
63. Ibid., see section 67
64. Ibid., see section 68
65. Ibid., see section 69
66. Ibid., see section 70
67. Ibid., see section 71
68. Ibid., see section 72
69. Ibid., see section 73
70. Ibid., see section 74
71. Ibid., see section 75
72. Ibid., see section 76
73. Ibid., see section 77
74. Ibid., see section 78
75. Ibid., see sections 79, 82 and 82A
76. Ibid., see section 83
77. Ibid., see section 84
78. Ibid., see section 85
79. Ibid., see sections 86, 87 and 87A
80. Ibid., see section 88
81. Ibid., see section 89
82. Ibid., see section 90
83. Ibid., see section 91
84. Ibid., see section 92
85. Ibid., see section 93
86. Ibid., see section 94
87. Ibid., see section 95
88. Ibid., see section 96
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97. Ibid., see section 105
98. Ibid., see section 106
99. Ibid., see section 107
100. Ibid., see section 108
101. Ibid., see section 109
102. Ibid., see section 110
103. Ibid., see section 111
104. Ibid., see section 112
105. Ibid., see section 113
106. Ibid., see section 114
107. Ibid., see section 116
108. Ibid., see section 117
109. Ibid., see section 118
110. Ibid., see section 119
111. Ibid., see section 120

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## INTRODUCTION

The legal structures of apartheid South Africa were incapable of supporting the organisation and conduct of non-racial multi-party democratic elections. Because of this fact, a completely new legal scheme had to be established for the organisation and conduct of the first non-racial democratic elections held in April 1994.

The new legal framework included a provisional Constitution, a Transitional Executive Council, an Electoral Act, an Independent Electoral Commission, an Independent Broadcasting Authority and an Independent Media Commission. These structures were in the main transitional and lapsed after the first non-racial democratic elections aforementioned. In the light of this, only the main features of these structures will be given herein.

These structures demonstrated the lengths to which legal resourcefulness can go in given situations to create the conditions necessary to ensure the delivery of free and fair elections in an otherwise hostile atmosphere to democratic elections.

### — *Section 1* —

## CONSTITUTIONAL PROVISIONS RELEVANT TO 1994 ELECTIONS

### 1.01 The Franchise

A person who is –

- (a) (i) a South African citizen; or
  - (ii) not such a citizen but who in terms of an Act of Parliament has been accorded the right to exercise the franchise;
  - (b) of or over the age of 18 years; and
  - (c) not subject to any disqualifications as may be prescribed by law,
- shall be entitled to vote in elections of the National Assembly, a provincial legislative or a local government and in referenda or plebiscites contemplated in the Constitution, in accordance with and subject to the laws regulating such elections, referenda and plebiscites.<sup>1</sup>

### 1.02 Fundamental Rights – Political Rights

Every citizen shall have the right –

- (a) to form, to participate in the activities of and to recruit members for a political party;
- (b) to campaign for a political party or cause; and
- (c) freely to make political choices.

Every citizen shall have the right to vote, to do so in secret and to stand for election to public office.<sup>2</sup>

### **1.03 System for Election of National Assembly**

Parties registered in terms of the Electoral Act 1993, and contesting an election of the National Assembly, shall nominate candidates for such election on lists of candidates prepared in accordance with Schedule 2 of the Constitution and the Electoral Act 1993.

The 400 seats in the National Assembly shall be filled as follows:

- (a) 200 seats from regional lists submitted by the respective parties, with a fixed number of seats reserved for each region as determined by the Commission for a particular election, taking into account available scientifically based data in respect of voter representations by interested parties and a proposed determination in respect of the various regions – (not reproduced here);
- (b) 200 seats from national lists submitted by the respective parties, or from regional lists where national lists were not submitted.<sup>3</sup>

### **1.04 Adoption of New Constitutional Text**

The Constitutional Assembly shall pass a new constitutional text within two years as from the date of the first sitting of the National Assembly under the Constitution.

For the passing of the new constitutional text by the Constitutional Assembly, a majority of at least two-thirds of all the members of the Constitutional Assembly shall be required: provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two-thirds of all the members of the Senate.<sup>4</sup>

## **— Section 2 —**

### **TRANSITIONAL EXECUTIVE COUNCIL**

#### **2.01 Establishment**

The Transitional Executive Council (herein referred to as “the Council”) was established by the Transitional Executive Council Act 1993.<sup>5</sup>

#### **2.02 Objects of Council**

The objects of the Council shall be to facilitate and promote, in conjunction with all legislative and executive structures of all levels of government in South Africa, the preparation for and transition to a democratic order in South Africa by –

- (a) creating and promoting a climate for free political participation by endeavouring to –

- (i) eliminate any impediments to legitimate political activities;
- (ii) eliminate any form of intimidation which has a bearing on the said transition;
- (iii) ensure that all political parties are free to canvass support from voters and to organise and hold meetings and for those purposes have access to all voters;
- (iv) ensure the full participation of women in the transitional and electoral structures and processes; and
- (v) ensure that no Government or administration exercises any of its powers in such a way as to advantage or prejudice any political party;
- (b) creating and promoting conditions conducive to the holding of free and fair elections;
- (c) exercising such powers and performing such duties as may be conferred or imposed upon it by any other law.<sup>6</sup>

### 2.03 Constitution of Council

Each Government, political party or organisation which –

- (a) is or was at any time represented on the Negotiating Council; and
- (b) by notice in writing to the Negotiating Council commits itself to the objects of the Council, and in respect of itself and all organisations which are under its authority or control, and any armed force which is under its authority and control, or associated with it and promotes its objectives –
  - (i) undertakes to be bound by and to implement directions issued by the Council; and
  - (ii) renounces violence as a means of achieving political objectives,

shall be a participant in the Council and shall be entitled to be represented by one member on the Council.

The Government of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, or any political party registered only in or operating only from or any organisation operating only from such a State, shall not be a participant in the Council unless –

- (a) the provisions of the Transitional Executive Council Act, as well as the provisions of the Independent Electoral Commission Act 1993, the Electoral Act 1993, the Independent Media Commission Act 1993 and the Independent Broadcasting Authority Act 1993, have been incorporated into the law of the State concerned; or
- (b) formal provision has been made by law in such a State for the application of any Act referred to in the foregoing provisions in that State.

A participant in the Negotiating Council that wishes to be represented on the Council shall within seven days after the commencement of the Act by notice in writing to the State President nominate a member and an alternate member to the Council.

The State President shall within seven days after the receipt of such a notice, by proclamation in the Gazette appoint the persons so nominated as a member alternate, respectively, of the Council.<sup>7</sup>

## **2.04 General Powers of Council**

The Council shall, in addition to the other powers conferred upon it by the Act or any other law, for the purpose of attaining its objects have the power to –

- (a) request and obtain all such information and documents as may be necessary for attaining its objects;
- (b) direct a sub-council to enquire into and to advise the Council on any matter in connection with the functions of the Council;
- (c) initiate or participate in negotiations relating to its functions and objects;
- (d) appoint staff to assist the Council and sub-councils in the performance of their functions, and in consultation with the State President, to determine the conditions of service, remuneration, allowances and other benefits of such staff;
- (e) request the secondment of skilled staff from any public service in South Africa, subject to any law applicable to such staff in that regard, to assist the Council or a sub-council in the performance of its functions;
- (f) make rules providing for the convening of and procedure at meetings of the Council and sub-councils;
- (g) appoint from among its members office bearers, on either a fixed or a rotational basis;
- (h) appoint a person, body or subcommittee to investigate or deal with any matter relating to the Council's functions and to report thereon;
- (i) open and administer its own financial accounts; and
- (j) take such steps, including legal steps, in terms of any law or the common law, as may be necessary to give effect to the Act or to any decision taken by the Council or a sub-council.

The Council may delegate to a sub-council any of its powers, but it shall not be divested of a power so delegated.<sup>8</sup>

## **2.05 Decisions**

All decisions of the Council or a sub-council shall be taken by the members thereof alone and shall, as far as possible, be taken on a basis of consensus.<sup>9</sup>

## **2.06 Duration**

The Transitional Executive Council shall lapse upon the assumption of office by the members of the first Cabinet in terms of the Constitution.

The Council and every sub-council shall be dissolved on the date referred to in the foregoing provision.<sup>10</sup>

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— *Section 3* —

**ELECTION ADMINISTRATION**

**3.01 Independent Electoral Commission**

The provisions of the Electoral Act 1993 were administered by the Independent Electoral Commission which was established by a separate Act. The Electoral Act required the Independent Electoral Commission to endeavour to create an environment which generated confidence in the electoral process and the secrecy of the ballot.<sup>11</sup>

**3.02 Establishment and Objects of Commission**

The Independent Electoral Commission was established by the Independent Electoral Commission Act 1993.

The objects of the Commission shall be –

- (a) to administer, organise, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act;
- (b) to promote conditions conducive to free and fair elections;
- (c) to determine and certify the results of elections, and to certify to what extent such elections have been free and fair;
- (d) to conduct voter education; and
- (e) to make and enforce regulations for the achievement of such objects.<sup>12</sup>

**3.03 Constitution of Commission**

The Commission shall consist of not fewer than seven and not more than 11 members, who shall be appointed by the State President upon the advice of the Council, and who shall be impartial, respected and suitably qualified men and women, do not have a high party political profile, are themselves voters, and represent a broad cross-section of the population.

The State President shall, upon the advice of the Council, appoint not more than five persons (not being citizens of the Republic) from the international community as members of the Commission in a non-representative capacity.

Such international members shall have the same rights and powers as other members, excluding the power to vote, and shall not constitute part of any quorum in terms of the Independent Electoral Commission Act.

The State President shall, upon the advice of the Council, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively: provided that if the Transitional Council so decides, it may advise the State President to designate two members as Co-Chairpersons in lieu of a Chairperson and Vice-Chairperson, and designate which one of them shall preside at the first meeting of the Commission.

In the absence of both such Chairperson and Vice-Chairperson, or both such Co-Chairpersons, as the case may be, the remaining members shall by simple majority nominate another as acting Chairperson of the Commission.

The international members shall not be eligible to serve as Chairperson, Co-Chairperson, Vice-Chairperson or acting Chairperson.<sup>13</sup>

### **3.04 Conduct Required of Members**

Every member and international member of the Commission shall –

- (a) be appointed in his or her individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;
- (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or holding of any other office.<sup>14</sup>

### **3.05 Independence of Commission**

The Commission shall function without political or other bias or interference and shall be independent and separate from the Council, any party, any government and its administration or any other functionary or body, whether directly or indirectly representing the interests of any such entity.

Any power of any of the entities referred to above, in so far as it relates to the administration, organisation, conduct and supervision of any election, shall be subject to the powers of the Commission, to which such entities shall be accountable for such of their acts and decisions as may influence or affect any election.<sup>15</sup>

### **3.06 Dissolution of Commission**

The Commission shall be dissolved upon the completion of its mandate on a date fixed by the State President by proclamation in the Gazette.<sup>16</sup>

### **3.07 Powers, Duties and Functions of Commission**

The Commission may exercise the powers and shall perform the duties and functions conferred upon or assigned to it by the Act or any other law.

The Commission shall –

- (a) assume responsibility for the administration, organisation and conduct, whether directly or indirectly, and the supervision of the administration, organisation and conduct of any election;
- (b) take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties;
- (c) be responsible for the education of voters concerning –

- (i) democratic principles and values;
  - (ii) the electoral process and mechanisms;
  - (iii) the right to free political canvassing and campaigning;
  - (iv) secrecy of voting; and
  - (v) any other relevant matter,
- by means of –
- (aa) literature and the use of other media, including distribution and publication of suitable literature, advertisements and dissemination through radio, television and the public printed media, having due regard to the variety of languages spoken and varying levels of education throughout the Republic; and
  - (bb) workshops, seminars and meetings, as it may consider appropriate; and
- (d) submit monthly reports in writing concerning its functions, which reports shall be delivered at the same time to the Council and the State President, and such reports shall be public documents.

The Commission shall have power –

- (a) to hear and determine appeals against decisions or actions of the Chief Directors of Administration and Monitoring respectively in respect of prescribed matters, which decisions or actions may be confirmed, varied or set aside;
- (b) to give instructions to the Chief Directors: Administration and Monitoring in respect of matters concerning their functions, which power may be exercised either upon request from the said Chief Directors or at its own initiative; and
- (c) to establish such committees as it may consider necessary for the effective exercise and performance of its powers, duties and functions, and determine the composition, quorum for a meeting and a decision, procedure and functions thereof.<sup>17</sup>

### **3.08 International Advisory Committee**

The State President shall, upon the advice of the Council, establish a committee to be known as the International Advisory Committee to advise the Commission on any matter regarding the performance of its functions as may be requested by it.

The International Advisory Committee may consist of persons (not being citizens of the Republic) from the international community appointed in a non-representative capacity by the State President upon the advice of the Council.

The International Advisory Committee may determine its own procedures to be followed at its meetings.<sup>18</sup>

### **3.09 Administration and Staff of Commission**

The Commission shall, in addition to the other powers conferred upon it by the Act and any other law, for the purpose of achieving its objects, have power to –

- (a) appoint staff to assist it or a Chief Director of a directorate or the Secretary in the

performance of its or his or her functions, and after consultation with the Minister of State Expenditure determine their conditions of service, remuneration, allowances and other benefits, including those of –

- (i) members of committees who are not members of the Commission;
  - (ii) the Chief Directors: Administration and Monitoring and the Secretary; and
  - (iii) other officials;
- (b) request the secondment to it of skilled personnel from any public service, subject to any law applicable to such personnel in that regard, to assist the Commission, the Chief Directors of the directorates or the Secretary in the performance of its, his or her functions;
- (c) open and maintain its own financial accounts; and
- (d) take such steps, including legal steps, as are necessary to give effect to the Act or any decision taken thereunder.<sup>19</sup>

### **3.10 Expenditure of Commission and Budget**

The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be paid out of money appropriated by Parliament for such purpose.

The Commission shall budget for and be allocated the necessary resources or additional resources to enable it to exercise its powers and perform its duties and functions effectively.<sup>20</sup>

### **3.11 Determination and Certification of Election Results, or Declaration**

Upon completion of the ballot, the Commission shall as expeditiously as possible, but not sooner than two days and not later than ten days after the close of the poll –

- (a) determine and certify the results of the election; and
- (b) either certify in respect of the National Assembly and such other legislature that the election was substantially free and fair; or
- (c) declare that it was unable to certify it as such.<sup>21</sup>

### **3.12 Election Administration Directorate**

There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Administration Directorate.

The Administration Directorate shall consist of a Chief Director: Administration, one or more deputy directors and such other officials as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions in terms of the Independent Electoral Commission Act and the Electoral Act.

In effecting the appointment of the Chief Director of Administration, and Deputy Director, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Council.

Any decision or action taken by any functionary of any sub-structure of the Administration Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to the Chief Director of Administration, who may confirm, vary or set aside any such decision or action.

The Chief Director of Administration shall –

- (a) operate independently of the Chief Director of Monitoring;
- (b) be under the supervision of the Commission; and
- (c) carry out the instructions of the Commission, to which he or she shall be accountable.

The Chief Director of Administration may delegate the power to hear and determine appeals, and may delegate any other power conferred upon him or her by or under the Electoral Act and the Independent Electoral Commission Act to any official of his or her directorate as he or she may consider necessary.<sup>22</sup>

### **3.13 Election Monitoring Directorate**

There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Monitoring Directorate.

The Monitoring Directorate shall consist of a Chief Director of Monitoring and such other officials as the Commission may consider necessary and appoint to enable that Directorate effectively to perform its functions.

In effecting the appointment of the Chief Director of Monitoring, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Council.

The Chief Director of Monitoring shall –

- (a) appoint monitors and co-ordinate their functions to observe and report to him or her upon the electoral process, including political meetings, canvassing, advertising and other campaigning;
- (b) register observers and regulate their activities, and publish guidelines and, if he or she considers it necessary, a Code of Conduct binding upon all such observers;
- (c) facilitate the role of international observers and provide them with information and assistance as may be required to enable them to perform their duties;
- (d) investigate alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable in terms of the Commission Act and the Electoral Act and report to the Commission thereon;
- (e) issue and execute prescribed search warrants and subpoenas and seize items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other alleged electoral offences and any other matters justiciable, with the assistance of the National Peacekeeping Force, the police or defence forces, as may be requested by the Commission;
- (f) initiate or co-ordinate meetings between the various registered parties participating in

- the election with a view to mediating and, if possible, resolving issues and disputes arising in the course of the election, by negotiation and mutual agreement;
- (g) issue prescribed warnings, concerning alleged or threatened infringements of the Electoral Code of Conduct;
  - (h) report to the Commission upon the electoral process as required by it;
  - (i) operate independently of the Chief Director of Administration, and the Secretary;
  - (j) be under the supervision of the Commission;
  - (k) carry out the instructions of the Commission, to which he or she shall be accountable; and
  - (l) have such other powers, duties and functions as may be prescribed.

Any decision or action taken by any functionary of any sub-structure of the Monitoring Directorate in any geographic district or region in respect of any prescribed matter may be appealed against to Chief Director of Monitoring, who may confirm, vary or set aside any such decision or action.

The Chief Director of Monitoring may delegate any power conferred upon him or her to any official of his or her directorate as he or she may consider necessary.<sup>23</sup>

### **3.14 Election Adjudication Secretariat**

There shall be established on the date on which the Commission is constituted a secretariat to be known as the Election Adjudication Secretariat. The Secretariat shall consist of a Secretary and such other officials as the Commission may consider necessary and appoint to enable the Secretariat effectively to perform its functions.

In effecting the appointment of the Secretary, the Commission shall invite and, where given, consider, but shall not be bound by, the advice of the Council.

The Secretary shall –

- (a) co-ordinate the functions of the Electoral Tribunals, the Electoral Appeal Tribunals and the Special Electoral Court;
- (b) perform the administrative work connected with the performance of the functions of those Tribunals and that Court;
- (c) operate independently of the Chief Directors: Administration and Monitoring;
- (d) be under the supervision of the Commission; and
- (e) carry out the instructions of the Commission, to which he or she shall be accountable.

The Secretary shall have such other powers, duties and functions, as may be prescribed.<sup>24</sup>

### **3.15 Electoral Tribunals**

The Commission shall establish such number of Electoral Tribunals with jurisdiction in respect of prescribed geographic areas as it may consider necessary to adjudicate and decide prescribed matters concerning alleged electoral irregularities and alleged infringements of the Electoral Code of Conduct.

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An Electoral Tribunal shall consist of one person, who shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities, appointed to that office by the Commission.

An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into the matter in the prescribed manner, consider it and make such decision or give such order as in its opinion is fair and just.

An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of Conduct, may impose any such penalty or sanction as may be prescribed, as it may consider appropriate in the circumstances.

An Electoral Tribunal shall have such other powers, duties and functions as may be prescribed.<sup>25</sup>

### **3.16 Electoral Appeal Tribunals**

The Commission shall establish such number of Electoral Appeal Tribunals as it may consider necessary to hear and determine appeals and to review decisions from the Electoral Tribunals.

An Electoral Appeal Tribunal shall consist of three persons appointed by the Commission, of whom –

- (a) the Chairperson shall be a judge of the Supreme Court;
- (b) one shall be an attorney, advocate or magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities;
- (c) one shall be a suitable person, who may or may not be legally qualified or experienced.

An Electoral Appeal Tribunal hearing any or reviewing any decision shall enquire into the matter in the prescribed manner, consider it and confirm, vary or set aside the decision, order, penalty or sanction of the Electoral Tribunal, or make such other decision or give such other order or impose such other penalty or sanction as in its opinion the Electoral Tribunal ought to have made, given or imposed.

An Electoral Appeal Tribunal shall have such other powers, duties and functions as may be prescribed.<sup>26</sup>

### **3.17 Special Electoral Court**

There is hereby established a court to be known as the Special Electoral Court.

The Special Electoral Court shall consist of –

- (a) a Chairperson, who shall be a judge of the Appellate Division of the Supreme Court, and two judges of the Supreme Court designated by the Chief Justice; and

- (b) two other members, of whom –
- (i) one shall be an attorney, advocate, magistrate or academic lawyer at a university with not less than five years' experience in one or more such capacities; and
  - (ii) one shall be a suitable person, who may or may not be legally qualified or experienced,
- appointed by the Council.

The Special Electoral Court shall have power to review any decision of the Commission.

Any such review shall be conducted on an urgent basis, and shall be deposited of as expeditiously as possible.

The Special Electoral Court shall have power to hear and determine an appeal against any decision of the Commission only in so far as such decision relates to the interpretation of any law or any other matter for which an appeal is provided in the Electoral Act.

No such appeal shall be heard save with the prior leave of the Chairperson of the Special Electoral Court granted on application within the period and in the manner determined by that Court.

Such an appeal shall be heard, considered and summarily determined upon written submissions submitted within three days after leave to appeal was granted.

The Special Electoral Court shall have power to remove any member of the Commission from office.

The Special Electoral Court shall have power to hear appeals against and review decisions of any Appeal Tribunal.<sup>27</sup>

### **3.18 Dissolution of Directorates, Secretariat and Tribunals**

The directorates and the Secretariat shall be dissolved on the date upon which the Commission is dissolved.

The Electoral Tribunals and the Electoral Appeal Tribunals shall be dissolved on final determination of the issues placed before them.<sup>28</sup>

### **3.19 Party Liaison Committees**

The Council shall –

- (a) as soon as practicable establish an interim party liaison committee which shall continue until the party liaison national committee has been established; and
- (b) appoint a chairperson for such committee, who may or may not be a person contemplated in the provisions of the following paragraph, and who shall determine the procedures to be followed at the meetings thereof. If a person contemplated in the following paragraph so appointed as chairperson, the party represented by

such person on such committee may designate another representative in his or her place.

The interim party liaison committee shall consist of such representatives of parties as may be appointed for that purpose by the Council.

Upon the publication of the notice of registration of contesting political parties in the Gazette, the Commission shall –

- (a) establish a party liaison national committee consisting of all party election national agents or other authorised representatives of all registered parties participating in the election whether in respect of the National Assembly or any provincial legislature; and
- (b) establish party liaison provincial and local committees consisting of all party election provincial and district agents concerned, as the case may be, of all registered parties participating in the election whether in respect of the National Assembly or any provincial legislature.

The Commission shall appoint –

- (a) a chairperson for each of the committees who shall determine the procedures to be followed at the meetings thereof; and
- (b) a representative of the Commission to serve on any such committee.

The Commission may require any registered party which is unrepresented on any party liaison provincial or local committee to appoint a representative to attend the meetings of such committee and to serve thereon.

The functions of any party liaison committee shall be –

- (a) to establish liaison between the Commission and the parties represented thereon and between such parties regarding election matters, including –
  - (i) the administration of the electoral arrangements in general;
  - (ii) staffing;
  - (iii) the number and location of voting and counting stations;
  - (iv) the demarcation of electoral districts; and
  - (v) the number and location of foreign voting stations; and
- (b) to be a forum in which the parties represented on any such committee may –
  - (i) discuss matters of concern with a view to obviating the incidence of infringements of the Electoral Code of Conduct and, if possible, resolving the same without the necessity for formal complaint and investigation procedures; and
  - (ii) consult regarding the need for and formulation of regulations governing matters in connection with the election.<sup>29</sup>

### **3.20 Appointment of and Control over Electoral Officers and Staff**

The Chief Director (Administration) shall, in respect of any election, in consultation with the Commission, appoint –

- (a) a provincial electoral officer and one or more deputies in respect of each province;
- (b)
  - (i) a district electoral officer and one or more deputies in respect of each electoral district;
  - (ii) a presiding officer in respect of each voting station; and
  - (iii) a counting officer in respect of each counting station, or, subject to such consultation, authorise any such appointment by any provincial electoral officer;
- (c) one or more voting officers in respect of each voting station as he or she may consider for the effective administration of the election, or, subject to such consultation, authorise any such appointment by any provincial or district electoral officer; and
- (d) one or more enumerators in respect of each counting station as he or she may consider necessary for the effective administration of the counting of votes, or, subject to such consultation, authorise any such appointment by any provincial or district electoral officer.

Subject to section 15 (Administration and Staff of Commission) of the Commission Act, the Chief Director or any provincial or district electoral officer or any counting officer may, if authorised thereto by the Chief Director, appoint other staff as may be necessary for the effective administration of the election. All electoral officers, and staff appointed under these provisions, shall be under the control and carry out the instructions of the Chief Director. In the appointment of staff an endeavour shall be made to appoint a broad cross-section of the population, including women.

In effecting any appointment under these provisions, the Commission shall be required to invite submissions from the interim party liaison committee or the party liaison national committee, as the case may be, on a proposal regarding any such appointment, and, where such submissions are received within 48 hours, consider, but shall not be bound by, the advice of any such committee.

Any presiding, voting or counting officer or enumerator may be removed from office by the Chief Director on account of –

- (a) misconduct;
- (b) inability or failure to perform the duties connected with his or her office efficiently;
- (c) absence from duty without the prior permission of the Chief Director or his or her delegate;
- (d) incompetence;
- (e) displaying bias; or
- (f) unsuitability for office.<sup>30</sup>

### **3.21 Powers, Duties and Functions of Provincial and District Electoral Officers**

Subject to the control of the Chief Director, the provincial electoral officer shall assume responsibility for the administration, organisation, supervision and conduct of the election for both the National Assembly and the provincial legislature in the province in respect of which he or she has been appointed.

In addition to the powers, duties and functions conferred or imposed by the other provisions

of the Electoral Act 1993, the provincial electoral officer shall have such other powers, duties and functions as may be prescribed.

Subject to the control of the provincial electoral officer, the district electoral officer shall have such powers as may be delegated to him or her by the Chief Director in respect of the administration, organisation, supervision and conduct of the election in the electoral district in respect of which he or she has been appointed, and shall have such other powers, duties and functions as may be prescribed.<sup>31</sup>

### **3.22 Powers, Duties and Functions of Presiding Officers, Voting Officers, Counting Officers and Enumerators**

The presiding officer at a voting station shall have power to –

- (a) take such steps as may be necessary for the orderly conduct of the voting, including the regulating of the number of voters to be admitted at a time to the election centre and the inner perimeter; and
- (b) exclude from the election centre and the inner perimeter all persons except –
  - (i) members and representatives of the Commission and employees of the Commission in the course of their official duties;
  - (ii) the Chief Director and any electoral officer concerned;
  - (iii) any party voting agent entitled to be present at a voting station;
  - (iv) any other person authorised by the Commission to be present as a monitor or international or other observer;
  - (v) any such prescribed number of candidates as the presiding officer may allow;
  - (vi) any interpreters and any such staff and other persons as may be necessarily admitted by the presiding officer; and
  - (vii) any person casting his or her vote.

Subject to the foregoing provisions, no person shall enter or remain in an election centre or inner perimeter without the permission of the presiding officer. The presiding officer shall take all reasonable steps for the protection of persons and property and for preventing any violence or disturbance in or in the vicinity of the voting station.

The powers conferred by these provisions shall not be so exercised as to prevent any person who is entitled to vote from having an opportunity to cast his or her vote.

Voting officers shall assist the presiding officer in exercise of the powers and the performance of the duties and functions of the presiding officer and carry out his or her lawful instructions.

The counting officer at a counting station shall have power to –

- (a) take such steps as may be necessary for the orderly conduct of the counting of the votes; and
- (b) exclude from the counting centre all persons except –
  - (i) members and representatives of the Commission and employees of the Commission in the course of their official duties;

- (ii) the Chief Director and any electoral officer concerned;
- (iii) any party voting agent entitled to be present at a counting station;
- (iv) any other person authorised by the Commission to be present as a monitor or international or other observer;
- (v) any such prescribed number of candidates as the counting officer may allow; and
- (vi) any such staff and other persons as may necessarily be admitted by the counting officer.

The counting officer shall take all reasonable steps for the protection of persons and property and for preventing any violence or disturbance in or in the vicinity of the counting station.

Subject to the control of the provincial electoral officer, the counting officer shall have such powers as may be delegated to him or her by the Chief Director in respect of the administration, organisation and conduct of the counting of the votes in respect of the area concerned. The counting officer shall have such other powers, duties and functions as may be prescribed.

The enumerator shall have such powers, duties and functions as may be prescribed.<sup>32</sup>

### **3.23 Appointment and Powers, Duties and Functions of Party Election and Voting Agents**

Upon registration the registered party concerned shall by written notice to the Chief Director –

- (a) if such party is contesting the election for the National Assembly, appoint a party election national agent and his or her deputy and a party election provincial agent in respect of each province, and shall furnish the names and business addresses of such party election agents;
- (b) if such party is contesting the election for any provincial legislature only, appoint a party election provincial agent and his or her deputy in respect of each province in respect of which it is contesting the election, and furnish the names and business addresses of such party election agents; and
- (c) when so required by the Commission, appoint a party election district agent within ten days after notification of such requirement and furnish the name and business address of such party election district agent.

The party election national agent or other authorised representative or party election provincial agent shall attend and represent the registered party concerned at meetings of the party liaison national or provincial committee, as the case may be, and every other forum which the Commission, a Chief Director of a directorate or the provincial electoral officer in its, his or her discretion may convene in respect of the election.

When a registered party revokes an appointment or if any party election agent resigns, becomes incapacitated or dies, the registered party concerned shall forthwith inform the Chief Director or the provincial electoral officer concerned in writing of such revocation, resignation, incapacity or death.

A registered party shall as soon as practicable but not later than five days after the occurrence of any vacancy, fill such vacancy by appointing any other person as party election agent and shall forthwith notify the Chief Director or the provincial electoral officer concerned in writing of the name and business address of the person so appointed: provided that in the case of a party election national agent, such appointment shall be made within 48 hours of the vacancy having occurred.

A record of all appointments and information noted in terms of these provisions shall be kept by the Chief Director and the provincial electoral officer in the electoral district concerned.

A party election provincial agent shall in the prescribed manner appoint the prescribed number of party voting agents for the purposes of monitoring voting at a voting station and the counting of votes at a counting station on behalf of a registered party.

No person shall be appointed as party election or voting agent unless he or she is a person entitled to vote.<sup>33</sup>

### **3.24 Declaration of Secrecy**

Before assuming or performing any of the duties or functions assigned to him or her by or under the Electoral Act, any officer or agent shall make a declaration of secrecy, under oath or affirmation, in the prescribed form and in accordance with the prescribed procedure.<sup>34</sup>

## **— Section 4 —**

### **ELECTORAL CODE OF CONDUCT**

#### **4.01 Features of Electoral Code of Conduct**

The Electoral Code of Conduct (“the Code”) set out in Schedule 2 –

- (a) shall be subscribed to by –
  - (i) every party registered; and
  - (ii) every candidate nominated, as a condition of their respective rights to be so registered or nominated; and
- (b) shall, in so far as it is applicable, be binding on any party or on the leader or any office-bearer, member or supporter of such party or candidate.

Any party referred to above which, or the leader or any office-bearer, member or supporter of such party or candidate so referred to who, infringes any provision of the Code shall, upon finding that any such provision has been so infringed, be liable –

- (a) in the case of any party which has infringed the provisions of the Code, to one or more of the following penalties or sanctions, of which any or all may be suspended on specified conditions –
  - (i) a formal warning;
  - (ii) a fine not exceeding R100,000;

- (iii) the forfeiture of any deposit paid by such party or any part thereof;
- (iv) an order prohibiting such party, whether permanently or for a specified period, from utilising any media time, including any such television or broadcasting services as have been or may be made available to such party for electoral purposes by the Independent Media Commission;
- (v) an order prohibiting such party –
  - (aa) from holding particular public meetings, demonstrations or marches, or any kind of such meetings, demonstrations or marches;
  - (bb) from entering any specified electoral district or area for purposes of canvassing for membership, or for any other electoral purpose;
  - (cc) from erecting placards or banners or from publishing and distributing campaign literature;
  - (dd) from publishing or distributing campaign literature and electoral advertising, or limiting such party's rights to do so;
- (vi) an order prohibiting such party from receiving, whether wholly or partly, State or foreign funding including an order requiring the repayment, within a specified period, of any such funding or any part of such funding already received;
- (b) in the case of a party which has infringed the provisions of the Code –
  - (i) by any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any registered party, candidate or voter, an order cancelling the registration of such party and consequently its right to participate in the election concerned;
  - (ii) by any fraudulent act by virtue of which votes have been obtained, an order reducing the number of votes counted in favour of that party by a specified number of votes;
  - (iii) by any act by virtue of which free and safe access by any other registered party has been prevented, an order excluding such party from any voting station situated in the area where such other registered party has been prevented free and safe access;
- (c) in the case of the leader or any office-bearer, member or supporter of such party or of any candidate –
  - (i) who has infringed the provisions of the Code, to one or more of the penalties or sanctions;
  - (ii) who has infringed the provisions of the Code by any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any registered party, candidate or voter, an order disqualifying, in the case of a person who is a candidate, such person from being a candidate or deleting the name of such candidate from the list or lists of candidates concerned.<sup>35</sup>

#### **4.02 Provisions of Electoral Code of Conduct**

1. The object of this Code shall be to promote conditions conducive to the conduct of a free and fair election, and a climate of democratic tolerance in which political activity may take place without fear of coercion, intimidation or reprisals.
2. All registered parties and other persons bound by this Code shall endeavour to

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promote its object in order to enable free political campaigning and open public debate to take place in all parts of the Republic throughout the election period.

3. Registered parties and candidates further commit themselves –
  - (a) to give wide publicity to this Code;
  - (b) to promote voter education campaigns;
  - (c) to condemn violence and intimidation;
  - (d) to instruct their candidates, office-bearers, members and supporters accordingly; and
  - (e) generally, to affirm the rights of all participants in the election –
    - (i) to express divergent political opinions;
    - (ii) to debate and contest the policies and programmes of other parties;
    - (iii) to canvass freely for membership and support from voters;
    - (iv) to hold public meetings;
    - (v) to attend public meetings convened by others;
    - (vi) to distribute electoral literature and campaign materials;
    - (vii) to publish and distribute notices and advertisements;
    - (viii) to erect banners, placards and posters; and
    - (ix) to promote free electoral campaigns by all lawful means.
  
4. All those bound by this Code shall throughout the election period give effect to the following undertakings and stipulations:
  - (a) to publicly and repeatedly condemn violence and intimidation, and to avoid the use of language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of political advantage, or for any other reasons;
  - (b) to refrain from any action involving violence or intimidation;
  - (c) to ensure that no arms or weapons of any kind are carried or displayed at political meetings or in the course of any march, demonstration or other event of a political nature;
  - (d) to refrain from publishing or repeating false, defamatory or inflammatory allegations concerning any person or party in connection with the election;
  - (e) to co-operate and liaise in good faith with other parties to avoid, in so far as possible, arrangements involving public meetings, demonstrations, rallies or marches taking place at the same time and venue as similar political events organised by other parties;
  - (f) to do nothing to impede the democratic right of any party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purpose of conducting voter education, fund raising, canvassing membership and soliciting support;
  - (g) to avoid plagiarising the symbols, colours or acronyms of other parties; and to discourage and, if possible, prevent the removal, disfigurement or destruction of political campaign materials of any party;
  - (h) to refrain from offering any inducement or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner);

- or accepting, refusing or withdrawing such person's nomination as a candidate in the election;
- (i) to refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority, for political purposes, including any offer of reward or threat of penalty;
  - (j) to avoid any discrimination based on race, sex, ethnicity, class, gender or religion, in connection with the election and political activity;
  - (k) in relation to the role of women –
    - (i) to facilitate full participation by women in political activities on the basis of equality;
    - (ii) to ensure free access by women to all public political meetings, facilities, and venues;
    - (iii) to respect the right of women to communicate freely with political parties and organisations; and
    - (iv) generally, to refrain from forcing women to adopt a particular political position or to engage in or to refrain from engaging in, any political activity otherwise than in accordance with their free choice;
  - (l) in relation to the Commission –
    - (i) to acknowledge its authority in the conduct of the election;
    - (ii) to ensure the attendance and participation of representatives at meetings of any party liaison committee and other forums convened by or on behalf of the Commission;
    - (iii) to implement its orders and directions;
    - (iv) to facilitate its right of access through official monitors or other representatives to all public political meetings or other electoral activities;
    - (v) to co-operate in the official investigation of issues and allegations arising during the election period; and
    - (vi) to take all reasonable steps to ensure the safety of monitors and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;
  - (m) to reassure voters with regard to the impartiality of the Commission, the secrecy and integrity of the ballot, and furthermore, that no one will know how any other person has voted;
  - (n) to take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and supporters from –
    - (i) infringing this Code;
    - (ii) committing any offence;
    - (iii) committing any prescribed electoral irregularity; and
    - (iv) contravening or failing to comply with any provision of this Act;
  - (o) to establish and maintain effective lines of communication with the Commission, and with other registered parties, at national, provincial and local level, including the exchange of names, addresses and contact telephone and facsimile numbers of party election agents and of other relevant office-bearers and representatives; and
  - (p) to accept the final outcome of the election, and the Commission's declaration and certification of the results thereof.<sup>36</sup>

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— *Section 5* —

**STATE ELECTORAL FUND**

The Act established a fund known as the “State Electoral Fund” which was administered by the Commission. The Fund had to comply with the following requirements:

- (a) the capital of the said Fund shall be constituted by –
  - (i) money appropriated by Parliament for that purpose, the amount of which is to be determined by the Council in consultation with the Minister of State Expenditure; and
  - (ii) such further amounts, if any, as may be contributed by donors, including foreign governments, intergovernmental and non-governmental organisations;
- (b) the object of the said Fund shall be to provide registered parties with financial assistance for the purposes of conducting their electoral campaigns: provided that no such assistance shall be utilised for the purposes of entertainment or for the purchasing of any immovable property;
- (c) the Chief Executive Officer of the Commission shall be the accounting officer charged with the responsibility of accounting for all money received by the said Fund and the utilisation thereof;
- (d) the said accounting officer shall cause such records of account to be kept as are necessary to present fairly the state of affairs of the said Fund and to explain the transactions and the financial position thereof;
- (e) the Auditor-General shall audit the books of accounts, accounting statements and annual financial statement of the said Fund;
- (f) subject to the provisions of the Exchequer Act 1975 the Commission may invest any unexpended portion of the money in the said Fund;
- (g) the Commission may utilise the interest on investments in pursuance of the object of the Fund;
- (h) if a person who is or was in the employment of the Commission caused the said Fund any loss or damage, the said accounting officer shall determine the amount of such loss or damage and order the recovery thereof in accordance with the Exchequer Act 1975;
- (i) in the event of the Commission or the said Fund being dissolved all remaining assets of the Fund shall be utilised in accordance with the recommendation of the Commission for the purposes of the encouragement and promotion of democratic values.

The Commission shall at regular intervals report to the Council on all income and expenditure in respect of the State Electoral Fund.

The Commission shall make the following forms of financial assistance available to any registered party which qualifies therefor –

- (a) an initial grant payable to all registered parties on an equal basis and without discrimination, on the basis provided below; and

- (b) a grant payable to such registered parties after the results of the election have been determined.

The initial grant referred to above shall only be payable to a registered party if an independent opinion poll recognised and accepted by the Commission for that purpose shows that such a party has in respect of an application for financial assistance to contest the election –

- (i) for the National Assembly or the National Assembly and any provincial legislature or legislatures, the potential support of at least two per cent of the voters for the National Assembly; or
- (ii) for any provincial legislature or legislatures, the potential support of at least two per cent of the voters of the legislature or legislatures concerned.

The requirements for the acceptance of an opinion poll shall be prescribed by the Commission: provided that no such poll may have been conducted earlier than six months before the final date on which parties have to submit their lists of candidates; provided further that the Commission may have an opinion poll conducted for the purpose of these provisions.

A party may, when applying for registration as a participant in the election, furnish the prescribed information in respect of the opinion poll on which that party intends to base its application for a grant.

The Commission shall not later than seven days after the application has been submitted to it notify the party concerned whether the poll is accepted by the Commission or not.

If the opinion poll referred to above is rejected by the Commission, or if a registered party so decides of its own accord, such a party may prove its potential support of voters by submitting a list containing –

- (a) 10,000 signatures of voters, of which at least 1,000 signatures shall be by voters from each of at least five provinces, if that party applies for a grant to contest the election for the National Assembly; or
- (b) 3,000 signatures by voters from each such province in respect of which such party applies for a grant with a view to contesting the election in such province or provinces.

The procedures for the collection of signatures and the circumstances under which a party may be disqualified from receiving a grant, shall be prescribed by the Commission.

A voter –

- (aa) may only sign the support list of one party;
- (bb) may sign both the lists in (a) and (b) above of a party;
- (cc) shall state his full name, home address and identity number on the list or lists; and

- (dd) shall, if he or she cannot sign or write his or her name, place his or her mark on the said list or lists, which mark shall be witnessed by a voter by placing his or her signature next to that mark.

The initial grant referred to above shall be payable from the money provided: provided that only 50 per cent of that money shall be utilised for that purpose.

A registered party which is contesting the election for any provincial legislature or legislatures may receive one quarter of the amount of the grant payable to a registered party contesting the election for the National Assembly in respect of each provincial legislature being contested, which grant shall be in addition to any grant which may be payable to such party for contesting the election for the National Assembly.

A registered party making use of the procedure of relying on signatures in its application, may only receive 50 per cent of the amount of a grant payable to a registered party entitled to such payment.

No party shall be allowed to apply for assistance unless it has submitted the list or lists of candidates required under the Act, and no registered party shall be eligible for a grant if its qualifying application has not been received by the Commission before the expiry of the period of 35 days stipulated.

The grant shall be payable from the remainder of the said Fund referred to above in the following manner –

- (a) 50 per cent shall be distributed equally among those registered parties which in terms of the total number of votes cast, are entitled to at least one seat in the National Assembly or any provincial legislature: provided that a party which contested the election for one provincial legislature only, may only receive one quarter of the amount of the grant payable to a party which contested the election for the National Assembly; and
- (b) the other 50 per cent shall be payable to each registered party proportional to the number of votes cast nationally and provincially in favour of such party.

With a view to ensuring that the object set out is pursued by registered parties, it shall be a precondition for the payment of the grants that –

- (a) registered parties which are recipients of the grants shall be obliged to deposit such funds in an account specially opened for that purpose, and to keep separate books, accounts, financial statements and vouchers of all financial assistance received and so deposited and expenditure incurred from that account;
- (b) the Commission shall prescribe a requirement for audit in respect of the said account, and may further require that the books, accounts, financial statements and vouchers relating to that account be submitted for scrutiny and audit by the Auditor-General, who shall have full and unrestricted access to such documentation as may be considered relevant by him or her.<sup>37</sup>

— *Section 6* —

**THE INDEPENDENT BROADCASTING AUTHORITY**

**6.01 Establishment**

There is hereby established a juristic person to be known as the Independent Broadcasting Authority, which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act (the Independent Broadcasting Authority Act 1993) or by or in terms of any other law.

The Authority shall function without any political or other bias or interference and shall be wholly independent and separate from the the government and its administration or any political party, or from any other functionary or body directly or indirectly representing the interests of the State, the government or any political party.<sup>38</sup>

**6.02 Relevant Provisions to Elections**

A party election broadcast and a political advertisement shall not be broadcast on any broadcasting service except during an election period and then only if and to the extent authorised by the provisions (sections 59 and 60) of the Act.

A public sound broadcasting licensee shall permit a party election broadcast only during an election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its only authorised representatives.

The Authority shall determine the time to be made available to political parties for such purposes, including the duration and scheduling of party election broadcasts, duly taking into account the financial and programming implications for the broadcasting services in question.

The Authority shall consult with the relevant public sound broadcasting licensees and all the political parties prior to making any determination.

In making any determination, the Authority may impose such conditions on a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably.

A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.

A party election broadcast shall conform to a technical quality acceptable to the Authority.

No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.

A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions shall apply.

A sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity.

A sound broadcasting licensee may broadcast a political advertisement only during an election period and then only if it has been submitted to such licensee on behalf of a political party by its duly authorised representative.

In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

A political advertisement shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if such material were to be broadcast.

A political advertisement shall conform to a technical quality acceptable to the Authority.

No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

These provisions shall be subject to the provisions of any law relating to the expenditure of political parties during an election.

If, during an election period, the coverage of any broadcasting service extends to the field of election, political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.

In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such party a reasonable opportunity to respond to the criticism.

If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting licensee intends broadcasting a programme in which a particular political party is criticised, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter.

The Broadcasting Monitoring and Complaints Committee shall monitor compliance by the broadcasting licensees with the foregoing provisions and report to the Authority which may make the following orders, namely – where a finding is founded on non-compliance

by the respondent with the foregoing provisions, an order whereby the respondent, if he or she –

- (a) is a sound broadcasting licensee, is required to broadcast a party election broadcast or a political advertisement (as the case may be);
  - (b) is a broadcasting licensee, is required to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme,
- whichever is applicable.

Any person who fails to comply with any order made by the Authority under the foregoing provisions is guilty of an offence and is liable on conviction to a maximum fine of R50,000.<sup>39</sup>

## — Section 7 —

### THE INDEPENDENT MEDIA COMMISSION

#### **7.01 Establishment and Objects of Media Commission**

There is hereby established a juristic person to be known as the Independent Media Commission, which shall exercise and perform the powers, functions and duties conferred and imposed upon it by this Act (the Independent Media Commission Act 1993).

The primary objects of the Commission shall be –

- (a) to ensure equitable treatment of all political parties by broadcasting services; and
  - (b) to ensure that State-financed publications and State information services are not, directly or indirectly, used to advance the interests of any political party,
- during the election period, so as to promote and contribute towards the creation of a climate favourable to free political participation and a free and fair election.<sup>40</sup>

#### **7.02 Appointment of Commissioners**

The Commission shall consist of –

- (a) a chairperson; and
- (b) not more than six other members.

Each Commissioner, including the Chairperson, shall be appointed by the State President on the advice of the Council with due regard to the provisions of the Act.

The appointments shall be made simultaneously and be made known by notice in the Gazette and be effective as from the date of publication of such notice.

The Chairperson of the Commission shall be –

- (a) a judge or retired judge of the Supreme Court of South Africa; or
- (b) a practising advocate or practising attorney of at least five years' standing or a magistrate with at least ten years' appropriate experience.

At least two of the Commissioners shall have experience in the field of broadcasting media and at least one in the field of the printed media.

The Commissioners shall –

- (a) be persons who, in the opinion of the Council, are of high standing and merit and are suited to serve on the Commission by virtue of their qualifications, expertise and experience;
- (b) be persons who are committed to fairness, freedom of expression, the right of the public to be informed and openness and accountability on the part of those holding public office;
- (c) when viewed collectively, represent a broad cross-section of the population of the Republic; and
- (d) be persons who are committed to the objects and principles of the Act.<sup>41</sup>

### **7.03 Powers and Functions of Commission**

The Commission, in order to achieve the objects of the Act, shall –

- (a) monitor all broadcasting services in the Republic and enforce compliance by broadcasting licensees with the provisions of the Act relating to –
  - (i) party election broadcasts and political advertisements; and
  - (ii) equitable treatment of all political parties; and
- (b) monitor all State-financed publications and State information services, during the election period, and shall exercise and perform such other powers and functions as may be assigned to it.

The Commission shall inform the Council and the Independent Electoral Commission of any matter which has come to its knowledge in the exercise and performance of its powers, functions and duties which, in its opinion, may have an adverse impact upon the creation or achievement of a climate favourable to free political participation and the holding of the election on a free and fair basis.<sup>42</sup>

### **7.04 Party Election Broadcasts and Political Advertising**

A public sound broadcasting licensee shall permit a party election broadcast only during the election period and then only if such a broadcast is produced on behalf of the political party in question at the instance of its duly authorised representative.

The Commission shall determine the time to be made available to political parties for the purpose of the foregoing provision, including the duration and scheduling of party election

broadcasts, duly taking account of the financial and programming implications for the broadcasting services in question.

The Commission shall consult with the relevant public sound broadcasting licensees and all the political parties prior to making any determination.

In making any determination, the Commission may impose such conditions upon a public broadcasting licensee with respect to party election broadcasts as it deems fit, having due regard to the fundamental principle that all political parties are to be treated equitably.

A party election broadcast shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if it were to be broadcast.

A party election broadcast shall comply with a technical quality acceptable to the Commission.

No party election broadcast shall be broadcast later than 48 hours prior to the commencement of the polling period.

A private or community sound broadcasting licensee shall not be required to broadcast party election broadcasts, but if he or she elects to do so, the preceding provisions shall *mutatis mutandis* apply.

A sound broadcasting licensee shall not be required to broadcast a political advertisement, but if he or she elects to do so, he or she shall afford all other political parties, should they so request, a like opportunity.

A sound broadcasting licensee may broadcast a political advertisement only if it has been submitted on behalf of a political party at the instance of its duly authorised representative.

In making advertising time available to political parties, no sound broadcasting licensee shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

A political advertisement shall not contain any material which may reasonably be anticipated to expose the broadcasting licensee to legal liability if it were to be broadcast.

A political advertisement shall comply with a technical quality acceptable to the Commission.

No political advertisement shall be broadcast later than 48 hours prior to the commencement of the polling period.

These provisions shall be subject to any law relating to the expenditure of political parties during an election.<sup>43</sup>

### **7.05 Equitable Treatment of Political Parties**

If, during the election period, the coverage by any broadcasting service extends to the field of the election and political parties and issues relevant thereto, the broadcasting licensee concerned shall afford reasonable opportunities for the discussion of conflicting views and shall treat all political parties equitably.

In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service without such party having been afforded an opportunity to respond thereto in such programme or without the view of such political party having been reflected therein, the broadcasting licensee concerned shall be obliged to afford such political party a reasonable opportunity to respond to the criticism.

If, within 48 hours before the commencement of the polling period or during the polling period, a broadcasting licensee contemplates broadcasting a programme in which a particular political party is criticised, the licensee shall ensure that the political party is given a reasonable opportunity to respond thereto in the same programme, or to do so as soon as is reasonably practicable thereafter.<sup>44</sup>

### **7.06 State-Financed Publications and State Information Services**

The publisher of any State-financed publication in existence immediately prior to the commencement of the Act shall, within 14 days of such commencement, submit to the Commission of the prescribed information concerning such publication.

The Commission may require the publisher of a publication to provide the Commission with a copy of such publication prior to the printing thereof.

A State-financed publication shall be submitted by its publisher to the Commission free of charge within 48 hours of the completion of the printing thereof.

A State-financed publication shall not contain any advertisement or other material which is intended or calculated to support or advance the interests of any political party, whether directly or indirectly.<sup>45</sup>

### **7.07 Hearings**

Any political party which has reason to believe that a broadcasting licensee, the publisher of a State-financed publication or any State information service has contravened the provisions of the Act in relation to such party, and which was unable to resolve the matter with the licensee, publisher or information service (as the case may be), may in relation thereto lodge a complaint with the Commission.

Any such complaint must be in writing and must be served on the licensee, publisher or information service and lodged with the Commission. A complaint may be delivered by hand or sent by registered post, fax or telex.

The Commission shall as soon as may be reasonably practicable, having due regard to the urgency of the matter investigate and adjudicate any complaint received by it and shall, in doing so, afford the complainant and the respondent a reasonable opportunity to make representations and to be heard in relation thereto.

The Commission shall determine the form and procedure as regards the adjudication of any complaint.

The complainant and the respondent shall be entitled to legal representation at any hearing held by the Commission for the purpose of adjudicating a complaint.

After having considered the complaint and the representations (if any) and evidence in regard thereto, the Commission shall make a ruling in respect of the matter.

Any ruling of the Commission shall be published in such manner as the Commission may in its discretion determine.

Hearings shall be open to the public.

The Commission shall keep records of all complaints received by it and of all its proceedings, rulings and findings in relation thereto. The records shall be kept in the offices of the Commission and be open to inspection by interested parties during the normal office hours of the Commission. The Commission shall at the request of any interested party and on payment of such fee as may be prescribed, furnish him or her with certified copy of or extract from any record.

With regard to the summoning and examination of witnesses, the administering of the oath or an affirmation, recalcitrant witnesses, and the production of books, documents, objects and material, the Commission shall have such powers as shall be prescribed.

For the purposes of these provisions, a State-financed publication and State information service shall be represented by the official of the State at the head of the State-financed publication or State information service in question.<sup>46</sup>

### **7.08 Orders and Recommendations of Commission**

If the Commission, in making a ruling, has found the respondent to have contravened the provisions of the Act, it may –

- (a) make an order requiring the respondent, if he or she –
  - (i) is a public sound broadcasting licensee, to broadcast a party election broadcast;
  - (ii) is a sound broadcasting licensee, to broadcast a political advertisement;
  - (iii) is a broadcasting licensee, to broadcast another version of the programme complained of or a counter-version of the opinions expressed or alleged facts stated in such a programme;
- (b) order the respondent to pay such fine as the Commission may determine, but not exceeding such amount as may be prescribed in relation to the contravention in question;

- (c) make an order prohibiting the respondent from carrying on his or her broadcasting service for such period as the Commission may determine: provided that such a prohibition shall not extend beyond the day of the dissolution of the Commission, and may, with due regard to the provisions of the Act, make any other order which it considers appropriate with a view to remedying the matter complained of.

Where the Commission has made an order against a broadcasting licensee it may, having due regard to the nature, consequences and gravity of the contravention with reference to which the order was made, forward a certified copy of such order and of the record of its adjudication proceedings relevant thereto, to the Authority with a view to the Authority taking steps against such broadcasting licensee in terms of the Independent Broadcasting Authority Act 1993.

In any case where either the publisher of a State-financed publication or any State information service is the respondent, the Commission shall convey its ruling to the Council.

Any person who contravenes or fails to comply with any order referred to in the foregoing provisions shall be guilty of an offence and liable on conviction to a maximum fine of R100,000.<sup>47</sup>

### **7.09 Dissolution of Commission and Cessation of Act**

The Commission shall be dissolved on the date when the Independent Electoral Commission is dissolved in terms of section 9 of the Independent Electoral Commission Act 1993, on which date this Act shall cease to have effect.

All assets, monies and liabilities of the Commission shall on its dissolution devolve upon the State, which shall to that extent for all purposes in law be deemed to be the legal successor of the Commission.<sup>48</sup>

## **NOTES**

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|---|-------------------------------|
| 1. Constitution of the Republic of South Africa 1993, see section 6 | 13. Ibid., see section 5      |
| 2. Ibid., see section 21  | 14. Ibid., see section 6      |
| 3. Ibid., see Schedule 2  | 15. Ibid., see section 8      |
| 4. Ibid., see section 73  | 16. Ibid., see section 9      |
| 5. Transitional Executive Council Act 1993, see section 2           | 17. Ibid., see section 13     |
| 6. Ibid., see section 3   | 18. Ibid., see section 14     |
| 7. Ibid., see section 4   | 19. Ibid., see section 15     |
| 8. Ibid., see section 7   | 20. Ibid., see section 16     |
| 9. Ibid., see section 25  | 21. Ibid., see section 18     |
| 10. Ibid., see section 29   | 22. Ibid., see sections 19-21 |
| 11. Electoral Act 1993, see section 4                               | 23. Ibid., see sections 22-24 |
| 12. Independent Electoral Commission Act 1993, see section 4        | 24. Ibid., see sections 25-27 |
|   | 25. Ibid., see sections 28-29 |
|   | 26. Ibid., see sections 30-31 |

27. Ibid., see sections 32-33
28. Ibid., see section 35
29. Electoral Act 1993, see sections 5 and 6
30. Ibid., see section 7
31. Ibid., see sections 8-9
32. Ibid., see sections 10-12
33. Ibid., see section 13
34. Ibid., see section 14
35. Ibid., see section 69
36. Ibid., see Schedule 2
37. See section 74 (as amended), Electoral Act 1993
38. Independent Broadcasting Authority Act 1993, see section 3
39. Ibid., see sections 58-62 and 66
40. Independent Media Commission Act 1993, see sections 2 and 3
41. Ibid., see sections 4 and 5
42. Ibid., see section 17
43. Ibid., see sections 19 and 20
44. Ibid., see section 20
45. Ibid., see section 21
46. Ibid., see section 23
47. Ibid., see sections 24 and 27
48. Ibid., see section 34

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## INTRODUCTION

In 1991 Zambia moved from a one-party to a multi-party system of government. In order to conduct multi-party elections, new legal structures were required to guarantee the formation of political parties and their freedom to conduct political campaigns throughout the country. A new Constitution and a new Electoral Law were promulgated in 1991.

These new structures were aimed at ensuring the organisation and conduct of free and fair multi-party elections. The main features of the new legal instruments will be set out herein to the extent that they impacted on the organisation of free and fair elections.

### — SECTION 1 —

#### RELEVANT PROVISIONS OF THE CONSTITUTION

##### **1.01 Freedom of Assembly and Association**

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.<sup>1</sup>

##### **1.02 The Franchise**

Every citizen of Zambia who has attained the age of eighteen years must unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered.

Every person who is registered in any constituency as a voter for the purposes of elections to the National Assembly must, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament, and no other person may so vote.<sup>2</sup>

##### **1.03 Electoral Commission**

The President is required to establish an Electoral Commission to supervise the registration of voters and the conduct of Presidential and Parliamentary elections and to review the

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boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly.

The President shall establish an Electoral Commission –

- (a) whenever Parliament is dissolved or he otherwise considers it to be necessary;
- (b) at such times, being not less than eight or more than ten years since the boundaries of the constituencies were last reviewed, as he may from time to time appoint;
- (c) whenever the number of seats in the National Assembly have been altered;
- (d) whenever a census of the population has been held in pursuance of any law.

The composition and operations of an Electoral Commission appointed by the President are provided for by an Act of Parliament.<sup>3</sup>

#### **1.04 Constituencies and Elections**

Zambia is divided into constituencies, for purposes of elections to the National Assembly so that the number of such constituencies, the boundaries of which must be such as an Electoral Commission prescribes, shall be equal to the number of seats of elected members in the Assembly.

In delimiting the constituencies, the Commission must have regard to the availability of means of communication and the geographical features of the area to be divided into constituencies: provided that the constituencies shall be so delimited that there is at least ten constituencies in each administrative Province.

Each constituency returns one member only to the National Assembly.

The boundaries of each constituency must be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable: provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features and the difference between urban and rural areas in respect of density of population.

An Electoral Commission established for the purpose of reviewing the boundaries of the constituencies must review the boundaries and may alter the constituencies to such extent as it considers desirable.

A Commission established by reason of holding of a census of the population may, if the Commission considers that the changes in the distribution of population reported in the census do not justify an alteration in the boundaries, so report to the President without entering upon a review of the boundaries of the constituencies.

Any alteration of the constituencies comes into effect upon the next dissolution of Parliament.

“Population quota” means the number obtained by dividing the number of inhabitants of Zambia by the number of constituencies into which Zambia is to be divided.

The number of inhabitants of Zambia is ascertained by reference to the latest census of the population.

During any period when an Electoral Commission is established for the purposes of Presidential and Parliamentary elections, the registration of voters and the conduct of elections in every constituency must be subject to the direction and supervision of the Commission.<sup>4</sup>

## — Section 2 —

### ELECTION ADMINISTRATION

#### **2.01 Electoral Commission**

An Electoral Commission established under the Constitution shall consist of a Chairman and two other members, who must be appointed by the President.

Where an Electoral Commission is established solely for the purpose of a by-election for a member of the National Assembly, the Electoral Commission may consist of a single Commissioner who may exercise all the powers of the Electoral Commission relating to the direction and supervision of that election other than the power to make or alter regulations.

A person is not qualified for appointment as Chairman of a Commission or as a Commissioner –

- (a) unless he holds or has held high judicial office;
- (b) if he is a member of, or nominated as a candidate for election to, either House of Parliament.

If, after the appointment of a Commission and before the Commission stands dissolved, the office of Chairman or any member falls vacant or the holder of the office becomes unable for any reason to discharge his functions as a member of the Commission, the President may appoint another person qualified for appointment to be the Chairman or a member of the Commission, as the case may be.

An Electoral Commission stands dissolved upon such date as the President may determine.<sup>5</sup>

#### **2.02 Independence of Electoral Commission**

In the exercise of its functions under the Constitution, a Commission shall not be subject to the direction or control of any other person or authority.<sup>6</sup>

#### **2.03 Supervision by Commission**

The registration of voters and the conduct of every election shall be subject to the direction and supervision of the Commission.<sup>7</sup>

## **2.04 Appointment and Functions of Election Officers**

The Commission has power to appoint, in respect of any election, for any constituency or province such election officers as it may deem necessary for the purposes of such election, and any election officer may exercise his functions in respect of the whole or part of a constituency or province or in respect of more than one constituency as prescribed by the Commission.

In respect of any election, an election officer may, subject to the general or special directions of the Commission, appoint any fit person to assist him in the exercise of his functions and may, at any time, revoke such appointment.

Every election officer must, before exercising any of the functions of his office, take and subscribe such oath, or make such affirmation in lieu thereof, as the Commission may prescribe.

The Commission may, at any time, revoke the appointment of an election officer.

The term “election officer” is defined as a person appointed by the Commission to be –

- (a) a registration officer;
- (b) an assistant registration officer;
- (c) an electoral officer;
- (d) a returning officer;
- (e) a presiding officer;
- (f) a polling assistant; and
- (g) a counting assistant,

and includes any person appointed to assist an election officer and, where functions are conferred on the Director of Elections in respect of any election, includes the Director of Elections.<sup>8</sup>

## **2.05 Powers of the Commission**

The Commission may –

- (a) require from any election officer such information and returns as it may consider necessary;
- (b) issue instructions to any election officer in connection with his functions;
- (c) issue instructions to any candidate in an election in respect of the use of motor vehicles by or on behalf of such candidate during the day on which such election is to be held.

The Commission may, by statutory instrument, make regulations providing for the registration of voters for the purposes of elections and for the procedure and manner of conducting elections; separate regulations may be made in respect of each category of elections.

Before making any regulations which make any separate or distinct provision in respect of

the functions of the returning officer for the election of a President, the Electoral Commission must consult the returning officer.

Regulations made under these provisions shall not be affected by the dissolution of the Commission by which they are made but shall remain valid and in force, subject to any amendment or revocation by a subsequent Commission.

Regulations may provide in respect of any contravention thereof that the offender is liable to a fine not exceeding twenty thousand Kwacha or to a term of imprisonment not exceeding two years or to both.

No prosecution for an offence against the Act can be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.<sup>9</sup>

## **2.06 The Director of Elections**

The Director of Elections is required to –

- (a) ensure that every election officer performs his functions under the Electoral (General) Regulations with impartiality and in accordance with the provisions thereof;
- (b) issue to any electoral officer, registration officer or assistant registration officer such instructions as he may deem necessary to ensure due compliance with the provisions of the said Regulations;
- (c) perform all such functions as are conferred or imposed upon him by the said Regulations.<sup>10</sup>

## **2.07 Election Officers**

In respect of each constituency, there must be –

- (a) a returning officer who shall be such person as the Commission shall specify, by notice in the Gazette, as the returning officer for that constituency; and
- (b) such approved number of assistant returning officers as the electoral officer for that constituency may, by notice in writing, appoint for the purpose of assisting him in the exercise of his functions; and
- (c) such approved number of counting assistants as the electoral officer for that constituency may, by notice in writing, appoint.

In respect of each polling district, there shall be such approved number of presiding officers and polling assistants as the electoral officer may, by notice in writing, appoint.

Whenever an electoral officer –

- (a) appoints any person to be an assistant returning officer;
  - (b) appoints any person to be a counting assistant; or
  - (c) appoints any person to be presiding officer or a polling assistant,
- he shall deliver a copy of the notice of each appointment to the Director of Elections.

Every returning officer, assistant returning officer, counting assistant, presiding officer and polling assistant must, before exercising any of the functions conferred upon him under the Electoral (General) Regulations or under any other written law, take and subscribe an oath, or make an affirmation in lieu thereof, before a magistrate in a prescribed form.

Where the Commission revokes the appointment of a returning officer, it shall publish a notice of such revocation in the Gazette.

Where an electoral officer revokes the appointment of an assistant returning officer or of a presiding officer or of a polling assistant or of a counting assistant appointed by him, such electoral officer shall give notice in writing of such revocation to the person concerned and shall deliver a copy of such notice to the Director of Elections.<sup>11</sup>

### — Section 3 —

## REGISTRATION OF VOTERS

### 3.01 Qualification for Registration of Voters

Except as provided in the subsequent paragraphs, every person is qualified for registration as a voter in direct elections who –

- (a) is a citizen of Zambia; and
- (b) has attained the age of eighteen years.

No person is qualified for registration as a voter in direct elections, and no person shall be registered as such a voter, who –

- (a) is under a declaration of allegiance to some country other than Zambia;
- (b) under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind, or is detained under the Criminal Procedure Code during the pleasure of the President;
- (c) is under sentence of death imposed on him by any court in Zambia, or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or
- (d) is not in possession of a national registration card issued to him under the National Registration Act.

A sentence of imprisonment does not include a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.<sup>12</sup>

### 3.02 Registration in a Constituency

A person qualified for registration as a voter must, on application in accordance with regulations made by the Commission, be registered as a voter in the register of voters for a constituency in which he is ordinarily resident.

Every person who is registered in a register of voters for a constituency is entitled to vote at a direct election held in that constituency.

Every person must, whenever he wishes to vote at a direct election, identify himself to an election officer in such a manner as may be prescribed, and no person is entitled to vote more than once in the same such election.<sup>13</sup>

## — Section 4 —

### APPOINTMENT OF ELECTION DATES

#### 4.01 Election Dates

For the purpose of the election of members to the National Assembly, whether after a dissolution of Parliament or after the Speaker has informed the President and the Commission of a vacancy in the elected membership of the National Assembly, the Commission must, in respect of each constituency in which an election is to be held, by statutory order –

- (a) appoint the day on which, and the hours on such day within which, returning officers may receive nominations of candidates for any election; and
- (b) appoint the day on which, and the hours on such day within which, presiding officers may take the poll at any election. Different days may be appointed in respect of different constituencies, and different hours may be appointed in respect of different constituencies or different polling districts.

The Commission may, from time to time, by statutory order, vary or amend any statutory order.<sup>14</sup>

#### 4.02 Allocation and Registration of Symbols

The Director of Elections is required to keep a register of symbols for use by candidates at elections, and such register must be in such form as the Director of Elections may determine.

A political party contesting an election must apply through its secretary to the Director of Elections for registration of a symbol chosen by that party for use by candidates supported by that party at elections and the Director of Elections is required to register such symbol.

The Director is also required to allocate and register a symbol for use by an independent candidate in any election; such a candidate may however apply to the Director to cancel the registration of a symbol allocated by the Director of Elections and for the registration of a symbol chosen by such candidate.

The following symbols are not allowed and must not be registered –

- (a) the Armoria Ensigns or the National Flag of Zambia;

- 
- (b) any device or emblem which, in the opinion of the Director of Elections, is normally associated with any tribe or religion or the regalia of a chief;
  - (c) any symbol or part of a symbol which is currently registered in respect of any political party or candidate;
  - (d) any symbol which is not distinctive from any other registered symbol; and
  - (e) any symbol the use of which may, in the opinion of the Director of Elections, be offensive or objectionable.<sup>15</sup>

#### **4.03 National Assembly Nominations**

The Commission must, by notice in the Gazette, appoint for each constituency a place to be the nomination office for receiving nomination papers.

The returning officer for a constituency must attend at the nomination office during the periods appointed in respect of that constituency to receive nomination papers in that constituency.

The returning officer is required to keep order at the nomination office and in its precincts and to control the number of persons to be admitted at a time to the nomination office.

The returning officer may require any unauthorised or any other person who misbehaves to leave the nomination office and its precincts. This power must not be exercised in such a manner so as to prevent any person from lodging or subscribing a nomination paper.<sup>16</sup>

#### **4.04 Nomination Procedure**

The returning officer for a constituency is required to provide nomination papers to persons who are qualified for nomination and who request such papers.

Every person who desires to be a candidate for election in any constituency must lodge his nomination paper with the returning officer for that constituency. The nomination paper must be in the prescribed form and must –

- (a) state the name of the political party of which the candidate is the authorised candidate or, if he is not the authorised candidate of any political party, that he is standing as an independent candidate;
- (b) be completed on all respects, save that the supporters must sign it in the presence of the returning officer;
- (c) be signed by the candidate or by any person authorised in that behalf by him in writing; if the nomination paper is signed on behalf of the applicant, a copy of the written authority must be attached thereto;
- (d) state the name and address of his election agent, if any;
- (e) lodged within the period appointed for that purpose in respect of such constituency;
- (f) be accompanied by an election fee in the sum prescribed which fee shall not be refunded once the nomination has been lodged;
- (g) be accompanied by a declaration in prescribed form stating citizenship, age, registration, etc.

At the time of lodging a nomination paper, the candidate or a person duly authorised by him, must present himself to the returning officer together with his nine supporters who must produce their voter registration cards and national registration cards to the returning officer. The supporters must complete that part of the nomination paper which relates to their signatures in the presence of the returning officer.

If a person intending to lodge his nomination paper as a candidate in a constituency requests the returning officer for that constituency to examine his nomination paper before it is lodged, or to guide him on any matter relating thereto, the returning officer must guide such person to the best of his ability. Where the nomination paper is to be lodged on behalf of the person intending to be a candidate, the returning officer owes the same duty to the person authorised to lodge the nomination paper. The fact or nature of any advice or guidance given cannot be inquired into at any proceedings before a court.<sup>17</sup>

#### **4.05 Withdrawal of Nomination**

A nomination may be withdrawn at any time before the expiry of the period appointed for lodging nomination papers in respect of the constituency concerned.

The withdrawal must be effected only if the candidate, or a person authorised in that behalf by him in writing, delivers to the returning officer a written notice in that behalf.<sup>18</sup>

#### **4.06 Determination of Validity of Nominations**

Upon the expiry of the period appointed for lodging nominations in any constituency, the returning officer for that constituency is required to determine the validity of each nomination lodged with him, and declare invalid any nomination in respect of which he is satisfied that –

- (a) the nomination paper was not duly completed, properly signed and lodged as required;
- (b) the nomination paper is not accompanied by the declaration or such declaration is defective in a material particular; or
- (c) the appropriate fee was not paid.

Where the returning officer determines that a nomination is invalid, he shall reject the nomination and endorse on the nomination paper his reason for such determination, and must sign an endorsement.

Where a returning officer determines that a nomination is valid, he must sign the nomination paper to signify his acceptance.

The determination of the returning officer that a nomination is valid or invalid must not be questioned save by way of an election petition.

In any election, no person must seek to lodge nomination papers in more than one constituency. If upon the expiry of the period for lodging nomination papers in any two or

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more constituencies, a person is found to have lodged and not withdrawn nomination papers in more than one constituency, then every one of those nominations is invalid.<sup>19</sup>

#### **4.07 Procedures after Determination of Validity of Nominations**

A returning officer is required to, after he has determined the validity of the nominations lodged with him, inform the Commission of the names of the candidates validly nominated.

Where a returning officer for any constituency determines that only one candidate has been validly nominated for election in that constituency, the returning officer must declare such candidate to be elected in that constituency, and inform the Commission accordingly.

Where a returning officer for any constituency determines that no candidate has been validly nominated for election in that constituency, the returning officer must inform the Commission accordingly.<sup>20</sup>

#### **4.08 Notice of Taking of the Poll**

Where two or more candidates have been validly nominated for election in a constituency, the returning officer for that constituency must give local notice that a poll must be taken in such constituency on the day appointed therefor and such notice must set out the names of such candidates in alphabetical order of surnames.

Where no candidate or only one candidate has been validly nominated for election in a constituency, the returning officer for that constituency must give local notice that a poll must not be taken in that constituency for that reason.

After a returning officer for a constituency has given notice of the taking of the poll and before the day appointed for the taking of a poll in that constituency, any person registered in such constituency may, at any reasonable time, inspect, at the office of the returning officer, any of the nomination papers of the candidates in that constituency.<sup>21</sup>

### **— Section 5 —**

#### **PREPARATION FOR POLLING**

##### **5.01 Polling Stations**

For the purpose of the taking of a poll in a polling district the electoral officer for that polling district must appoint a place at which the polling station for such polling district is to be established and give local notice thereof as directed by the Director of Elections. The same polling station may serve more than one district.<sup>22</sup>

##### **5.02 Duties of Returning Officer**

For the taking of a poll, a returning officer must, in respect of each polling station within his constituency –

- (a) ensure that there are sufficient compartments within which voters may mark their ballot papers in secrecy and screened from observation;
- (b) provide each presiding officer with such number of ballot boxes, ballot papers, official seals, official marks, copies of the voters' roll relating to such polling station and such other things as may be necessary;
- (c) make such arrangements to facilitate the taking of the poll as may be necessary for ensuring that it is taken in the manner prescribed;
- (d) publish, both inside and outside each polling station, notices instructing voters as to the procedure for casting their votes, and notices showing –
  - (i) the names in alphabetical order of surnames of the candidates for election in that constituency; and
  - (ii) that symbol allocated in respect of each candidate for election in the constituency.

The returning officer for each constituency in which a poll is to be taken must give notice in writing to each candidate for election in such constituency, prior to the day appointed for the taking of the poll, of the time and place at which the votes cast in such election are to be counted.<sup>23</sup>

### **5.03 Ballot Boxes**

Every ballot box must be so constructed that, after it is sealed, the ballot papers can be placed therein by voters but not taken out without breaking the seals. The official seals and official marks must be in the form directed by the Director of Elections.

Immediately before the commencement of the poll, the presiding officer at each polling station must show every ballot box, open and empty, to any person whose presence for that purpose is permitted so that such person may see that it is empty, and must then lock and seal with the official seal every such ballot box, and permit any candidate, election agent or polling agent who may be present to affix their seals thereto, and such seal or seals must not be broken until the ballot box is opened.

The presiding officer at each polling station shall place the key to every ballot box in a packet marked "A" as soon as such ballot box has been locked, and must then seal such packet with the official seal, and permit any candidate, election agent or polling agent who may be present to affix their seals thereto, and such seal or seals must not be broken except for the purpose of opening such ballot box.

The presiding officer at each polling station must place every ballot box locked and sealed in such position in the polling station that it can be seen throughout the taking of poll by the presiding officer and such candidate, election agent or polling agent as may be present at the polling station.<sup>24</sup>

### **5.04 Polling Procedure**

The Commission may appoint different commencement or closing times for different constituencies or polling districts.

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The presiding officer must permit every voter to cast his vote before closing the poll if such voter, at the time appointed for the closing of the poll –

- (a) is inside the polling station; or
- (b) was, in his opinion, within the precincts of the polling station and was prevented from entering the polling station owing to congestion therein.

A presiding officer may in his discretion postpone until later in the day, and, if necessary, adjourn to some other day, the polling at his polling station where it cannot be started or is interrupted by reason of riot, open violence, flood, natural catastrophe or other similar cause but where he does so, he must start or restart the polling at the earliest practicable moment.

A presiding officer in his discretion may extend the hours or adjourn the day of polling at his polling station where polling has not started or has been interrupted by reason of any of the causes referred to in the sub-regulation above and references in the Regulations to the close of the poll must be construed accordingly.

Where a presiding officer postpones or adjourns the poll, he must take such precautions as are necessary to safeguard the ballot boxes, ballot papers and other election requisites, and must forthwith notify the returning officer of such postponement or such adjournment, as the case may be. Where a returning officer is notified of a postponement or adjournment of a poll he must forthwith notify the Director of Elections of such postponement or such adjournment, as the case may be.

A voter is entitled to vote at the polling station appointed for the district in which he is registered and is not entitled to vote at any other polling station.

At the taking of a poll a voter is entitled to cast one, and only one, vote and if a voter's name appears in error or for any other reason in more than one voters' roll or more than once in the same voters' roll he is not entitled to cast more than one vote.

The poll must be taken by secret ballot.

For a poll in an election to the National Assembly, the ballot paper must be in the prescribed form and in respect of any constituency, must show the names in alphabetical order of surnames of the candidates for election in that constituency and the symbol allocated to each candidate for the election in that constituency.

Every ballot paper must be attached to a counterfoil bearing the same serial number as that printed on the ballot paper.

Every person applying for a ballot paper must –

- (a) present himself at the polling station at which he is entitled to vote;
- (b) produce his voter's registration card to the presiding officer or polling assistant at such polling station;
- (c) identify himself by producing his national registration card; and

(d) if so required by the presiding officer or polling assistant, present both his hands for inspection by such officer, and no person must be issued with a ballot paper unless he complies with the requirements contained in the Regulations.

A presiding officer or polling assistant at a polling station may put to any applicant for a ballot paper such questions as he may consider necessary to enable him to identify the applicant with the name on the copy of the voters' roll for such polling station.

No person shall be issued with a ballot paper or permitted to vote at a polling station unless the presiding officer or polling assistant for such polling station is satisfied that such person –

- (a) is entitled to vote at that polling station;
- (b) has produced his voter's registration card;
- (c) has properly identified himself;
- (d) has not previously voted in the poll in respect of which he is applying for a ballot paper; and
- (e) is not disqualified from voting at such election.

The presiding officer at each polling station must keep order in such polling station and in its precincts, and must regulate the number of voters to be admitted at a time to such polling station.

The presiding officer at each polling station may require any unauthorised person to leave such polling station and its precincts.

Every candidate, election agent, polling agent or person authorised in writing by the Director of Elections to enter and remain in a polling station must, before attending the taking of a poll at any polling station, take and subscribe an oath, or make an affirmation in lieu thereof in the prescribed form before the returning officer for such constituency.

The above-mentioned powers cannot be exercised in a manner so as to prevent any voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at such polling station.

The main features of the voting procedure are as follows –

- (a) the voter must, prior to receiving a ballot paper, immerse in ink provided for that purpose by the presiding officer or polling assistant, a thumb up to at least the whole of the exposed nail: provided that –
  - (i) in the case of a voter without any thumb, such voter must immerse a finger up to at least the whole of the exposed nail;
  - (ii) in the case of a voter without any thumb or fingers, these provisions do not apply; and
- (b) before issuing a ballot paper to the voter the officer or polling assistant must –

- 
- (i) call out the name and number of the voter as recorded in the copy of the voters' roll at such polling station;
  - (ii) draw a line through the entry relating to the voter in such copy of the voters' roll as evidence that such voter has received a ballot paper;
  - (iii) stamp such ballot paper with the official mark;
  - (iv) on the counterfoil of such ballot enter the number of the voter as recorded in such copy of the voters' roll;
  - (v) stamp the voter's registration card produced by such voter with the official mark; and
- (c) the presiding officer or polling assistant must then detach the ballot paper from its counterfoil and deliver it to the voter; and
  - (d) the voter, on receiving the ballot paper, must enter one of the compartments provided in the polling station for that purpose and signify his vote by secretly marking such ballot paper with a cross in the appropriate place and shall then fold the ballot paper in such a way that the official mark stamped thereon is visible and the mark signifying his vote is not visible; and
  - (e) the voter must then leave the compartment and must, in the presence of the presiding officer or polling assistant, place the folded ballot paper in the ballot box provided in the polling station for that purpose.

A voter must cast his vote without undue delay and must leave the polling station as soon as he has placed his ballot paper in the ballot box. Where the presiding officer is of the opinion that any voter is causing undue delay in casting his vote and that such delay is likely to hinder the adequate or orderly conduct of the poll, he may require such voter to complete the procedures within a period of two minutes immediately thereafter. On or after the expiry of the period of two minutes, the presiding officer may direct the voter concerned to place the ballot paper issued to such voter in the ballot box and to leave the polling station and its precincts and not to return thereto during the period of the poll.

No person, other than a presiding officer, polling assistant, police officer or person on duty in an official capacity at a polling station, shall have any communication whatsoever with a voter while the voter is in the precincts of a polling station for the purpose of voting.

Where a voter inadvertently deals with a ballot paper in such a manner that it cannot be used as a valid ballot paper, he must deliver such ballot paper (referred to as a "spoilt ballot paper") to the presiding officer and, if the presiding officer is satisfied that such ballot paper has been spoilt inadvertently, he shall issue another ballot paper to such voter, and shall cancel the spoilt ballot paper and the counterfoil to which it relates.<sup>25</sup>

### **5.05 Incapacitated Voters**

A presiding officer, a relative or a friend may, upon application by and with the assent of –

- (a) a voter who is incapacitated by blindness or other physical cause from voting in accordance with the procedure prescribed; or
- (b) a voter who declared orally that he is unable to read or otherwise asks for assistance of the presiding officer, a relative or a friend,

enter a compartment with such voter in order to assist him to cast his vote, mark the ballot paper issued to such voter in such manner as the voter may signify and place it in the ballot box on behalf of such voter. Such a relative or friend must prove that he is a registered voter in that polling district and had not already assisted another voter in that election.

A presiding officer acting under the foregoing provision must record in the copy of the voters' roll, by means of a mark placed next to the name of the voter concerned, that he or a relative or friend of a voter has marked the ballot paper on the application of the voter, and the reasons for doing so.

If the presiding officer is of the opinion that due to the number of voters making application to be assisted the conduct of the poll is being or is likely to be delayed he may authorise a polling assistant to assist him in the performance of the functions imposed upon him.<sup>26</sup>

### **5.06 Voting by Electoral Officers**

Where a person entitled to vote in any constituency is employed as a returning officer, presiding officer, polling assistant, police officer or in any other official capacity at a polling station within such constituency other than the polling station at which he is entitled to vote, the returning officer for such constituency may authorise the voter by a certificate under his hands in the prescribed form, to vote at the polling station at which he is employed. Any voter to whom such authority is given must deliver the certificate to the presiding officer when he applies for a ballot paper.<sup>27</sup>

### **5.07 Close of Poll**

As soon as practicable after the close of the poll, the presiding officer at a polling station, in the presence of such candidates or election agents or polling agents as may be present at such polling station, must –

- (a) close and seal with the official seal the aperture of every ballot box used for the poll and permit any such candidate or election agent or polling agent to affix his seal thereto; and
- (b) in respect of the poll, complete the ballot paper account which must be in the prescribed form; and
- (c) place in separate packets, which shall be sealed of such candidates or election agents or polling agents, if any, who wish to affix their seals thereto the following items in the manner hereinafter provided, that is to say:
  - (i) in a packet marked "B", the unused ballot papers, which must remain attached to their respective counterfoils, and the spoil ballot papers;
  - (ii) in a packet marked "C", the copy of the voters' roll marked together with the certificates delivered to the presiding officer;
  - (iii) in a packet marked "D", the counterfoils of the used ballot papers including the counterfoils of any spoil ballot papers;
  - (iv) in a packet marked "E", the ballot paper account;
  - (v) a packet marked "F", the official mark and the official seal. This packet must not be sealed but must be securely fastened.

The presiding officer must, in accordance with such directions as may be issued by the Director of Elections, dispatch each packet, together with the ballot boxes sealed as prescribed, in safe custody to the returning officer for the constituency in respect of which the poll was conducted.

The returning officer for a constituency in which a poll has been taken must take into his custody, and issue a receipt for, all packets and ballot boxes delivered to him.<sup>28</sup>

## — Section 6 —

### THE COUNT

#### 6.01 Persons Who May Attend

No person is allowed to attend at the counting of the votes cast in an election in a constituency, other than –

- (a) members of the Commission or members of its staff authorised in that behalf;
- (b) the Director of Elections;
- (c) the returning officer of such constituency;
- (d) the counting assistants appointed by the electoral officer;
- (e) the electoral officer of any area within such constituency;
- (f) the candidates for election to the office of President;
- (g) the candidates for election in such constituency;
- (h) the election agents appointed by such candidates;
- (i) one polling agent in respect of each candidate for election;
- (j) a police officer on duty; and
- (k) any person authorised in writing by the Director of Elections.

Every person authorised to attend the counting of the votes in any constituency, other than a member of the Commission, must take and subscribe an oath, or make an affirmation in lieu thereof, in the prescribed form and for that purpose the returning officer for such constituency has power to administer such oath.<sup>29</sup>

#### 6.02 Examination of Seals

When the returning officer for a constituency in which a poll has been taken is satisfied that he has received all the packets and ballot boxes in respect of all the polling stations in such constituency he shall, at the time and place notified for the counting of the votes, examine the seals of all such packets and ballot boxes and shall permit such candidates, election and polling agents as are present to examine such seals.

The returning officer shall submit to the Director of Elections a written report of the result of the examination carried out if such examination reveals that the seals of any packet or ballot box are broken.<sup>30</sup>

### 6.03 Counting Procedure

The returning officer for a constituency in which a poll has been taken must, with the aid of the counting assistants for such constituency, count all the votes cast in the election in such constituency in accordance with the regulations.

The counting of the votes must, so far as circumstances permit, proceed continuously until the count is completed, allowing only a reasonable time for refreshment.

The counting procedure is as follows –

- (a) the returning officer must open each ballot box and, after removing all the ballot papers therefrom, must count and record the total number of ballot papers contained in each ballot box without reference to the manner in which such ballot papers are marked; and the returning officer shall announce publicly to those present the total number of the ballot papers found in the ballot box;
- (b) the returning officer must then count the votes according to the way they have been given (marked) by the voters in respect of each candidate;
- (c) after sorting them accordingly, the returning officer must announce publicly how the ballot papers have been distributed from the single polling station, before proceeding to the next polling station;
- (d) the returning officer is required to ensure that, while counting the ballot papers, the counting assistants keep the side of each ballot paper on which the vote is recorded upwards, and must take all precautions for preventing any person present at the count from seeing the number printed on each ballot paper.<sup>31</sup>

### 6.04 Rejection of Ballot Papers

The returning officer must reject as invalid, and must not count, any ballot paper –

- (a) which does not bear the official mark, unless the returning officer is satisfied that such omission was a bona fide error; or
- (b) which contains more than one vote; or
- (c) on which anything (other than the number printed on such ballot paper) is written or marked in such manner that the voter can be identified; or
- (d) which is unmarked or invalid for uncertainty.

A ballot paper on which the vote is marked –

- (a) elsewhere than in the proper place; or
- (b) otherwise than by means of a cross; or
- (c) by more than one mark,

must not by reason thereof be invalid if the intention of the voter clearly appears, and the manner in which the paper is marked does not of itself identify the voter and it is not shown that he can be identified thereby.

The returning officer must write the word “rejected” on any ballot paper which is not to be

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counted, and must add “rejection objected to” if any objection to the returning officer’s decision is made by a candidate, his election agent or his polling agent present at the count.

The returning officer must draw up a statement in the prescribed form showing the number of ballot papers rejected under the heads of –

- (a) want of official mark;
- (b) more than one vote;
- (c) writing or mark by which voter could be identified;
- (d) unmarked or invalid for uncertainty,

and any candidate, his election agent or his polling agent present may copy such statement.

The decision of a returning officer on any question in respect of any ballot paper can only be dealt with on an election petition.<sup>32</sup>

### **6.05 Recounting of Votes**

A candidate, his election agent or his polling agent may, if present when the counting or any recounting of the votes is completed, require the returning officer to have the votes recounted or again recounted, or the returning officer may, on his own initiative, have the votes recounted or again recounted.

The returning officer may refuse a request for a recount, if in his opinion, it is unreasonable.

Where an equality of votes is found to exist between any candidates and the addition of one vote to the votes counted for any such candidate would materially affect the result of the election, the returning officer must make a recount of the votes cast in respect of such candidates.

No steps must be taken by the returning officer on the completion of the counting or of any recounting of the votes until the candidates, election agents and polling agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred under these provisions.<sup>33</sup>

### **6.06 Equality of Votes**

If upon the completion of the counting of votes, it is found that an equality of votes exists between two or more candidates and the addition of one vote would entitle any one of the candidates to be declared elected, the returning officer must forthwith decide between those candidates by lot in such manner as the Commission may determine and must proceed as if the candidate on whom the lot falls has received an additional vote.<sup>34</sup>

### **6.07 Procedure after the Count**

On the completion of the counting of votes cast in an election, the returning officer must seal up in separate, marked packets the ballot papers counted in respect of each candidate, and must place the rejected ballot papers in a single marked packet.

The returning officer for a constituency in which a poll is taken must appoint a time and place at which the verification of the ballot paper accounts in that constituency must take place and must give notice in writing to the candidates in such election of such time and place.

At the time and place appointed, the returning officer must, in the presence of the assistant returning officers for that constituency and of such candidates and their election agents as may be present, proceed with the verification of the ballot paper accounts according to the following procedure –

- (a) he must open the envelopes marked “B” containing the unused ballot papers together with their counterfoils and the spoilt ballot papers, and the envelopes delivered to him in respect of each polling station in that constituency;
- (b) he must, in respect of each polling station, compare the ballot papers contained in the ballot boxes with the total number of unused and spoilt ballot papers contained in the envelope marked “B” for that polling station;
- (c) he must reseal the envelopes marked “B” with their respective contents; and
- (d) he must place all ballot paper accounts for that constituency in one envelope marked “E” and must seal such envelope.

The returning officer must then prepare and deliver to the Director of Elections a report on the verification of the ballot paper accounts and must permit such candidates and election agents as may be present at the verification to make a copy thereof.<sup>35</sup>

### **6.08 Destruction of Election Materials**

Upon the completion of the verification of the ballot paper accounts, the returning officer must forthwith deliver to the Commission –

- (a) in respect of each polling station within his constituency, the packet marked “B” containing the unused ballot papers together with their counterfoils and the spoilt ballot papers; and
- (b) in respect of each polling station within his constituency, the packet marked “C” containing the copy of the voters’ roll and the certificates placed therein; and
- (c) the packet sealed according to the relevant regulation and containing the ballot papers counted in respect of each of the candidates; and
- (d) the packet containing the rejected ballot papers and sealed in accordance with the relevant regulation,

and must forthwith deliver to the Director of Elections in respect of each polling station within his constituency –

- (i) the packet marked “D”, containing the counterfoils of the used and the spoilt ballot papers delivered to the returning officer; and
- (ii) the packet marked “E”, containing the ballot paper account; and
- (iii) the packet marked “F”, containing the official seal and the official mark, delivered to the returning officer.

The Commission must retain the packets delivered in respect of any poll in an election for a

period of thirty days after the day on which the result of such election was declared and must then cause them to be destroyed by burning, pulping or by any other efficacious method.

Where the Commission has been informed that an election petition has been presented in respect of such election, the packets must not be destroyed until such time as the trial of such election petition has been finally determined.

The Director of Elections must retain the packets marked "D" delivered to him for a period of thirty days after the day on which the result of such election was declared and must then cause them to be destroyed by burning, pulping or by any other efficacious method approved by the Commission and must notify the Commission accordingly.

Where the Commission has been informed that an election petition has been presented in respect of such election, the packets must not be destroyed until such time as the trial of such election petition has been finally determined.<sup>36</sup>

#### **6.09 Declaration of Results**

When the counting of the votes has been completed and the result of the polls ascertained, the returning officer must –

- (a) complete in duplicate a declaration of the result of the polls;
- (b) declare to be elected the candidate to whom the majority of votes was cast by reading aloud in public, at the place where such counting was conducted, such completed form; and
- (c) cause to be delivered to the Commission without delay the original of such completed form.

In every constituency where a poll in respect of an election to the office of President has been taken, the returning officer for such constituency must, without delay after the counting of the votes has been completed, inform the Commission, in such manner as the Commission may direct, of the total number of valid votes for each candidate.

The Commission must, upon receipt of the information, notify the same in writing to the Chief Justice in his capacity as the returning officer for the purposes of election to the office of President.

The Commission must, in respect of each candidate declared elected, give notice in the Gazette of –

- (a) the full names of such person; and
- (b) the constituency in which such person was elected.

A person declared elected is deemed to have been elected with effect from the date appointed for the taking of the poll at the election in the constituency concerned.<sup>37</sup>

— *Section 7* —

**ELECTION OFFENCES**

**7.01 Bribery**

Any person who directly or indirectly, by himself or by any other person –

- (a) gives, lends, or procures or offers, promises or agrees to give, lend or procure any money to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;
- (b) gives, lends, or procures, or offers, promises or agrees to give, lend, or procure, any money to or for any voter or to or for any other person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;
- (c) makes any such gift, loan, offer, promise, procurement or agreement to or for any person in order to induce such person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;
- (d) upon or in consequence of any such gift, loan offer, promise, procurement or agreement, procures or engages, promises, or endeavours to procure, the return of any candidate at any election or the vote of any voter at any election;
- (e) advances or pays or caused to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof must be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;
- (f) before or during any election, receives or contracts for any money or loan for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;
- (g) after any election, receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or
- (h) conveys or transfers or is concerned with the conveyance or transfer of any property, or pays or is concerned with the payment of any money, to any person for the purpose of enabling him to be registered as a voter, thereby to influence his vote at any future election, or pays to or is concerned with the payment of any money on account of any voter for the purpose of inducing him to vote or refrain from voting,

is guilty of the offence of bribery.<sup>38</sup>

**7.02 Personation**

Any person who –

- (a) at any election, applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person; or

- (b) having voted once at any election, applies again at the same election for a ballot paper; or
  - (c) votes at any election knowing that he is not entitled to vote at that election or induces or procures any person to vote at any election knowing that that person is not entitled to vote at that election,
- is guilty of the offence of personation.<sup>39</sup>

### 7.03 Treating

Any person who corruptly by himself or by any other person either before, during or after an election, directly or indirectly, gives or provides or pays wholly or in part the expenses of giving or providing any food, drink, entertainment, lodging or provisions to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at an election is guilty of the offence of treating.<sup>40</sup>

### 7.04 Undue Influence

Any person who directly or indirectly, by himself or by any other person –

- (a) makes use of or threatens to make use of any force, violence or restraint upon any other person; or
  - (b) inflicts or threatens to inflict by himself or by any other person, or by any supernatural means or non-natural means or pretended supernatural or non-natural means any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person; or
  - (c) does or threatens to do anything to the disadvantage of any person, in order to induce or compel that person –
    - (i) to sign a nomination paper or refrain from signing a nomination paper; or
    - (ii) to vote or refrain from voting; or
    - (iii) to refrain from claiming registration as a voter; or
    - (iv) to refrain from offering himself as a candidate for election,
 or on account of that person having –
    - (A) signed or refrained from signing a nomination paper; or
    - (B) voted or refrained from voting at any election; or
    - (C) refrained from claiming registration as a voter; or
    - (D) refrained from offering himself as a candidate,
- is guilty of the offence of undue influence.

Any person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of his vote by any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving his vote at any election, is guilty of the offence of undue influence.<sup>41</sup>

### 7.05 Penalties for Corrupt Practices

Any person who is guilty of the offence of bribery, personation, treating or undue influence is guilty of a corrupt practice and is liable on conviction to a fine not exceeding ten thousand

Kwacha or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.<sup>42</sup>

### **7.06 Illegal Practices**

Any person who, before or during an election, publishes a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true, is guilty of an illegal practice.

Any person who, before or during an election publishes any false statement of fact in relation to the personal character or conduct of a candidate in that election, is guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true.

Any person who forges or fraudulently destroys any written authority of a candidate or nomination paper, or delivers to a returning officer any written authority of a candidate or nomination paper knowing the same to be forged is guilty of an illegal practice.

Any person who knowingly makes a false statement in a statutory declaration made and subscribed with respect to the nomination requirements is guilty of an illegal practice.

Any person who, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing nomination day and the day on which the result of the election is published, acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of business for which the meeting is called, is guilty of an illegal practice.

Any person who, with intent to influence persons to give or refrain from giving their votes at an election, uses or procures the use of any wireless transmitting station outside the country is guilty of an illegal practice.

Any person who –

- (a) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (b) without authority supplies any ballot paper to any person;
- (c) without authority puts into any ballot box any ballot paper which he is not authorised by law to put in;
- (d) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
- (e) not being a person entitled to be in possession of a ballot paper, has any such ballot paper in his possession;
- (f) without authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;
- (g) without authority prints or makes any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;

- (h) manufactures, constructs, has in his possession, supplies or uses for the purpose of an election, or causes to be manufactured, constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station,  
is guilty of an illegal practice.

Any person who attempts to commit an illegal practice is guilty of an illegal practice.<sup>43</sup>

### **7.07 Penalty for Illegal Practices**

Any person who is guilty of an illegal practice is liable on conviction to a fine not exceeding ten thousand Kwacha or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.<sup>44</sup>

### **7.08 General Election Offences**

Any person who –

- (a) within a period appointed for receipt of nominations, loiters in any public place within four hundred metres from the entrance to a nomination office;
- (b) having been required to leave a nomination office fails to leave such nomination office or the precincts thereof;
- (c) puts into any ballot box anything other than the ballot paper which he is authorised by law to put therein;
- (d) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (e) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station –
  - (i) canvasses for votes;
  - (ii) solicits the vote of any person;
  - (iii) induces any person not to vote; or
  - (iv) induces any person not to vote for a particular candidate;
- (f) on any polling day loiters in any public place within four hundred metres from the entrance to any polling station;
- (g) on any polling day exhibits in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by any officer relating to the election;
- (h) not being a presiding officer, a polling assistant, a candidate, an election agent or a polling agent in the course of his functions within a polling station, makes any record showing that any particular person has voted in an election;
- (i) without lawful authority, destroys, mutilates, defaces or removes any notice which is exhibited or any document made available for inspection;
- (j) wilfully obstructs or interferes with a returning officer, presiding officer, or polling assistant in the execution of his duties;
- (k) makes a false answer to any question put to him by a presiding officer or a polling assistant;

- (l) in contravention of the relevant regulation has any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;
- (m) being a candidate, uses a symbol in the course of an election other than the symbol registered with the Director of Elections or in the case of any other person associates any candidate with any symbol in the course of an election other than such candidate's registered symbol,

is guilty of an offence and is liable on conviction to fine not exceeding ten thousand Kwacha or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.<sup>45</sup>

### **7.09 Breach of Secrecy**

Every person in attendance at a polling station must maintain, and aid in maintaining, the secrecy of the voting at such station and must not communicate, except for some purpose authorised by law, to any person any information as to the name or number on the register of voters of any voter who has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

No person, except a presiding officer or polling assistant acting pursuant to the law is to obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote or has voted or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote or has voted, or as to the number on the ballot paper issued to any person at such polling station.

Every person in attendance at the counting of the votes must maintain, and aid in maintaining, the secrecy of the voting and must not ascertain or attempt to ascertain at such counting the number on any ballot paper or communicate any information obtained at such counting as to the manner in which any vote is given by any particular ballot paper.

Any person who contravenes any of these provision is guilty of an offence.<sup>46</sup>

### **7.10 Offences by Election Officers**

Any election officer who wilfully fails to perform the functions of his office is guilty of an offence.<sup>47</sup>

## **— Section 8 —**

### **ELECTION PETITIONS**

#### **8.01 Avoidance of Elections**

No election of a candidate as a member of the National Assembly can be questioned except by an election petition.

The election of a candidate as a member of the National Assembly is void on any of the

following grounds which is proved to the satisfaction of the High Court upon the trial of an election petition, that is to say –

- (a) that by reason of any corrupt practice or illegal practice committed in connection with the election or by reason of other misconduct, the majority of voters in a constituency were or may have been prevented from electing the candidate in that constituency whom they preferred;
- (b) that there had been a non-compliance with the provisions of the Act relating to the conduct of elections, and it appears to the High Court that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance affected the result of the election;
- (c) that any corrupt practice or illegal practice was committed in connection with the election by or with the knowledge and consent or approval of the candidate or of his election agent or of his polling agents;
- (d) that the candidate was at the time of his election a person not qualified or a person disqualified for election.

Where, upon the trial of an election petition, the High Court finds that any corrupt practice or illegal practice has been committed by or with the knowledge and consent or approval of any agent of the candidate whose election is the subject of such election petition, and the High Court further finds that such candidate has proved that –

- (a) no corrupt practice or illegal practice was committed by the candidate himself or by his election agent, or with the knowledge and consent or approval of such candidate or his election agent, and
- (b) such candidate and his election agent took all reasonable means to prevent the commission of corrupt practice or illegal practice at such election; and
- (c) in all other respects the election was free from any corrupt practice or illegal practice on the part of such candidate or his election agent,

then the High Court shall not, by reason only of such corrupt practice or illegal practice, declare that election of such candidate was void.

No election shall be declared void by reason of any act or commission by an election officer in breach of his official duty in connection with an election if it appears to the High Court that the election was so conducted as to be substantially in accordance with the Act and that such act or omission did not affect the result of that election.<sup>48</sup>

## **8.02 Who May Present Election Petitions**

An election petition may be presented to the High Court by one or more of the following persons –

- (a) a person who lawfully voted or had a right to vote at the election to which the election petition relates;
- (b) a person claiming to have had a right to be nominated as a candidate or elected at the election to which the election petition relates;

- (c) a person claiming to have been a candidate at the election to which the election petition relates;
- (d) the Attorney-General.<sup>49</sup>

### **8.03 Relief Available to a Petitioner**

Any of the following reliefs may be claimed in an election petition –

- (a) a declaration that the election was void;
- (b) a declaration that any candidate was duly elected.

In addition to the foregoing reliefs, a petitioner may apply to the High Court upon trial of an election petition for a scrutiny to be carried out by the High Court in such manner as the Court may determine.

On a scrutiny at the trial of an election petition, the following votes only shall be held invalid –

- (a) the vote of any person whose name was not on the register of voters assigned to the polling station at which the vote was cast or who was not authorised to vote at such polling station;
- (b) the vote of any person whose vote was procured by any corrupt practice or illegal practice;
- (c) the vote of any person who committed or procured the commission of personation at the election to which the election petition relates;
- (d) the vote of any person proved to have voted more than once at the election to which the election petition relates;
- (e) the vote of any person who was disqualified from voting at the election to which the election petition relates.

“Scrutiny” means an enquiry as to the validity of the votes cast, and includes the determination of the number of valid votes cast for each candidate in the election in respect of which the application for a scrutiny is made.<sup>50</sup>

### **8.04 Procedure of Election Petition**

Every election petition must be in such form and contain such matters as may be prescribed by rules made by the Chief Justice.

Presentation of an election petition to the High Court must be made by lodging it with the Registrar.

Every election petition must be signed by the petitioner or by all the petitioners if more than one, and must be presented not later than thirty days after the date on which the result of the election to which it relates is duly declared.

When the election of any person (referred to as “the respondent”) is questioned upon

an allegation of a corrupt practice or an illegal practice, the election petition may be presented –

- (a) at any time before the expiry of twenty-one days after the day on which the returning officer receives the return of the election expenses of the respondent; or
- (b) if the election petition specifically alleges a payment of money or some other act to have been made or done since the day referred to in paragraph (a) by the respondent or his election agent, or with the privity of the respondent or of his election agent in pursuance or in furtherance of the corrupt practice or illegal practice alleged in the election, at any time within thirty days after the date of payment or other act.

Where an election petition is presented, the Registrar must in writing inform the Speaker of the National Assembly and the Commission of such presentation.<sup>51</sup>

### **8.05 Duty of the Registrar**

The Registrar is required to make out a list of all election petitions presented, placing them on such list in the order in which they are presented, and he must keep at his office a copy of such list which must be open for inspection by any person making application for inspection thereof.

Every election petition must, unless the High Court orders otherwise, be tried in the order in which it stands on the list made out by the Registrar, but where more election petitions than one are presented in respect of the same election such election petitions must be bracketed together and must be dealt with as one petition, standing, unless the High Court orders otherwise, in such list in the place where the last of such election petitions would have stood if it had been the only election petition presented in respect of that election.<sup>52</sup>

### **8.06 Security Costs**

After the presentation of an election petition, every petitioner thereto must give such security for costs as the High Court may order, and such security must be given within such time and in such manner and form as the Chief Justice may prescribe by rules or, in the absence of such rules, as the High Court may order.

Where, after the presentation of an election petition no security for costs is given, no further proceedings must be had on that election petition.<sup>53</sup>

### **8.07 Withdrawal of Election Petition**

A petitioner must not withdraw an election petition without leave of the High Court.

No application for leave to withdraw an election petition must be made until notice of intention to withdraw such election petition has been given in such manner as the Chief Justice may prescribe.

Where an election petition is presented by two or more petitioners an application to

withdraw such election petition must not be made except with the consent of all the petitioners thereto.

The High Court may, upon an application for leave to withdraw an election petition, make such order as to costs as it may think just.<sup>54</sup>

### **8.08 Substitution of New Petitioners**

Upon the hearing of an application for leave to withdraw an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may apply to the High Court to be substituted for the petitioner so applying to withdraw, and the High Court may, if it grants leave to such petitioner to withdraw, order that such person (“the substituted petitioner”) be substituted for such petitioner.

The substituted petitioner must, as nearly as may be, stand in the same position, and be subject to the same liabilities as the petitioner for whom he is substituted (“the original petitioner”).

Where the High Court makes an order, it may direct that the security for costs given by the original petitioner must remain as security for any costs caused thereafter by the substituted petitioner upon the trial of the election, and may direct that, to the extent of the amount of such security, the original petitioner must be liable to pay the costs of the substituted petitioner.<sup>55</sup>

### **8.09 Abatement of Election Petition**

If a sole petitioner or the survivor of several petitioners dies, then no further proceedings shall take place upon the election petition.

The death of a petitioner does not affect his liability for the payment of costs previously incurred.

On the abatement of an election petition, any person who might have been a petitioner in respect of the election to which that election petition relates may apply to the High Court to be substituted as a petitioner in place of the deceased petitioner and the High Court may, if it thinks fit, order that such person be substituted accordingly.

Where the High Court makes an order for the substitution of a person in place of a deceased petitioner such person must, as nearly as may be, stand in the same position, and be subject to the same liabilities as the deceased petitioner would have been but for this death.<sup>56</sup>

### **8.10 Trial of Election Petitions**

An election petition is tried by the High Court in open court. The trial may be adjourned from time to time and from place to place.

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The High Court may, in respect of the trial of an election petition exercise such powers within its civil jurisdiction as it may deem appropriate.

On the trial of an election petition, a verbatim record of all evidence given orally in such trial shall be taken, and transcript of such record must, at the conclusion of the proceedings, be delivered to the Commission by the Registrar.<sup>57</sup>

### **8.11 Witnesses**

On the trial of an election petition, the High Court may –

- (a) order any person who appears to the High Court to have been concerned with the election to attend as a witness at such trial;
- (b) examine any witness or any person who is present at such trial although such witness or person is not called as a witness by any party to the proceedings, provided that after such examination by the High Court of such witness or person, such witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

A person who is called as a witness at the trial of an election petition is not excused from answering any question relating to any offence connected with an election on the ground that the answer thereto may tend to incriminate him, or on the ground of privilege: provided that –

- (a) where a witness answers to the satisfaction of the High Court every question which he is required to answer and the answers to which may tend to incriminate him, he shall not be liable to prosecution for any offence committed by him in connection with that election and in respect of which he is so examined and such witness is entitled to receive a certificate of indemnity under the hand of the Registrar stating that he is freed and discharged from liability to prosecution for that offence;
- (b) an answer by a witness to a question before the High Court must not, except in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible in any proceedings, civil or criminal in evidence against him.

Where a person has received a certificate of indemnity and any legal proceedings are at any time brought against him for any offence to which such certificate relates, the court having cognizance of the case must, on proof of the certificate of indemnity, stay such proceedings and may award to that person such costs as he may have been put to in such proceedings.

All reasonable expenses incurred by any person in attending at or appealing before the High Court to give evidence as a witness at the trial of an election petition must be allowed to such person according to the scale of allowance and expenses appropriate in civil proceedings before the High Court.<sup>58</sup>

### **8.12 Conclusion of Trial**

At the conclusion of the trial of an election petition, the High Court must determine whether the respondent, or any other and which person, was duly elected, or whether the election to

which the election petition relates was void, and the Registrar must as soon as may be, submit a copy of such determination to the Speaker of the National Assembly and to the Commission.

Where the High Court determines that the respondent was duly elected, such election remains valid.

Where the High Court determines the respondent was not duly elected but that some other person was duly elected, such other person is deemed to have been elected accordingly.

Where the High Court determines that the respondent was not duly elected, and that no other person was duly elected, at the election concerned, the vacancy in the membership of the National Assembly in respect of which that election was held is deemed to continue until duly filled.

Where a determination alters the results of an election as previously declared, it is the duty of the Commission to publish the results as so altered in the Gazette.

Where it appears to the High Court upon the trial of an election petition that any corrupt practice or illegal practice has been committed by any person in connection with the election to which such election petition relates, the High Court must, at the conclusion of the proceedings, prepare a report stating –

- (a) the evidence given in the proceedings in respect of such corrupt practice or illegal practice;
- (b) the names and particulars of any person by whom such corrupt practice or illegal practice was, in the opinion of the Court, committed: provided that the Court must not state the name of any person unless such person has been given an opportunity of appearing before the Court and of showing cause why his name should not be so stated.

The Registrar is required to deliver a copy of every report prepared by the High Court with respect to corrupt practice or illegal practice to the Commission and the Director of Public Prosecutions.<sup>59</sup>

### **8.13 Costs**

All costs, charges and expenses of and incidental to the presentation and trial of an election petition must be borne in such manner and in such proportions as the High Court may order and in particular, any costs which in the opinion of the High Court have been caused by any vexatious conduct or by any frivolous or vexatious allegations or objections on the part of the petitioner or of the respondent, may be ordered to be paid by the party by whom such costs have been caused.

Where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the election petition from all or a portion of the costs thereof, then –

- (a) if the Court finds that the objection of the respondent was due to a mistake or improper performance or failure of performance of any function *bona fide* made by any election officer, it may, after sufficient notice to the Attorney-General to show cause to the contrary make such order as to the payment by the state of the costs of the proceedings or a portion thereof, as it may deem proper;
- (b) if the Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance by any function *mala fide* made by any election officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such election officer of the costs of the proceedings or a portion thereof, as it may deem proper.

The High Court may, on application made by any person to whom any costs, charges or expenses are payable, order the same to be paid out of any deposit made to secure the same, or by any surety who gave a recognizance to secure the same: provided that notice of such application shall be given in such manner as may be prescribed by rules of court to the party by or on whose behalf such deposit was made or for whom such surety gave a recognizance, requiring such party, or such surety and such party, as the case may be, to state, within such time and in such manner as may be so prescribed, whether he resists the application.

Where, on the trial of a petition any person appears to the High Court to have been guilty of any corrupt practice or illegal practice relating to the election which is the subject of such election petition, the Court may, after giving that person opportunity of making a statement to show cause why the order should not be made, order the whole or a portion of the costs of or incidental to the trial of such election petition to be paid by the said person to such person or persons as the Court may determine.

Execution may be levied under any order for payment made by the High Court in the same manner and to the same extent as execution may be levied under a judgment of the High Court for the payment of money.

Money deposited as security must, when no longer needed as security for costs, be returned to the person in whose name it is deposited or to any person entitled to receive the same by order of the High Court, which may be upon motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the High Court may require.<sup>60</sup>

## NOTES

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| <ol style="list-style-type: none"> <li>1. Constitution of Zambia 1991, see section 21</li> <li>2. <i>Ibid.</i>, see section 75</li> <li>3. <i>Ibid.</i>, see section 76</li> <li>4. <i>Ibid.</i>, see section 77</li> <li>5. Electoral Act 1991, see section 12</li> <li>6. <i>Ibid.</i>, see section 13</li> <li>7. <i>Ibid.</i>, see section 14</li> </ol> | <ol style="list-style-type: none"> <li>8. <i>Ibid.</i>, see section 15</li> <li>9. <i>Ibid.</i>, see sections 16 and 17</li> <li>10. See regulation 4 of the Electoral (Registration of Voters) Regulations and regulation 3 of the Electoral (General) Regulations 1991</li> <li>11. Electoral (General) Regulations 1991, see regulations 4-6</li> <li>12. Electoral Act 1991, see sections 3 and 4</li> </ol> |
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13. Ibid., see sections 5 and 6
14. Electoral (General) Regulations 1991, see regulation 8
15. Ibid., see regulation 10
16. Ibid., see regulation 12
17. Ibid., see regulations 13 and 14
18. Ibid., see regulation 15
19. Ibid., see regulation 16
20. Ibid., see regulation 17
21. Ibid., see regulation 19
22. Ibid., see regulation 20
23. Ibid., see regulation 27
24. Ibid., see regulations 28 and 29
25. Ibid., see regulations 30-34
26. Ibid., see regulation 35
27. Ibid., see regulation 36
28. Ibid., see regulation 38
29. Ibid., see regulation 39
30. Ibid., see regulation 40
31. Ibid., see regulation 41
32. Ibid., see regulations 42 and 43
33. Ibid., see regulation 44
34. Ibid., see regulation 45
35. Ibid., see regulations 46 and 47
36. Ibid., see regulation 48
37. Ibid., see regulation 49
38. Ibid., see regulation 51
39. Ibid., see regulation 52
40. Ibid., see regulation 53
41. Ibid., see regulation 54
42. Ibid., see regulation 55
43. Ibid., see regulations 56-60
44. Ibid., see regulation 61
45. Ibid., see regulation 62
46. Ibid., see regulation 64
47. Ibid., see regulation 65
48. Electoral Act 1991, see section 18
49. Ibid., see section 19
50. Ibid., see section 20
51. Ibid., see section 21
52. Ibid., see section 22
53. Ibid., see section 23
54. Ibid., see section 24
55. Ibid., see section 25
56. Ibid., see section 26
57. Ibid., see section 27
58. Ibid., see section 28
59. Ibid., see section 29
60. Ibid., see section 30

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## INTRODUCTION

The Constitution of Zimbabwe as amended deals with elections, generally indicating when a general election may be held, the qualification of voters and related matters.

It provides for the establishment of an Electoral Supervisory Commission and a Delimitation Commission. It also deals with the delimitation of constituencies.

The principal election law is the Electoral Act 1990, which is referred to herein as “the Act”.

### — *Section 1* —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 Elections

A general election shall be held on such day or days within a period not exceeding four months after the issue of a proclamation dissolving Parliament under section 63(7) or, as the case may be, the dissolution of Parliament under section 63(4) as the President may, by proclamation in the Gazette, fix.

The qualifications and disqualifications for registration as a voter and for voting at elections shall be as prescribed in Schedule 3 and, subject thereto, by the Electoral Law.

An Act of Parliament shall make provision for the election of members of Parliament, including elections for the purpose of filling casual vacancies.<sup>1</sup>

##### 1.02 Delimitation Commission, Constituencies and Electoral Commission

The Constitution also deals with the establishment of a Delimitation Commission and the delimitation of constituencies, both of which are dealt with herein under Section 3. The Constitution establishes an Electoral Supervisory Commission which is dealt with in Section 2 below.<sup>2</sup>

### — *Section 2* —

#### ELECTION ADMINISTRATION

##### 2.01 Electoral Supervisory Commission

There shall be an Electoral Supervisory Commission which shall consist of –

- (a) a chairman and two other members appointed by the President after consultation with the Judicial Service Commission; and

- (b) two other members appointed by the President after consultation with the Speaker.

A person shall not be eligible for appointment if –

- (a) he is a member of Parliament or any local authority; or  
(b) he is a public officer.

The Electoral Supervisory Commission shall supervise the registration of voters and the conduct of elections of members of Parliament and shall consider any proposed Bill or proposed statutory instrument relating to the registration of voters or to the election of members of Parliament that may be referred to it.

The Electoral Supervisory Commission may make such reports to the President concerning the matters under its supervision or any draft Bill or statutory instrument that is referred to it as it thinks fit and, if the Commission so requests in any such report other than a report on a draft Bill or statutory instrument, the Minister shall ensure that the report concerned is laid before Parliament.

The Electoral Supervisory Commission shall not, in the exercise of its functions be subject to the direction or control of any person or authority.

An Act of Parliament may make provision for the powers and functions of the Electoral Supervisory Commission and, without prejudice to the generality of the foregoing, may make provision for the disqualifications, tenure of office and remuneration of the members thereof.

Where the members of the Electoral Supervisory Commission are not unanimous in regard to any matter, the view of the majority shall prevail.

The salary paid to a member of the Electoral Supervisory Commission shall not be reduced during his tenure of office.<sup>3</sup>

## **2.02 Election Directorate**

There shall be an Election Directorate which is responsible for –

- (a) co-ordinating the activities of Ministries and departments of Government in regard to the delimitation of constituencies, the registration of voters, the conduct of polls and all other matters connected with elections; and  
(b) giving instructions and making recommendations to –  
(i) the Registrar-General in regard to the exercise of his functions under the Act;  
(ii) other persons in the employment of the State for the purpose of ensuring the efficient, proper, free and fair conduct of elections; and  
(c) generally ensuring that elections are conducted efficiently, properly, freely and fairly.

The Directorate shall consist of –

- (a) a chairman, who shall be appointed by the President for his ability and experience in

- 
- administration or his professional qualifications or his suitability otherwise for appointment; and
- (b) the Registrar-General; and
  - (c) not fewer than two and not more than ten other members, who shall be appointed by the Minister.

The chairman and other members of the Election Directorate shall hold office for such period as may be fixed on their appointment.

Members of the Election Directorate who are not in the full-time employment of the State, a statutory body or a local authority shall be paid such allowances as may be prescribed.<sup>4</sup>

### **2.03 Registrar-General of Elections**

There is a Registrar-General of Elections whose office is a public office and forms part of the Public Service.

The Registrar-General exercises such functions as are imposed or conferred upon him by or under the Act and in the exercise of his functions, the Registrar-General shall not be subject to the direction or control of any other person or authority other than the Election Directorate, but shall have regard to any report or recommendation of the Electoral Supervisory Commission.

The Registrar-General may –

- (a) assume and exercise any function which is vested in a constituency registrar, presiding officer, polling officer, counting officer or other official;
- (b) with the consent of the Minister, delegate any of his functions to any other member of the Public Service;
- (c) assign or authorise the delegation of all or any of the functions which are vested under the Act in a constituency registrar, presiding officer, polling officer, counting officer or other official to any other such official.

For each constituency there must be –

- (a) a constituency registrar; and
  - (b) a deputy constituency registrar; and
  - (c) one or more assistant constituency registrars,
- who shall be members of the Public Service.

A deputy constituency registrar or assistant constituency registrar shall, subject to the general supervision and direction of the Registrar-General, exercise such functions as are imposed or conferred by or under the Act upon the constituency registrar of the constituency for which he has been appointed or as may be delegated to him from time to time by that constituency registrar.<sup>5</sup>

— *Section 3* —

**CONSTITUENCIES**

**3.01 Delimitation Commission**

From time to time, as may be required for the purposes of the Constitution, the President shall appoint a Delimitation Commission which shall consist of –

- (a) a chairman, who shall be the Chief Justice or some other judge of the Supreme Court or the High Court appointed after consultation with the Chief Justice; and
- (b) three other members appointed after consultation with the Chief Justice: provided that a person shall not be eligible for appointment if he is a member of Parliament.

If a member is for any reason unable to continue to act, the President shall –

- (a) in the case of the chairman, appoint the Chief Justice or, after consultation with the Chief Justice, some other judge of the Supreme Court or the High Court to be chairman;
- (b) in the case of any other member, appoint in his place, after consultation with the chairman, some other person.

Where the members of the Delimitation Commission are not unanimous in regard to any matter, the view of the majority shall prevail and, in the event of an equality of votes, the chairman shall have, in addition to a deliberate vote, a casting vote.

Following the first delimitation for the purposes of the Constitution, a Delimitation Commission shall be convened by the President at five-yearly intervals: provided that a Delimitation Commission may be convened before the expiration of any five-year period if it appears to the President necessary to do so.<sup>6</sup>

**3.02 Delimitation of Constituencies**

It shall be the function of the Delimitation Commission to determine the limits of the constituencies into which Zimbabwe is to be divided.

Provided that, if the President notifies the Delimitation Commission of an anticipated alteration in the number of constituencies, the Delimitation Commission shall determine the limits of the anticipated number of constituencies accordingly.

Zimbabwe shall be divided into one hundred and twenty common roll constituencies.

The boundaries of the constituencies shall be such that at the time of delimitation the number of voters registered in each common roll constituency is as nearly as may be equal to the number of voters registered in each of the other common roll constituencies.

In dividing Zimbabwe into constituencies the Delimitation Commission shall, in respect of any area, give due consideration to –

- 
- (a) its physical features;
  - (b) the means of communication within the area;
  - (c) the geographical distribution of voters registered on the common roll;
  - (d) any community of interest as between voters registered on the common roll; and
  - (e) in the case of any delimitation after the first delimitation consequent upon an alteration in the number of constituencies, existing electoral boundaries.<sup>7</sup>

## — Section 4 —

### REGISTRATION OF VOTERS

#### 4.01 Resident Qualification

In order to have the requisite residence qualifications to be registered as a voter in a particular constituency, a claimant must be resident in that constituency at the date of his claim: provided that, if a claimant satisfies the Registrar-General that, for reasons related to his place of origin, political affiliations or otherwise, it is appropriate for the claimant to be registered as a voter in a constituency in which he is not resident, the claimant may be registered as a voter in that constituency.

A claimant is deemed to be residing in a constituency while he is absent therefrom for a temporary purpose.

A voter who is registered on the voters' roll for a constituency, other than a voter who has been registered in that constituency, is not entitled to have his name retained on such voters' roll if, for a continuous period of twelve months, he has ceased to reside in that constituency: provided that his name may be struck off such voters' roll –

- (a) on his being registered in any other constituency; or
- (b) if he becomes disqualified for registration as a voter.<sup>8</sup>

#### 4.02 Claims for Registration

Any person who wishes to be registered as a voter on the voters' roll for any constituency shall complete the appropriate prescribed form and lodge it with the constituency registrar for that constituency: provided that a claimant who seeks registration in a constituency in which he is not resident shall lodge his claim form with the Registrar-General.

Where a claimant seeks registration in a constituency in which he is not resident, he shall provide the Registrar-General with an address in that constituency where he shall be deemed to be resident for the purposes of any delimitation of constituencies.

If, on receipt of a claim form in which the claimant seeks registration in a constituency in which he is resident, the constituency registrar is satisfied that the claimant is entitled to be registered as a voter on the voters' roll for that constituency, he shall enter the claimant's name and particulars relating to him on that voters' roll.

If, on receipt of a claim form in which the claimant seeks registration in a constituency in which he is not resident, the Registrar-General is satisfied that it is appropriate for the claimant to be registered in that constituency, he shall direct the appropriate constituency registrar to enter the claimant's name and particulars relating to him on the voters' roll for his constituency.

If a constituency registrar considers that a claimant should be registered on the voters' roll for some other constituency, he shall forward the claim to the constituency registrar for that other constituency and shall advise the claimant accordingly.

The Registrar-General may direct any constituency registrar to register on the voters' roll for his constituency any person or class of persons who –

- (a) is or are registered in terms of the National Registration Act 1976; and
  - (b) the Registrar-General is satisfied is or are qualified to be registered,
- and the registration of any such person in accordance with any such direction shall be valid in all respects as if that person had completed a claim form and lodged it with the constituency registrar.<sup>9</sup>

#### **4.03 Claims for Transfer of Registration**

A voter whose name is registered on the voters' roll for a constituency and who –

- (a) has become resident in another constituency; or
  - (b) wishes for reasons related to his place of origin, political affiliations or otherwise, to be registered in another constituency in which he is not resident,
- may apply in the prescribed form for the transfer of his name to the voters' roll for that other constituency and shall submit with his application the voter's registration card, if any, issued to him.

An application shall be signed by the voter and sent to the constituency registrar for the constituency for which he is registered: provided that an application for a transfer to a constituency in which the applicant is not resident shall be sent to the Registrar-General for his approval.

Where an applicant seeks transfer to a constituency in which he is not resident, he shall provide the Registrar-General with an address in that constituency where he shall be deemed to be resident for the purpose of any delimitation of constituencies.

On receipt of an application in which the applicant seeks transfer to a constituency in which he is resident, the constituency registrar, if satisfied that the applicant is entitled to the transfer, shall –

- (a) remove the applicant's name from the voters' roll for his constituency; and
- (b) forward the applicant's name and particulars to the constituency registrar for the constituency to which the applicant has applied to be transferred.

On receipt of an applicant's name and particulars forwarded to him, a constituency registrar,

if satisfied that the application is in order, shall register the applicant on the voters' roll for his constituency and, as soon as he has done so, notify the voter thereof.

If, on receipt of an application in which the applicant seeks transfer to a constituency in which he is not resident, the Registrar-General is satisfied that it is appropriate for the applicant to be registered in that constituency he may direct –

- (a) the constituency registrar for the constituency in which the applicant is registered to remove the applicant's name from the voters' roll for his constituency and forward the applicant's name and particulars to the constituency registrar for the constituency to which the applicant has applied to be transferred; and
- (b) the constituency registrar of the constituency to which the applicant has applied to be transferred, on receipt of the applicant's name and particulars forwarded to him, to register the applicant on the voters' roll for his constituency, and, as soon as he has done so, to notify the voter thereof,

and the constituency registrars concerned shall comply with any such direction.<sup>10</sup>

#### **4.04 Voters' Registration Cards**

On registration of a voter, the constituency registrar shall furnish him with a voter's registration card in the prescribed form.

On the transfer of the registration of a voter, the voter shall be issued with a voter's registration card by the constituency registrar of the constituency to which he has been transferred.<sup>11</sup>

#### **4.05 New Registration of Voters**

The President may at any time, by proclaiming in the Gazette, order that there shall be an entirely new registration of voters and such proclamation shall fix –

- (a) the day upon which such new registration shall begin; and
- (b) the latest day upon which claims and applications for registration shall be received, which day shall not be less than six months after the day fixed in terms of paragraph (a).

Any person who, immediately before the day of publication of a proclamation for a new registration is registered as a voter on the voters' roll for any constituency shall be entitled to be registered on the new voters' roll for that constituency without completing a claim form on the submission of a written application in the prescribed form to the constituency registrar for that constituency in which he was so registered.

A person who, immediately before the day of publication of a proclamation for a new registration, was registered with the approval of the Registrar-General in a constituency in which he was not resident may, in his written application, provide the address where he is deemed to reside in the constituency and he shall be entitled to have his name registered on the voters' roll of the constituency in which such address is situated.<sup>12</sup>

#### **4.06 Objections to Registration of Voters**

If a constituency registrar has reason to believe that –

- (a) a claimant is not entitled to be registered; or
- (b) a claimant is not entitled to be registered on the voters' roll on which he has claimed to be registered; or
- (c) a voter registered on a voters' roll is not qualified for registration on that voters' roll, he shall send to the claimant or voter, as the case may be, a written notice of objection to which a form of notice of appeal shall be annexed: provided that no such objection shall be taken and notice sent during the period between the issue of a proclamation for the holding of an election and the close of polling at the election to which such proclamation relates.

A notice of objection shall be in the prescribed form and shall set forth –

- (a) the ground of objection; and
- (b) that, unless notice of appeal is given within a time stated therein, being not less than seven days, or the constituency registrar, on representation made to him by the person to whom the objection relates, withdraws his objection, the claim will be rejected, and the claimant registered on the appropriate voters' roll or the voter's name struck off the voters' roll, as the case may be.

If –

- (a) notice of appeal is not duly given or is withdrawn or the constituency registrar does not withdraw his objection, the constituency registrar shall reject the claim, register the claimant on the appropriate voters' roll or strike the voter's name off the voters' roll, as the case may be;
- (b) notice of appeal is duly given –
  - (i) the constituency registrar shall, unless he withdraws his objection, forthwith set down the objection for hearing before a designated magistrate of the province in which the claimant or voter resides; and
  - (ii) the designated magistrate shall appoint a day and a place for the hearing, the day so appointed being not more than thirty days after the date of receipt of the notice of appeal.

The constituency registrar shall give written notice to the appellant of the day and place appointed for the hearing.

A notice of appeal must be accompanied by the sum of fifty dollars as a deposit.

A voter may object to the retention of any name on the voters' roll of the constituency in which he himself is registered.

An objection must be –

- (a) in writing, setting forth the grounds of the objection; and

- 
- (b) lodged in duplicate with the constituency registrar; and
  - (c) accompanied by the prescribed deposit.

If an objection is lodged –

- (a) the constituency registrar shall forthwith set down the objection for hearing before a designated magistrate of the province in which the person to whom the objection relates resides; and
- (b) the designated magistrate shall appoint a day and place for the hearing, the day so appointed being not more than thirty days after the date of lodging of the objection.

The constituency registrar shall –

- (a) give written notice to the person lodging the objection and to the person to whom the objection relates of the day and place appointed for the hearing; and
- (b) send with such notice to the person to whom the objection relates a copy of the objection, setting forth the grounds thereof.

If the constituency registrar receives an objection during the period of thirty days immediately prior to the polling day or first polling day, as the case may be, fixed for an election in the constituency in which the person to whom the objection relates is registered, he shall take no action on such objection until after the close of the polling day or last polling day, as the case may be.

On the hearing of an objection by a designated magistrate the following provisions apply –

- (a) the person lodging the objection may appear either in person or by an agent appointed in writing under his hand;
- (b) the person to whom the objection relates may –
  - (i) appear either in person or by an agent appointed in writing under his hand; or
  - (ii) forward by post addressed to the designated magistrate a statement in writing signed by him and witnessed by another voter of the same constituency setting forth his reasons for his claim or for remaining on the voters' roll, as the case may be;
- (c) if the person lodging the objection does not appear, the designated magistrate shall disallow the objection unless the person to whom the objection relates has, in writing, admitted the validity of the objection;
- (d) if the person to whom the objection relates has, in writing, admitted the validity of the objection, the designated magistrate shall direct the constituency registrar –
  - (i) in the case of a claim for registration as a voter, to reject the claim or to register the voter on the correct voters' roll;
  - (ii) in the case of an objection to a registered voter, to strike his name off the voters' roll or to place it on the correct voters' roll;
- (e) if the person lodging the objection appears, the designated magistrate shall hear and determine the objection and may direct the constituency registrar –
  - (i) in the case of a claim, to register the claimant or reject the claim; or

- (ii) in the case of an objection to a registered voter, to retain his name on the voters' roll, to place it on the correct voters' roll or to strike it off the voters' roll, as he may consider fit.
- (f) no grounds of objection shall be entertained except such as one specifically set forth in the objection as lodged;
- (g) if any party to the proceedings appears by an authorised agent, the designated magistrate may, if he considers it necessary, adjourn the hearing for the attendance of that party in person and may make an order requiring his attendance accordingly;
- (h) if the designated magistrate holds that an objection is frivolous or vexatious, he may make such order as to costs as he thinks fit.

The designated magistrate may order the forfeiture and the payment into the Consolidated Revenue Fund of –

- (a) the sum deposited by the appellant if –
  - (i) the appellant or his duly authorised agent fails to appear on the date appointed for the hearing and fails to lodge with the clerk of the court of the designated magistrate, within twenty-four hours after that date, a reasonable excuse for such failure to appear; or
  - (ii) he has disallowed the appeal and held that the grounds of appeal were frivolous or vexatious; or
- (b) the sum deposited by the objector if –
  - (i) the person lodging the objection does not appear and the person to whom the objection relates has not in writing admitted the validity of the objection; or
  - (ii) he has held that the grounds of objection were frivolous or vexatious,and if he makes no such order the deposit shall be returned to the depositor.

If, on the hearing of an objection –

- (a) the nature of the claim or objection is such that the designated magistrate is doubtful as to the proper decision to be given upon it, he may draw up a statement of the facts and state a question for decision and sign it; or
  - (b) a party to the proceedings so requests, the designated magistrate shall draw up a statement of the facts and state a question for decision and sign it and such statement shall be signed by the party at whose request it is made,
- and the designated magistrate shall transmit the statement to the registrar of the High Court to be laid before a judge in Chambers.

Where a case is laid before a judge, the person lodging the objection and the person to whom the objection relates and any other party interested shall be entitled to be heard in person or represented by a legal practitioner in argument upon the question stated in the case.

The judge before whom a case is laid –

- (a) may call for further information, if he thinks fit, from the designated magistrate who transmitted it; and

(b) shall give such decision thereon as appears to him right and proper, and there shall be no appeal from the decision of that judge.

The name of every person whose registration is objected to shall be publicly exhibited outside the court of the designated magistrate which is to hear and determine the objection and such other place or places as the constituency registrar may direct and maintained there until the objection is so heard and determined.<sup>13</sup>

#### **4.07 Removal of Duplications, on Death and on Disqualification**

The various constituency registrars shall from time to time compare the several voters' rolls with a view to ensuring that no person is registered as a voter –

- (a) more than once on the voters' roll for any one constituency; or
- (b) on the voters' roll for more than one constituency.

If a constituency registrar is satisfied that a voter is registered –

- (a) more than once on the voters' roll for his constituency, he shall remove the name where it occurs on the second or any subsequent occasion;
- (b) on the voters' roll for his constituency and on the voters' roll for any other constituency, he shall remove the name of the voter from his voters' roll unless he is satisfied that the voter is entitled to be registered on his voters' roll rather than on the other voters' roll.

If a constituency registrar is satisfied that a voter whose name is registered on a voters' roll has become disqualified for registration as a voter or is dead, he shall remove his name therefrom.

If a constituency registrar is satisfied that a voter registered on a voters' roll –

- (a) has been absent from his constituency for a period of twelve months or longer and is not a voter who was registered with the approval of the Registrar-General in a constituency in which he was not resident; or
- (b) has left Zimbabwe with the intention of residing permanently outside Zimbabwe, he shall remove such voter's name therefrom.

A constituency registrar shall not remove the name of a voter owing to absence unless he has sent to the voter concerned written notice of objection, to which a form of notice of appeal has been attached.

A person whose name has been removed from a voters' roll on the grounds of disqualification may, when no longer disqualified, claim to be registered as a voter.

In addition to other powers of alteration conferred by the Act, a voters' roll may be altered by the constituency registrar as follows –

- (a) at any time –
  - (i) by correcting any obvious mistake or omission; or

- (ii) by changing, on the written application of a voter, the original name or address of the voter to an altered name or address;
- (b) at any time except during the period between the issue of a proclamation and the close of polling at the election fixed by any such proclamation, by striking out the name of any person on proof that he has become qualified for and has secured registration on another voters' roll.

All alterations made by a constituency registrar shall be made in such a manner that the original entry on a voters' roll or a copy of a voters' roll shall not be obliterated and the reason for the alteration and the date thereof shall be set against the alteration, together with the initials of the person making the alteration.<sup>14</sup>

## — Section 5 —

### CONDUCT OF ELECTIONS

#### **5.01 Proclamation for General Election or By-election**

For the purposes of the election of members of Parliament, other than Chiefs, the President shall fix –

- (a) a place or places at which, and a day or days, not less than fourteen nor more than twenty-one days after the day of publication of the proclamation, on which a nomination court shall sit to receive nominations of candidates for election as members of Parliament; and
- (b) a day or days, not less than twenty-one nor more than forty-five days after the nomination day or last nomination day, as the case may be, fixed under these provisions, on which a poll shall be taken if a poll becomes necessary for the election of members of Parliament; and
- (c) a day on which the voters' rolls for that election shall be regarded as closed for the purpose of accepting the registration of voters who may vote at the election, which day may be on or after the day of publication of the proclamation or not more than thirty-one days before that day.

For the purposes of the election of chiefs the President shall fix times and places at which and a day or days, not earlier than the nomination day fixed and not later than fourteen days after the polling day or last polling day, as the case may be, on which electoral colleges shall meet.<sup>15</sup>

#### **5.02 Election of Chiefs to Parliament**

Under the Constitution –

- (a) the Council of Chiefs referred to in section 18 of the Chiefs and Headmen Act 1982 shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President for the purpose of electing two chiefs to be members of Parliament; and

- 
- (b) each provincial assembly of chiefs referred to in section 16 of the Chiefs and Headmen Act 1982 shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President for the purpose of electing one chief to be a member of Parliament to represent the province for which the provincial assembly is established.

For the purposes of the nomination and election of chiefs to Parliament, the Minister shall appoint a member of the Public Service to be the presiding officer for each electoral college. One-half of the total membership of each electoral college shall form a quorum of that electoral college.

At every meeting of an electoral college the presiding officer shall call for nominations of candidates for election to fill any vacancies in the membership of Parliament that are to be filled by the electoral college concerned.

Every candidate for election to Parliament as a chief shall be nominated by one chief who is a member and present at the meeting of the electoral college concerned and seconded by another chief who is a member and present at the meeting of the electoral college.

No nomination is valid unless the candidate has signified his acceptance of it.

If at a meeting of the electoral college which is the Council of Chiefs –

- (a) only two candidates have been duly nominated, the presiding officer shall declare such candidates to have been duly elected as members of Parliament with effect from the day of such declaration, and shall notify the Minister and cause to be published in the Gazette notice of the names of the candidates and the day with effect from which they were declared so elected;
- (b) more than two candidates have been duly nominated, a poll shall take place.

If at a meeting of electoral college which is a provincial assembly of chiefs –

- (a) only one candidate has been duly nominated to represent the province concerned, the presiding officer shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the day of such declaration, and shall notify the Minister and cause to be published in the Gazette notice of the name of every such candidate and the day with effect from which he was declared so elected;
- (b) more than one candidate has been duly nominated to represent the province concerned, a poll shall take place.

After the close of nominations the presiding officer shall adjourn the meeting at the electoral college for three hours. The presiding officer shall, on the expiration of three hours, reconvene the meeting of the electoral college for the purpose of conducting a poll.

The presiding officer shall make, before the meeting of the electoral college is reconvened, a declaration of secrecy before a commissioner of oaths.

During the period that the meeting has been adjourned the presiding officer shall, in the presence of the candidates, seal a ballot box for each candidate which is clearly labelled with the name of such candidate.

When the meeting of the electoral college is reconvened –

- (a) the presiding officer shall conduct a secret poll in relation to the vacancies to be filled by the electoral college;
- (b) each member of the electoral college shall be entitled to one vote in relation to each member of Parliament to be elected by the electoral college;
- (c) no member of the electoral college shall cast more than one vote for one candidate;
- (d) after the members of the electoral college have voted the presiding officer shall, in the presence of the members and the candidates, cause the votes to be counted;
- (e) after the counting of the votes the presiding officer shall prepare a list with the candidate or candidates who received the greatest number of votes at the top of the list and the rest of the candidates in descending order according to the number of votes cast for each and shall –
  - (i) in the case of the electoral college which is the Council of Chiefs, declare the two candidates whose names appear first and second on the list to have been duly elected as members of Parliament with effect from the day of such declaration;
  - (ii) in the case of an electoral college which is a provincial assembly of chiefs, declare the candidate whose name appears at the top of the list to have been duly elected as a member of Parliament with effect from the day of such declaration;
- (f) if two or more candidates have received the same number of votes and the addition of a vote would entitle any of those candidates to be declared elected, the presiding officer shall arrange for a fresh vote to be taken in respect of those candidates, with each member of the electoral college being allowed one vote, and the candidate who, at the second poll, received the greatest number of votes shall be declared to have been duly elected as a member of Parliament with effect from the day of such declaration,

provided that, if after the fresh vote has been taken one or more vacancies have still not been filled because two or more candidates have received the same number of votes, the presiding officer shall, in the presence of the members of the electoral college and the candidates, draw lots for the purpose of determining which candidate or candidates shall be deemed to be duly elected and, after the drawing of the lots, he shall declare the candidate or candidates concerned to have been duly elected as a member or members of Parliament, as the case may be, with effect from the day of such declaration.

Any such declaration by the presiding officer under these provisions is final and subject to reversal only on petition to the High Court.

After the holding of a poll under these provisions, the presiding officer shall notify the Minister and cause to be published in the Gazette notice of the names of the candidates declared to have been duly elected as members of Parliament and the day with effect from which they were declared so elected.<sup>16</sup>

### 5.03 Nomination of Candidates for Election as Members of Parliament

A candidate for election as a member of Parliament shall be nominated by means of a separate nomination paper in the prescribed form, which –

- (a) shall be signed by not fewer than ten persons who are registered on the voters' roll for the constituency for which the candidate seeks election and shall be countersigned with the acceptance of the candidate or his election agent; and
- (b) may specify a distinctive symbol which the candidate wishes to appear on the ballot paper in conjunction with his name; and
- (c) may, if the candidate is to stand for or to be sponsored by any party, specify that fact, together with the name of the party and an abbreviation of such name which the candidate wishes to appear on the ballot paper.

Where a nomination paper refers to sponsorship by a political party, the nomination paper must be countersigned by a person who is an office-bearer of the party concerned with the authority to certify that the candidate is to stand for or be sponsored by that party.

Nomination papers in respect of candidates for election as members of Parliament may be lodged with the constituency registrars for the constituencies concerned at any time after the publication of the proclamation calling for the election concerned but before the time on nomination day specified.

On the day or days and at the place fixed for the purpose, the constituency registrar shall hold a public court, commencing at ten o'clock in the morning, for receiving the nomination of candidates for election as a member of Parliament for the constituency for which he is the constituency registrar.

The constituency registrar shall in open court –

- (a) announce whether any candidate has lodged his nomination paper before the sitting of the court and, if so, the name of every such candidate; and
- (b) receive any further nominations for election as a member of Parliament for the constituency for which he is constituency registrar.

No nomination paper shall be received by the constituency registrar after four o'clock in the afternoon of nomination day or, where there is more than one nomination day for the election concerned, the last such nomination day: provided that, if at that time a candidate or his election agent is present in the court and ready to submit a nomination paper in respect of the candidate, the constituency registrar shall give him an opportunity to do so.

The constituency registrar shall examine every nomination paper lodged with him which has not been previously examined by him in order to ascertain whether it is in order and shall give any candidate or his election agent an opportunity to rectify any defect not previously rectified and may adjourn the sitting of the court for that purpose from time to time: provided that the sitting shall not be adjourned to any other day that is not a nomination day.

If, on examining a nomination paper which specifies that the candidate concerned is to stand for or to be sponsored by a party, the constituency registrar is doubtful that such fact is true, the constituency registrar may require the candidate or his election agent to produce proof as to such fact, and may adjourn the sitting of the court for that purpose from time to time: provided that the court shall not be adjourned to any other day that is not a nomination day.

The constituency registrar in open court shall reject any nomination paper lodged with him at any time –

- (a) if he considers that any symbol or abbreviation specified therein –
  - (i) is indecent or obscene; or
  - (ii) is too complex, or elaborate to be reproduced on a ballot paper; or
  - (iii) so closely resembles –
    - (aa) the symbol of any other candidate contesting the election in the constituency concerned; or
    - (bb) the recognised symbol or abbreviation of any party, other than the party, if any, for which the candidate concerned is standing or which is sponsoring him,  
as to be likely to cause confusion; or
- (b) if any symbol specified therein is a prohibited symbol; or
- (c) if the nomination paper states that the candidate concerned is to stand for or to be sponsored by a party and the constituency registrar has reason to believe that that fact is not true; or
- (d) if in his opinion the nomination paper is for any other reason not in order.

The constituency registrar shall not reject any nomination paper –

- (a) solely on account of any minor variation between the name of any person as it appears on the nomination paper and as it appears on the voters' roll, if the constituency registrar is reasonably satisfied that the variation is due to an error; or
- (b) on account of any other imperfection in the nomination paper if the constituency registrar is satisfied that there has been substantial compliance with these provisions.

The constituency registrar shall in open court announce the name of every candidate who has been duly nominated.

The sitting of the nomination court shall end immediately after the announcement and after the close of the sitting no candidate is entitled or permitted to lodge a nomination paper.

If, at the close of the sitting of the appropriate nomination court the same person has been duly nominated for more than one constituency, his nomination for all the constituencies for which he has been duly nominated is void.

If, at the close of the sitting of the nomination court –

- (a) no person has been duly nominated for election for a constituency, the constituency registrar shall report the fact to the Minister and the Secretary to Parliament;

- (b) only one person has been duly nominated for election for a constituency, the constituency registrar shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the polling day or last polling day, as the case may be, and shall notify the Minister and cause to be published in the Gazette notice of the name of the candidate declared so elected and the day with effect from which he was declared so elected: provided that if, by virtue of an appeal, an additional candidate is to be regarded as duly nominated, the constituency registrar shall revoke his declaration and shall notify the Minister and cause to be published in the Gazette notice thereof;
- (c) more than one person has been duly nominated for election for a constituency, a poll shall take place.

Any voter registered on any voters' roll may –

- (a) before the sitting of the nomination court, at the office of the constituency registrar and during office hours, inspect any nomination paper lodged with the constituency registrar;
- (b) after the close of the sitting and during such period as may be prescribed, inspect any nomination paper at such time and subject to such conditions as may be prescribed.

If a nomination paper has been rejected or been regarded as void –

- (a) the constituency registrar shall forthwith notify the candidate or his election agent, giving reasons for his decision; and
- (b) the candidate shall have the right of appeal from such decision to a judge of the High Court in Chambers and such judge may confirm, vary or reverse the decision of the constituency registrar and there shall be no appeal from the decision of that judge; and
- (c) if no appeal is lodged within four days after the receipt of notice of the decision of the constituency registrar, the right of appeal of the candidate shall lapse and the decision of the constituency registrar shall be final; and
- (d) if an appeal is lodged, the judge concerned may –
  - (i) direct that any further proceedings in relation to that election shall be suspended, if necessary, pending the determination of the appeal; and
  - (ii) specify a day or days on which any poll shall be held, and if he does so, the constituency registrar shall cause to be published in the Gazette notice thereof.<sup>17</sup>

#### **5.04 Deposit on Nomination**

At the same time as the nomination paper is lodged there shall be deposited with the constituency registrar, by or on behalf of the person nominated, such sum as may be prescribed.

If a poll takes place and the number of valid votes cast for an unsuccessful candidate is less than one-fifth of the number of valid votes cast for the successful candidate, the sum deposited by or on behalf of the unsuccessful candidate shall be forfeited and the money paid into the Consolidated Revenue Fund.<sup>18</sup>

### **5.05 Procedure When Poll to be Held**

If a poll becomes necessary, the constituency registrar must as soon as practicable after nomination day –

- (a) publish in the Gazette a notice of –
  - (i) the names of the candidates in alphabetical order of surnames; and
  - (ii) the polling day or days; and
- (b) notify by such means as he thinks fit the situation of and the hours specified for the opening and closing of each fixed polling station for the constituency.<sup>19</sup>

### **5.06 Withdrawal of Candidates**

A duly nominated candidate for election for a constituency may withdraw his nomination at any time before polling day or the first polling day, as the case may be, in the election concerned.

A withdrawal of a candidate shall be effected by means of a written notification to the constituency registrar, signed by the candidate personally.

Where a candidate has withdrawn his nomination, the sum deposited by or on his behalf shall be forfeited and the money paid into the Consolidated Revenue Fund.

If, as a result of the withdrawal of a candidate, only one candidate remains duly nominated for election for the constituency concerned, the constituency registrar shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the polling day or last polling day, as the case may be, and shall notify the Minister and cause to be published in the Gazette notice of the name of the candidate declared so elected and the day with effect from which he was declared so elected: provided that, if by virtue of an appeal an additional candidate is to be regarded as duly nominated, the constituency registrar shall revoke his declaration and shall notify the Minister and cause to be published in the Gazette notice thereof, and a poll shall take place.

If, after the withdrawal of a candidate, two or more candidates remain duly nominated for election for the constituency, the constituency registrar shall take all such steps as are reasonably practicable to ensure that –

- (a) the withdrawal is brought to the attention of voters in the constituency; and
- (b) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.<sup>20</sup>

### **5.07 Death of Candidate**

If –

- (a) the Minister is satisfied that a duly nominated candidate for election for a constituency died before the poll commenced or, if the poll has commenced, before the close thereof; or

(b) the proceedings relating to an election for a constituency have been stopped, the Minister shall, so far as concerns that constituency, declare that all proceedings relating to that election are void and all proceedings relating to that election shall be commenced afresh in the same manner as if a vacancy had occurred: provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the proceedings were declared void if such candidate or his election agent notifies the constituency registrar in writing of his intention to remain a candidate.

If a constituency registrar or assistant constituency registrar is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he shall stop all proceedings relating to that election and forthwith notify the Minister.<sup>21</sup>

### **5.08 Preparation for and Voting at Poll**

A constituency registrar shall establish, at such convenient places as he may determine, as many fixed polling stations as he may consider necessary for the purposes of conveniently taking the poll of the voters of his constituency.

A polling station may be established at a place which is outside of the boundaries of the constituency concerned: provided that –

- (i) there shall be at least one polling station at a place within the boundaries of the constituency concerned;
- (ii) no polling station shall be established as a polling station for more than one constituency.

A constituency registrar may provide for mobile polling stations that can be moved from place to place in his constituency.

Additional polling stations may be established or provided for at any time, whether before or after the commencement of the poll.

A constituency registrar –

- (a) shall cause a notice of –
  - (i) the places at which fixed polling stations are to be established; and
  - (ii) the hours during which the fixed polling stations will be open,to be published on each day during the polling period in a newspaper circulating in the constituency concerned and in such other manner as the constituency registrar thinks fit; and
- (b) may make known, in such manner as he thinks fit, the places to be visited by a mobile polling station during the polling period.

For any election the constituency registrar shall arrange for the obtaining of voting compartments and ballot boxes and shall provide papers, including ballot papers, instruments for marking ballot papers with the official mark, seals and other necessary things and shall do such other acts and things and make such arrangements to facilitate the taking of the poll as he may deem advisable for effectively conducting the election, and the

expenditure incurred upon all such acts and things shall be charged upon and paid out of the Consolidated Revenue Fund.

The constituency registrar –

- (a) shall appoint sufficient presiding officers, polling officers and counting officers for the purposes of the poll; and
- (b) may appoint a polling officer to act as presiding officer during such periods as the presiding officer is absent from the polling station.

A fixed polling station shall be open during such hours as the constituency registrar may fix: provided that such a polling station shall be open for at least eight hours continuously on each polling day.

For the purpose of fixing the hours of the poll, the constituency registrar may designate some fixed polling stations as urban stations and others as rural stations and may fix different hours for each such station.

If a constituency registrar has provided mobile polling stations, he may fix the hours during which each such station is proposed to be open at each place where it will stop on a polling day.

The presiding officer shall permit every voter who, at the time fixed for the closing of the polling station concerned –

- (a) is inside the room, tent, vehicle or other place in which the ballot box is placed;
- (b) in his opinion, was in the immediate precincts of the polling station before the proposed closing of the polling station and was prevented from entering the room, tent, vehicle or other place in which the ballot box is placed owing to congestion therein, to record his vote before closing the polling station.

Unless specific hours have been fixed, the presiding officer of a mobile polling station may permit any voter to record his vote at that polling station at any time on any polling day and at any place where such polling station is.

Not more than thirty minutes before the commencement of the poll on the first polling day at any polling station the presiding officer shall –

- (a) satisfy himself that the ballot box to be used at the polling station is empty; and
- (b) show the interior of the empty ballot box to such persons entitled to attend at the polling station as are present; and
- (c) immediately thereafter close and seal the ballot box in accordance with instructions issued by the Registrar-General.

The presiding officer at a polling station shall –

- (a) at the close of the poll on each polling day close and seal the aperture in the ballot box used at the polling station; and

- 
- (b) break the seal and open the aperture only at the commencement of the poll on the next succeeding polling day,  
in accordance with instructions issued by the Registrar-General and in the presence of such persons entitled to attend at the polling station as are present.

The ballot box used in or at a polling station shall be placed in a position where it can be seen by the presiding officer or a polling officer designated by him at all times during the continuance of the poll.

The presiding officer shall be responsible for the safe keeping of any ballot box used at his polling station until it is delivered to the appropriate constituency registrar.

The presiding officer and other officers at the polling station shall –

- (a) keep order thereat and regulate the number of voters to be admitted at a time; and
- (b) exclude all other persons other than an officer, the candidates or their election agents, the police on duty and such other classes of persons as may be prescribed.

The presiding officer may order the arrest of any person who is suspected by him on reasonable grounds of having committed the offence of personation and any person empowered by law to make arrests shall carry out such an order.

At an election for a member of Parliament –

- (a) every voter registered on the voters' roll for the constituency concerned shall be entitled to vote;
- (b) a voter shall not be entitled to vote more than once for a candidate who has been duly nominated for that constituency.

The presiding officer may put to an applicant for a ballot paper such questions as he considers necessary to ascertain whether or not the applicant is registered as a voter for the constituency.

Unless otherwise directed by the Registrar-General, the presiding officer shall require an applicant for a ballot paper to produce his voter's registration card and if that card –

- (a) shows that the applicant is registered for the constituency; and
- (b) does not bear any indication that the applicant has previously received a ballot or postal ballot paper for the election,

he shall mark or otherwise deal with that card in a manner directed by the Registrar-General and shall hand the applicant a ballot paper.

A presiding officer, if so directed by the Registrar-General –

- (a) before handing an applicant a ballot paper, shall require the applicant to submit to an examination specified by the Registrar-General to ascertain whether or not he has previously received a ballot paper at that election, and if the applicant refuses to submit

- to the examination or the examination shows that the applicant has previously received such a ballot paper, the presiding officer shall not hand him a ballot paper;
- (b) after handing an applicant a ballot paper, shall mark him in the manner specified by the Registrar-General.

Any person who refuses to be marked is guilty of an offence.<sup>22</sup>

### **5.09 Manner of Voting**

The voting at an election shall be by ballot which shall be conducted in the following manner –

- (a) every ballot paper shall be in the form prescribed and there shall be printed on every ballot paper –
- (i) in type of equal size, the names of all the duly nominated candidates at the election in alphabetical order of surnames; and
  - (ii) the symbols, if any, specified by the duly nominated candidates at the election each printed to a size that permits the vertical extremities or the horizontal extremities or both such extremities to touch opposite sides of the appropriate square on the ballot paper; and
  - (iii) in capital letters of equal size, the abbreviations of every party for which duly nominated candidates at the election are standing or which are sponsoring such candidates, where the candidates concerned specified the abbreviations in their nomination papers; and
  - (iv) such other particulars as may be prescribed;
- (b) before the ballot paper is handed to the applicant, the presiding officer shall mark the ballot paper with the official mark;
- (c) when the person claiming the vote has received the ballot paper, he shall –
- (i) take the paper to the compartment provided for the purpose; and
  - (ii) then signify the candidate for whom he desires to vote by secretly placing a cross in the rectangle opposite the name of that candidate, or, if there is more than one such rectangle, in the rectangle nearest to the right-hand side of the ballot paper; and
  - (iii) then fold the ballot paper so that the official mark is visible and the names of the candidates and the cross made by him are not visible and, having held up the ballot paper so that the presiding officer can recognise the official mark, drop the ballot paper in the ballot box placed in front of the presiding officer, provided that, if he has spoiled the ballot paper, he may return it to the presiding officer and shall deal with the second ballot paper given to him in accordance with these provisions.

If a voter inadvertently spoils a ballot paper, he may return it to the presiding officer who shall, if satisfied of the inadvertence, give him another ballot paper and retain the spoiled paper, and the spoiled paper shall be immediately cancelled and the fact of the cancellation shall be noted upon the counterfoil.

At the request in person of a voter who cannot read or write or who is incapacitated by blindness or other physical cause from voting in the manner prescribed, the presiding

officer shall cause the vote of such voter to be there and then marked on a ballot paper in the manner directed by the voter and the ballot paper to be placed in the ballot box, and if the directions of the voter as to the manner in which his vote is to be marked on the ballot paper are not sufficiently clear to enable the vote to be so marked without further directions from the voter, the presiding officer may cause such questions to be put to the voter as, in his opinion, are necessary to elicit such further directions.

The name of every person whose ballot paper is so marked and the reason why it is so marked must be entered on a list.

A presiding officer shall, immediately after the close of the poll, in the presence of such candidates and their election agents as are present –

- (a) close and seal the aperture in the ballot box and affix his seal thereto and permit any such candidates and election agents to affix their seals thereto; and
- (b) make up into separate packets sealed with his own seal and with the seals of those candidates and election agents, if any, who desire to affix their seals –
  - (i) the unused and spoilt ballot papers and counterfoils of the unused ballot papers placed together;
  - (ii) the counterfoils of the used ballot papers, including the counterfoils of the spoilt ballot papers;
  - (iii) the list of voters marked by the presiding officer;
  - (iv) the postal ballot papers and the declarations of identity delivered to him by a voter,

and shall forthwith deliver or cause to be delivered the ballot box and the packets to the constituency registrar.

The ballot box and the packets listed in the foregoing provisions shall be accompanied by a statement made by the presiding officer showing the number of ballot papers entrusted to him and accounting for them under the heads of used ballot papers, excluding spoilt ballot papers, unused ballot papers and spoilt ballot papers.<sup>23</sup>

### **5.10 Voting by Post**

When an election is to take place in a constituency a voter ordinarily resident in Zimbabwe who is resident in that constituency or was, within twelve months of the polling day or first polling day, as the case may be, fixed in relation to that constituency, resident therein and –

- (a) has good reason to believe that he will not be in the constituency on any such polling day during polling hours; or
- (b) has good reason to believe that on account of ill-health, infirmity or other like cause or his duty as a member of a disciplined force he will be prevented from attending at a polling station on any such polling day; or
- (c) resides more than twenty kilometres from nearest polling station for that constituency, may apply to the constituency registrar for that constituency for a postal ballot paper.

An application for a postal ballot paper shall be –

- (a) in the prescribed form; and
- (b) signed by the applicant in the presence of a competent witness and accompanied by the voter's registration card of the applicant; and
- (c) delivered by hand or by registered post so as to reach the constituency registrar concerned not later than noon of the day before the polling day or first polling day, as the case may be, fixed in relation to the constituency concerned.

The constituency registrar shall number in consecutive order all applications for postal ballot papers received by him and all such applications shall be kept by the constituency registrar and shall be open for public inspection, without fee, until the declaration of the result of the poll.

For the purposes of these provisions, a person is deemed to have resided in his constituency during any period –

- (a) in which he resided outside his constituency while he was the Vice-President, or a Minister, Provincial Governor or Deputy Minister; or
- (b) occupied in the discharge of his duties outside Zimbabwe while in the service of the State; or
- (c) in which he resided temporarily outside Zimbabwe by reason of –
  - (i) his service with an international organisation of which Zimbabwe is or was at the time a member; or
  - (ii) his employment by –
    - (aa) a person resident in Zimbabwe; or
    - (bb) a society, body of persons or company the control and management of which are in Zimbabwe; or
    - (cc) a body incorporated directly by an enactment in force in Zimbabwe; or
  - (iii) his attendance at a university or other educational institution; or
- (d) during which he resided outside Zimbabwe on account of ill-health or disability; or
- (e) during which he, being the spouse of a person referred to in paragraph (a), (b), (c) or (d) was absent from his constituency for the purpose of being with him.

If the constituency registrar is satisfied in regard to an application received by him not later than noon on the day before the polling day or first polling day, as the case may be, fixed in relation to the constituency, that –

- (a) it has been properly completed and signed by the applicant and is properly witnessed; and
- (b) the name of the applicant is on the voters' roll for the constituency and the application is otherwise in order,

he shall issue a postal ballot paper to the applicant in the manner stipulated.

A postal ballot paper shall be in the same form as, and indistinguishable from, the ballot papers delivered to voters at the polling stations.

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The constituency registrar shall enter or cause to be marked upon the prescribed form of declaration of identity the number of the ballot paper issued to the applicant.

The constituency registrar shall then place in an envelope addressed to the applicant at the address to which he has, in his application for the postal ballot paper, requested that the ballot paper be sent –

- (a) the ballot paper; and
- (b) the form of declaration of identity; and
- (c) an envelope addressed to the constituency registrar; and
- (d) a smaller envelope marked “Ballot Paper Envelope” bearing the number of the ballot paper.

The constituency registrar shall then effectively close the envelope addressed to the applicant and –

- (a) deliver it to the nearest post office for registration and dispatch; or
- (b) hand it to the applicant upon signature by the applicant of a receipt therefor, and the constituency registrar shall keep the receipt signed by the applicant or the receipt for such registration, as the case may be.

A voter to whom a postal ballot paper has been issued is not entitled to vote at a polling station in the constituency in which he is registered unless he first delivers to the presiding officer for cancellation such ballot paper, together with the form of declaration of identity and all envelopes received therewith.

The constituency registrar may, if he considers it desirable, before polling day or first polling day, as the case may be, send to the presiding officer of every polling station in the constituency a list of persons to whom postal ballot papers have been issued.

The following directions for voting by post shall be substantially observed by every person to whom a postal ballot paper has been issued –

- (a) before marking the ballot paper the voter shall produce before a competent witness –
  - (i) the ballot paper issued to him showing the number thereon; and
  - (ii) the declaration of identity; and
  - (iii) the envelope in which he has received the ballot paper;
- (b) the voter shall sign the declaration of identity in the presence of the competent witness who shall, if satisfied as to the identity of the voter, sign the declaration of identity in his own handwriting and add the title under which he acts as a competent witness;
- (c) the voter shall signify the candidate for whom he wishes to vote by secretly placing on the ballot paper a cross and no other person except the competent witness shall be present and the voter shall not allow the competent witness to see how he has voted;
- (d) immediately after voting the voter shall, in the presence of the competent witness but without disclosing how he has voted, place the marked ballot paper in the ballot paper envelope, effectively close that envelope and place it, together with the declaration of identity, in the covering envelope and effectively close the covering envelope;

- (e) the voter shall then dispatch the covering envelope by registered post without delay, or hand it to the constituency registrar who, when it is so handed to him, shall issue a receipt for it.

At the request of a voter who cannot read or write or who is incapacitated by blindness or other physical cause, the competent witness may mark the vote of the voter on the ballot paper in the manner directed by the voter. A competent witness who has marked a vote on a ballot paper shall make a written statement of what he has done and the reasons for doing so, specifying the nature of the inability or incapacity suffered by the voter and enclose it in the covering envelope together with the ballot paper envelope and the declaration of identity.

The constituency registrar shall provide a postal ballot box for the reception of the covering envelopes when returned by the voters.

The constituency registrar shall, not later than three days after nomination day, give to each candidate or his election agent notice of the time and place at which he will seal the postal ballot box.

At the time and place notified the constituency registrar shall show the postal ballot box open and empty to such candidates and election agents as are present and it shall then be sealed with the seal of the constituency registrar and the seals of such candidates and agents as wish to affix their seals and shall be marked "Postal Ballot Box" with the name of the constituency.

The constituency registrar shall, immediately on receipt, place unopened in the postal ballot box all covering envelopes received by him before the close of the poll.

After the close of the poll and before the time fixed for the counting of the votes, the constituency registrar shall open the postal ballot box in the presence of such candidates and their election agents as are present.

The constituency registrar shall give to each candidate or his election agent at least twenty-four hours' notice in writing of the time and place at which he will open the postal ballot box and the envelopes contained therein.

When the postal ballot box has been opened, the constituency registrar shall count and note the number of envelopes and shall then open each covering envelope separately, examine the declaration of identity and compare the number thereon with the number on the ballot paper envelope.

If the numbers agree and the declaration of identity is found to be duly signed and witnessed, the constituency registrar shall place the declaration of identity and the ballot paper envelope unopened in separate receptacles.

If the constituency registrar is not satisfied that the declaration of identity has been duly signed and witnessed, he shall endorse the declaration of identity "Vote Rejected" and shall attach thereto the ballot paper envelope without opening such envelope or, if there is no such envelope, the ballot paper.

If the constituency registrar finds that the numbers on the declaration of identity and on the ballot paper envelope do not agree or if the envelope has no number on it, he shall open the envelope and, if the number on the ballot paper agrees with the number on the declaration of identity, he shall mark the ballot paper with the official mark and place the ballot paper in the ballot box provided for the purpose.

In every case in which the number on the ballot paper does not agree with the number on the declaration of identity, the constituency registrar shall replace the ballot paper in the ballot paper envelope, if any, attach such envelope or ballot paper, as the case may be, to the declaration of identity and endorse the declaration of identity "Vote Rejected".

Where a declaration of identity does not appear to accompany the ballot paper envelope, the constituency registrar shall open the envelope and, if it is found to contain the declaration of identity, he shall deal with such declaration and ballot paper accordingly.

A declaration of identity not accompanied by a ballot paper and a ballot paper not accompanied by a declaration of identity shall be marked "Rejected".

The constituency registrar shall show to the candidates and their election agents present every –

- (a) declaration of identity which he proposes to reject on the ground that it has not been properly signed and witnessed; and
- (b) written statement of a competent witness where the constituency registrar proposes to reject the vote concerned on the ground that the competent witness was not entitled to mark the ballot paper concerned,

and, if a candidate or his election agent objects to his decision, the constituency registrar shall add to the endorsement on the relevant declaration of identity the words "Rejection Objected To".

The constituency registrar shall keep all rejected declarations, with the attached envelope or ballot papers, as the case may be, separate from other documents.

("Competent Witness" is defined to include several categories of Government servants and several categories of professionals.)<sup>24</sup>

### **5.11 Counting of Votes**

The constituency registrar shall receive into his custody the ballot boxes and the sealed packets and shall, as soon as practicable after he has received all the boxes and sealed packets, make arrangements for verifying the statements and counting the votes given at the poll and shall give notice in writing to each candidate or his election agent of the time and place where he will –

- (a) verify the said statements; and
- (b) count the votes.

At the verification of the statements and at the counting of the votes in the presence of the candidates and election agents and such other persons who may be present, the constituency registrar is required to adopt the following procedure in relation to each ballot box and the sealed packets received by him therewith –

- (a) he shall open the ballot box;
- (b) he shall then open each sealed packet containing the unused and spoilt ballot papers and the list of votes marked by the presiding officer;
- (c) he shall then verify the statement given by the presiding officer by comparing it with the number of ballot papers;
- (d) he shall then re-seal, after examination, each of the packets opened by him and shall report to the Registrar-General the result of such verification and shall on request allow a candidate or election agent of a candidate to copy the report before it is sent.

When the constituency registrar has –

- (a) completed the verification of the statements, whether or not he has found them to be correct; and
  - (b) verified the postal ballot papers,
- he shall, in the presence of the persons entitled to be present, mix together in one container all the ballot papers contained in each of the ballot boxes so that it is impossible to determine from which ballot box a particular ballot paper was taken.

At the time and place notified by the constituency registrar the votes shall be counted in the manner provided.

The constituency registrar shall reject and not count any ballot paper –

- (a) which does not bear the official mark of a presiding officer or the constituency registrar; or
- (b) which bears no mark other than the official mark; or
- (c) which does not indicate with certainty the candidate for whom the voter intended to vote.

At the counting of the votes the constituency registrar shall not reject any ballot paper where the voter has indicated with certainty the candidate for whom he intended to vote merely by reason of the fact that the voter has so indicated otherwise than by means of a cross.

If the aggregate of the ballot papers which do not bear the official mark of a presiding officer or the constituency registrar –

- (a) does not exceed five per centum of the votes cast at the election; and
- (b) together with all the other ballot papers does not exceed the total number of ballot papers issued by the presiding officers and the constituency registrar for that constituency,

the constituency registrar shall not reject any ballot paper merely by reason of the fact that it does not bear the official mark of a presiding officer or the constituency registrar.

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If the constituency registrar –

- (a) rejects as invalid a ballot paper, he shall endorse “Rejected” on the ballot paper and shall add to the endorsement “Rejection Objected To” if an objection to his decision is made by a candidate or his election agent and all such ballot papers shall be placed together in an envelope within the packet containing the rejected ballot papers;
- (b) accepts as valid a ballot paper he shall endorse “Acceptance Objected To” on the ballot paper if an objection to his decision is made by a candidate or his election agent and all such ballot papers shall be placed together in an envelope within the packet containing the accepted ballot papers.

After the counting is completed the constituency registrar shall forthwith declare the candidate who has received –

- (a) where there are two candidates, the greater number of votes;
  - (b) where there are more than two candidates, the greatest number of votes,
- to be duly elected as a member of Parliament with effect from the day of such declaration.

Where an equality of votes is found to exist between two or more candidates and the addition of one vote would entitle any of the candidates to be declared elected, the constituency registrar shall at once communicate the fact to the Registrar-General who shall, as soon as possible thereafter, arrange for the determination of the candidate to whom such one additional vote shall be deemed to have been given by the drawing of lots by the Registrar-General in the presence of a judge of the Supreme Court or the High Court and shall thereafter declare the candidate so determined to be duly elected as a member of Parliament with effect from the day of such declaration.

A declaration of the constituency registrar or the Registrar-General is final, subject to reversal on petition to the High Court that such declaration be set aside or to the proceedings relating to that election being declared void.

A constituency registrar shall, while counting the ballot papers for the purpose of the verification of the statements and while counting the votes, take such precautions as may be appropriate to prevent any person from seeing the number printed on any ballot paper.

As soon as the constituency registrar has declared a candidate to be duly elected, he shall, without delay, transmit by telegram in the prescribed form to the Registrar-General who shall transmit to the Minister and to the Secretary to Parliament the names of the person declared duly elected, the day with effect from which he was declared elected, the number of votes received by the respective candidates and the number of rejected ballot papers.

This information shall be confirmed by notice in writing which is signed by the constituency registrar and sent to the Registrar-General by the first postal delivery after the transmission of the telegram.<sup>25</sup>

— *Section 6* —

**ELECTION EXPENSES AND ELECTION AGENTS**

No election expenses of a candidate shall be lawful except in respect of the following matters –

- (a) purchasing voters' rolls;
- (b) the expenses of printing, the expenses of advertising, and expenses of publishing, issuing and distributing addresses and notices;
- (c) stationery, messages, postage, telegrams and the use of telephones;
- (d) one central committee room, which may consist of two or more adjoining rooms;
- (e) public meetings and hiring of halls or premises therefor;
- (f) one election agent for the candidate and no more;
- (g) a number of clerks not exceeding such number as may be prescribed;
- (h) a number of clerks not exceeding such numbers as may be prescribed and the same number of messengers;
- (i) miscellaneous expenses not exceeding in the whole three thousand dollars, and not being expenses incurred in respect of any matter constituting an offence;
- (j) personal expenses;
- (k) the supply to unpaid helpers of the candidate of a reasonable amount of petrol for the purpose of bringing voters and returning them from the polling station: provided that the total sum expended in terms of these provisions does not exceed one thousand dollars.

Before, on or after nomination day but not later than seven days before polling day or the first polling day, as the case may be, in the election concerned, a candidate may appoint one and only one person to be his election agent and shall forthwith notify in writing the full names and address of his election agent to the constituency registrar, and the constituency registrar shall forthwith give public notice of the full names and address of the election agent so appointed.

If a candidate revokes the appointment of his election agent or the election agent dies –

- (a) the candidate may appoint another election agent and shall forthwith notify in writing the full names and address of such election agent to the constituency registrar;
- (b) if the candidate appoints another election agent he shall forthwith give public notice, by an advertisement in a newspaper circulating in the constituency, of the full names and address of the election agent so appointed.

If a candidate –

- (a) fails to give the notification required; or
- (b) on the revocation of the appointment or the death of his election agent does not appoint another election agent,

the candidate shall be deemed to be his own election agent and thereupon shall, so far as circumstances admit, be subject to the Act both as a candidate and an election agent.

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Not later than three days before the polling day or the earliest polling day, as the case may be, an election agent may appoint one or more persons, not exceeding such number as may be prescribed to be his polling agents and shall forthwith –

- (a) notify in writing the full names and address of every polling agent so appointed to the constituency registrar; and
- (b) give public notice, by an advertisement in a newspaper circulating in the constituency, of the full names and address of every polling agent so appointed.

Anything done for the purposes of the election by or to a polling agent is deemed to be done by or to the election agent and any act or default of a polling agent which if he were the election agent would be a corrupt practice or an illegal practice or other offence shall be a corrupt practice or illegal practice or other offence, as the case may be, committed by a polling agent, and –

- (a) the polling agent shall be liable to punishment accordingly; and
- (b) the candidate shall, subject to the Act, incur the same consequences as if the act or default had been the act or default of the election agent.

The election agent of a candidate, by himself or a polling agent, shall appoint every person employed for hire or reward on behalf of the candidate at an election, and hire every committee room hired on behalf of the candidate.

A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate unless made by the candidate himself or by his election agent, whether by himself or through a polling agent: provided that the inability to enforce such a contract against the candidate shall not relieve the candidate from the consequences of any corrupt practice or illegal practice having been committed by his agent.

An election agent shall, where a poll is to be held, send to the constituency registrar not later than three days before polling day or the earliest polling day, as the case may be, a list containing the full names and addresses of every person employed by him for hire or reward on behalf of the candidate in connection with the election, and if any such person is registered on the voters' roll, his number on such roll.

An election agent who fails to comply with the foregoing provision is guilty of an offence.

No payment and no advance or deposit shall be made or promised by a candidate or by any person at any time, whether before, during or after that election, in respect of any expenses incurred or to be incurred on account of or in respect of the conduct or management of that election otherwise than by or through the election agent of the candidate, whether acting in person or by a polling agent.

All monies provided by an association or group of persons or by any person for the election expenses of a candidate, whether as a gift, loan, advance or deposit, shall be paid or promised to the candidate or his election agent and not otherwise.

Every payment in respect of any election expenses shall, except where it is less than ten dollars in all on any account, be vouched for by a bill stating the particulars, and by a receipt or some other evidence of payment.

Every claim against a candidate at an election or his election agent within the time limited by the Act shall be barred and shall not be paid and an election agent who pays a claim in contravention of the Act is guilty of an illegal practice.

The time for sending in claims is sixty days after the day on which the candidate who was returned was declared elected.

All election expenses in respect of a candidate shall be paid within the time limited by the Act and, subject to such exceptions as may be allowed, an election agent who makes payment in contravention of this provision is guilty of an illegal practice.

The time limit for the payment of election expenses is seventy-two days after the day on which the candidate who was returned was declared elected.

If the election agent, in the case of any claim sent in to him within the time limited by the Act, disputes it or refuses or fails to pay it within the period of seventy-two days, the claim shall be deemed to be a disputed claim.

The person making such a claim may bring an action for a disputed claim in any competent court and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limit and to be an exception to the provisions of the Act requiring claims to be paid by the election agent.

The court, on application by the person making the claim or by the candidate or his election agent may, if cause is shown to its satisfaction, by order, give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any election expenses, although sent in after the expiration of the time limit for sending in claims, or although the claim was sent in to the candidate and not to the election agent, and any payment made in pursuance of such order shall be deemed to be made within the time limit.

Where the court reports that it has been proved to it by a candidate that any payment made by an election agent in contravention of the Act was made without the sanction or connivance of such candidate, the election of such candidate shall not be void nor shall he be subject to any incapacity under the Act by reason only of such payment having been made in contravention of the Act.

A candidate at an election may pay any personal expenses incurred by him on account of or in connection with or incidental to that election, to an amount not exceeding five thousand dollars, but any further expenses so incurred shall be paid by or through his election agent.

Any expenses incurred and paid by supporters of a candidate in travelling or living at hotels or elsewhere for the purposes of and in relation to an election shall not be deemed to be expenses incurred in the interests of the candidate.

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A candidate shall send to the election agent within the time limited for sending in claims a written statement of the amount of personal expenses paid by him, giving the principal details of such expenditure.

Any person, if so authorised in writing by the election agent of the candidate –

- (a) may pay any necessary stationery, postage, telegrams and other petty expenses to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent; and
- (b) shall send to the election agent within the time stipulated for sending in claims, a statement of the particulars of payment made by him and such payments shall be vouched for by a bill containing the receipt of that person.

Any person who –

- (a) fails to send a statement as required; or
- (b) in this connection, makes a statement that is false in a material particular, is guilty of an offence.<sup>26</sup>

## — Section 7 —

### OFFENCES

#### 7.01 Treating

Any person who corruptly by himself or by any other person, whether done before or after an election directly or indirectly, gives or provides or pays wholly or in part the expense of giving or providing, any food, drink, entertainment, lodging or provisions to or for any person –

- (a) for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at any election; or
  - (b) on account of such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at an election,
- is guilty of the offence of treating.

Any voter who corruptly accepts or takes any food, drink, entertainment, lodging or provisions supplied by a person guilty of the offence of treating is also guilty of that offence.

The giving, providing, accepting or taking of such food, drink, entertainment, lodging or provisions as are reasonably necessary to enable voters to attend any meeting or rally shall not amount to an offence.<sup>27</sup>

#### 7.02 Undue Influence

Any person who, directly or indirectly, by himself or by any other person –

- (a) makes use of or threatens to make use of any force, violence or restraint or any unnatural means whatsoever upon or against any person; or

- (b) inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person; or
- (c) does or threatens to do anything to the disadvantage of any person, in order to induce or compel that person –
  - (i) to sign a nomination paper or refrain from signing a nomination paper; or
  - (ii) to vote or refrain from voting,is guilty of the offence of undue influence.

Any person who, directly or indirectly, by himself or by any other person –

- (a) makes use of or threatens to make use of any force, violence or restraint upon or against any person; or
- (b) inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person; or
- (c) does or threatens to do anything to the disadvantage of any person, on account of that person –
  - (i) having signed or refrained from signing a nomination paper; or
  - (ii) having voted or refrained from voting at any election,is guilty of the offence of undue influence.

Any person who by abduction, duress, threats to invoke any unnatural means or by fraudulent device or contrivance –

- (a) impedes or prevents the exercise of his vote by a voter; or
  - (b) compels, induces, or prevails upon a voter either to vote or to refrain from voting at an election,
- is guilty of the offence of undue influence.
- <sup>28</sup>

### **7.03 Bribery**

Any person who, directly or indirectly, by himself or by any other person –

- (a) gives, lends or procures or agrees to give, lend or procure or offers, promises or promises to procure or to endeavour to procure, any money to or for any person on behalf of a voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election; or
- (b) gives, lends or agrees to give or lend, or offers or promises to procure or to endeavour to procure, any money to or for a voter or to or for any other person on behalf of a voter, or to or for any other person, for acting or joining in any procession or demonstration before, during or after an election; or
- (c) makes any such gift, loan, offer, promise, procurement or agreement to or for any person in order to induce such person to procure or to endeavour to procure the return of a candidate at an election or the vote of a voter at an election; or
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement and agreement, procures or engages or promises or endeavours to procure, the return of a candidate at an election or the vote of a voter at an election; or

- (e) advances or pays any money to or for the use of any other person, with intent that such money, or any part thereof, shall be expended in bribery at an election, or who knowingly pays any money to any person in discharge or repayment of any money wholly or in part expended in bribery at an election; or
  - (f) before or during an election, receives or contracts for any money or loan for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at an election; or
  - (g) after an election receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at an election; or
  - (h) conveys or transfers any property or pays any money to any person for the purpose of enabling him to be registered as a voter, thereby to influence his vote at a future election, or pays any money on behalf of a voter for the purpose of inducing him to vote or refrain from voting,
- is guilty of the offence of bribery.<sup>29</sup>

#### **7.04 Personation**

Any person who –

- (a) at an election applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person; or
- (b) having voted once at an election, applies again at the same election for a ballot paper; or
- (c) not being entitled to do so marks a postal ballot paper so as to indicate thereon a vote for a candidate,

is guilty of the offence of personation.<sup>30</sup>

#### **7.05 Illegal Transportation of Voters**

Any person who corruptly conveys any other person or causes any other person to be conveyed to any constituency for the purpose of enabling or assisting that other person to vote unlawfully in that constituency, is guilty of the offence of illegally transporting voters.<sup>31</sup>

#### **7.06 Penalties for Corrupt Practices**

Any person guilty of the offence of personation is liable to imprisonment for a period not exceeding three years.

Any person guilty of a corrupt practice other than personation is liable to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Any person convicted of a corrupt practice by the High Court may, in addition to any other punishment, be declared to be incapable, for a period not exceeding five years from the date of his conviction, of –

- (a) being registered as a voter or of voting at an election; or

- (b) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution and, if he holds any such office, the High Court may declare that that office shall be vacated by him as from the said date.<sup>32</sup>

### **7.07 Illegal Practices**

No person shall for the purpose of promoting or procuring the election of a candidate at an election –

- (a) incur election expenses in respect of any matter or in any manner constituting an offence under the Act or any other law or in respect of any matter or thing payment for which is prohibited; or
- (b) receive any payment or be a party to any contract for payment, whether before, during or after an election –
- (i) for any of the matters specified in paragraph (a); or
- (ii) to a voter on account of the use of any premises for the exhibition of any address, bill, poster or notice or on account of the exhibition of any address, bill, poster or notice.

Any person who contravenes these provisions is guilty of an illegal practice.

Any person who, without the express or implied authority of a candidate or his election agent, incurs election expenses in relation to that candidate shall be guilty of an illegal practice.

Any person who knowingly provides money –

- (a) for any payment which is contrary to the Act; or
- (b) for any election expenses in excess of the maximum amount allowed by the Act; or
- (c) for replacing any money expended in any such payment or expenses, except where the same is allowed as an exception under the Act,
- is guilty of an illegal practice.

Any person who corruptly induces or procures any other person to become a candidate or to withdraw from being a candidate at an election in consideration of any payment or promise of any nature is guilty of an illegal practice and any person who becomes a candidate or withdraws from being a candidate in pursuance of such inducement or procurement is also guilty of an illegal practice.

Every bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof.

Any person who prints, publishes or posts, or causes to be printed, published or posted, any printed matter which does not bear upon the face thereof the name and address of the printer and publisher is guilty of an illegal practice unless he proves that such failure was due to inadvertence.

The proprietor and publisher of a newspaper shall cause the word “advertisement” to be printed as a headline to each article or paragraph in his newspaper containing electoral matter, the insertion of which is, or is to be, paid for or for which any reward or compensation or promise of reward or compensation is or is to be made.

No candidate shall issue or distribute any document, including any bill, placard, poster, pamphlet, circular, or card, which contains any facsimile or imitation of a ballot paper and advises or purports to advise any person as to the manner in which such person should record his vote, unless the candidate has first obtained from the constituency registrar for the constituency concerned a certificate, in duplicate, stating that, in his opinion, such document contains no representation likely to mislead a voter as to his rights.<sup>33</sup>

### **7.08 Obstruction of Voters**

Any person who, at an election, wilfully obstructs a voter, either at the polling station or on his way thereto or therefrom is guilty of an illegal practice.<sup>34</sup>

### **7.09 Philanthropical Societies Prohibited from Funding Political Purposes**

It is not lawful for any philanthropical society or body to devote any of its funds for political purposes.

If a philanthropical society or body contravenes this provision, the president or chairman and the secretary or other officer of such society or body is guilty of an offence and is liable to a fine not exceeding two thousand dollars.<sup>35</sup>

### **7.10 General Penalty for Illegal Practices**

Where under the Act no penalty is expressly provided for an illegal practice, a person guilty of an illegal practice is liable to a fine not exceeding two thousand dollars.

Where a person has been convicted by the High Court of an illegal practice and no other incapacity is specially provided for in the Act in respect of such conviction, that person shall be liable, in addition to any other penalty, to be declared by the High Court to be incapable, for a period not exceeding five years from the date of his conviction, of –

- (a) being registered as a voter or of voting at an election; or
- (b) filling a public office other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution and if he holds any such office, the High Court may declare that that office shall be vacated by him as from the said date.<sup>36</sup>

### **7.11 Election Void Owing to Corrupt or Illegal Practices**

If upon the trial of an election petition the High Court certifies to the Minister that any corrupt or illegal practice has been committed with reference to the election the subject of the petition, by or with the knowledge and consent or approval of any of his election agents, the election of that candidate shall be void, and a fresh election shall thereupon be held.

If a candidate or any of his election agents is found at the said trial to have committed any corrupt or illegal practice, that candidate or agent may be declared by the High Court to be incapable, for a period not exceeding five years from the date of the finding of –

- (i) being a registered voter or of voting at an election; or
- (ii) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution, and, if he holds any such office, the High Court may declare that that office shall be vacated by him as from the said date.

When upon the trial of an election petition the High Court finds that a candidate at the election the subject of the petition has been guilty by his agent of the offence of treating or undue influence or of an illegal practice with reference to that election, and the candidate has proved to the satisfaction of the High Court that –

- (a) no corrupt practice or illegal practice was committed at that election by the candidate himself or by his election agent and the offences mentioned in the said finding were committed without the sanction or connivance of the candidate or his election agent; and
- (b) the candidate and his election agent took all reasonable precautions for preventing the commission of corrupt and illegal practices at that election; and
- (c) the offences mentioned in the findings were of a trivial, unimportant and limited character, then the election of that candidate shall not, by reason of the offences mentioned in the finding, be void, nor shall the candidate or the election agent be subjected to any incapacity under the Act.

Proceedings against a person in respect of a corrupt or illegal practice or any other offence shall be commenced within six months after the offence is alleged to have been committed or within three months after the report of the High Court, if any, whichever period last expires: provided that no proceedings shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.<sup>37</sup>

## — *Section 8* —

### ELECTION PETITIONS

#### 8.01 Who May Present Election Petition

A petition complaining of an undue return or an undue election of a member of Parliament by reason of want of qualification, disqualification, corrupt practice, illegal practice, irregularity or any other cause whatsoever may be presented to the High Court –

- (a) by any person claiming to have had a right to be elected at that election; or
- (b) by any person alleging himself to have been a candidate as such election; or
- (c) by a registered voter in the constituency concerned.

Whenever in a petition, the seat is claimed for some person other than the petitioner, such person shall be party to the petition as a co-petitioner.<sup>38</sup>

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## 8.02 Provisions Governing Election Petitions

An election petition shall be –

- (a) presented by lodging it with the Registrar of the High Court; and
- (b) signed by the petitioner or all of the petitioners if more than one.

An election petition shall be presented within thirty days after the day on which the result of the election has been notified: provided that, if the return or election is questioned upon an allegation of an illegal practice, the petition may be presented if it specifically alleges a payment of money or some other act to have been made or done since that day, by the member or an agent of the member or with the consent of the member or his election agent, in pursuance of the illegal practice alleged in the petition, at any time within thirty days after the day of such payment or other act.

Not later than seven days after the presentation of the election petition, security of an amount fixed by the Registrar of the High Court, being not less than one thousand dollars, for the payment of all costs, charges and expenses that may become payable by the petitioner –

- (a) to any person summoned as witness on his behalf; and
  - (b) to the respondent,
- shall be given by or on behalf of the petitioner.

Security given under these provisions shall be by recognizance entered into by the petitioner and sureties not exceeding four in number in a form approved by the Registrar of the High Court, which recognizance shall be signed in the presence of the Registrar of the High Court or a magistrate.

Notice in writing of the presentation of a petition and of the names and addresses of the proposed sureties, accompanied by a copy of the petition, shall, within ten days after the presentation of the petition, be served by the petitioner on the respondent either personally or by leaving the same at his usual or last known dwelling or place of business.

The respondent may, by notice in writing served upon the petitioner, within such period as may be prescribed in the rules of court, object to any recognizance given on the ground that –

- (a) the sureties or any of them are insufficient; or
- (b) a surety is dead or cannot be found; or
- (c) the recognizance has not been signed by the person named therein; or
- (d) the recognizance is otherwise invalid or defective.

An objection shall be heard and decided by the High Court and if the objection is allowed –

- (a) the petitioner may, within a further period to be fixed by the High Court not exceeding

ten days, remove the objection by a deposit of such sum of money as may be deemed necessary by the High Court to make the security sufficient;

- (b) if the petitioner does not remove the objection in the manner specified in paragraph (a), no further proceedings shall be heard on the petition.<sup>39</sup>

### **8.03 Trial of Election Petition**

An election petition shall be tried by the High Court in open court.

If, on the trial of an election petition praying the High Court to determine that some person other than the respondent is entitled to be declared duly elected in place of the respondent, it is proved that any person who voted for the respondent –

- (a) was bribed or treated or subjected to undue influence by the respondent or anyone on behalf of the respondent; or
- (b) was guilty of personation or of an illegal practice or was not qualified or was disqualified as a voter at the election,

the vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election.

At the conclusion of the trial of an election petition the High Court shall determine whether the respondent was duly elected or whether any, and if so what, person other than the respondent was or is entitled to be declared duly elected, and if the High Court determines that –

- (a) the respondent was duly elected, such election shall remain as valid as if no petition had been presented against his election;
- (b) the respondent was not duly elected but that some other person was or is entitled to be declared duly elected –
- (i) the respondent shall forthwith be deemed to have vacated his seat; and
- (ii) the High Court shall forthwith certify its determination to the Minister and the Speaker, and the Minister shall thereupon, by notice published in the Gazette, declare such other person duly elected with effect from the day of the determination of the High Court;
- (c) the respondent was not duly elected and that no other person was or is entitled to be declared duly elected –
- (i) the seat of the respondent shall forthwith become vacant; and
- (ii) the High Court shall forthwith certify its determination to the Speaker who shall notify the President that the vacancy has occurred, and the cause of such vacancy.

Where a charge is made in an election petition of a corrupt practice or illegal practice having been committed at the election to which the petition refers, the High Court shall, in addition to the certificate, at the same time report in writing to the Speaker –

- (a) whether any corrupt practice or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of a candidate at that election or by or

- with the knowledge and consent of any of his agents, and the nature of such corrupt practice or illegal practice; and
- (b) the names of all persons who have been proved at the trial to have been guilty of any corrupt practice or illegal practice; and
  - (c) whether corrupt practices or illegal practices have, or whether there is reason to believe corrupt practices or illegal practices have, extensively prevailed at the said election.

The High Court may, in addition to the certificate required, at the same time make a special report to the Speaker as to any matter arising in the course of the trial, including the commission or possible commission of any corrupt practice or illegal practice, where the High Court considers that an account of such matter ought to be submitted to Parliament.

Where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the action from all or a portion of the costs thereof, then –

- (a) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *bona fide* made by any member of the Public Service, it may, after sufficient notice to the Minister to show cause to the contrary, make such order as to the payment from the Consolidated Revenue Fund of the costs of the action or portion thereof as it thinks fit;
- (b) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *mala fide* made by any member of the Public Service, it may, after sufficient notice to such member of the Public Service to show cause to the contrary, make such order as to payment by such member of the Public Service of the costs of the action or portion thereof as it thinks fit.<sup>40</sup>

#### **8.04 High Court Reports on Corrupt and Illegal Practices**

If the High Court states in the report on the trial of an election petition that any person has or may have been guilty of a corrupt practice or an illegal practice or that there is reason to believe that corrupt or illegal practices have extensively prevailed at the election to which the petition refers –

- (a) that statement, with the evidence taken at the trial, shall be transmitted by the Registrar of the High Court to the Attorney-General with a view to the institution of any prosecution proper to be taken in the circumstances; and
- (b) the report shall, so far as it concerns any such person, be transmitted by the Registrar of the High Court to the Registrar-General.<sup>41</sup>

#### **8.05 Witnesses**

On the trial of an election petition –

- (a) any witness shall be summoned and sworn in the same manner as a witness may be summoned and sworn in civil proceedings before the High Court;

- (b) the High Court may examine any witness or any person in court, even though such witness or person is not called or examined by any party to the petition;
- (c) after any examination the witness or person may be cross-examined by or on behalf of the petitioner and the respondent or either of them.

A witness who, in the course of the trial of an election petition, wilfully makes a false statement of fact material to the proceedings which he knows to be false or does not know or believe to be true is guilty of an offence.

No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt practice or illegal practice at or connected with an election then forming the subject of inquiry, on the ground of privilege or on the ground that the answer thereto may incriminate or tend to incriminate himself.

If any witness fully answers to the satisfaction of the High Court every question relating to any matter which he is required by the High Court to answer, and the answer to which may incriminate him, he shall be absolutely freed and discharged from all liability to prosecution, either at the public instance or at the instance of any private party, for any offence under the Act committed by him prior to the time of his giving evidence and at or in relation to the election concerned or in relation to which the witness may have been so examined and the witness is entitled to receive from the High Court under the hand of the Registrar thereof a certificate stating that he is so freed and discharged from all liability to prosecution as aforesaid.

No evidence given by a witness shall, except upon a charge of making a false statement, be admissible in evidence against him in any criminal or civil proceedings to which he is a party.

On the trial of a petition complaining of an undue election or undue return and claiming the seat for some person the respondent may give evidence to prove that the election of that person was undue, in the same manner as if the respondent had presented the petition complaining of such election.<sup>42</sup>

### **8.06 Withdrawal of Election Petitions**

An election petition shall not be withdrawn without the leave of the High Court and after such notice has been given as the High Court may direct.

On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition refers may apply to the High Court to be substituted as a petitioner for the petitioner who desires to withdraw.

The High Court may, if it thinks fit, substitute as a petitioner any applicant, and may further, if the proposed withdrawal has been, in the opinion of the High Court, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may become payable by the substituted petitioner and that the original petitioner shall be liable to pay such costs.

If no order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within fourteen days after the order of substitution.

If a petition is withdrawn the petitioner is liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made without the consent of all the petitioners.<sup>43</sup>

### 8.07 Costs of Petitions

All costs, charges and expenses of and incidental to the presentation of an election petition, and to the proceedings consequent thereon, shall be defrayed by the parties to the election petition in such manner and in such proportions, as the High Court may determine, regard being had to –

- (a) the disallowance of any costs, charges or expenses which may, in the opinion of the High Court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent; and
- (b) the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

The costs referred to may be taxed and recovered in the same manner as the costs of civil proceedings in the High Court.

If –

- (a) any petitioner makes default, for a period of thirty days after demand, in paying to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to him for his costs, charges or expenses; and
  - (b) the default is proved to the satisfaction of the High Court,
- every person who has entered into a recognizance relating to the petition shall be held to have made default in his said recognizance, and the Registrar of the High Court shall thereupon certify such recognizance to be forfeited, and execution may thereupon, by leave of the High Court, be sued out thereon at the suit of any such witness or respondent as occasion may require.<sup>44</sup>

## NOTES

- |   |                                       |
|---|---------------------------------------|
| 1. Constitution of Zimbabwe, see section 58 | 8. Electoral Act 1990, see section 11 |
| 2. Ibid., see sections 59-61                | 9. Ibid., see section 12              |
| 3. Ibid., see section 61                    | 10. Ibid., see section 13             |
| 4. Electoral Act 1990, see sections 4 and 5 | 11. Ibid., see section 14             |
| 5. Ibid., see sections 6 and 7              | 12. Ibid., see section 15             |
| 6. Constitution of Zimbabwe, see section 59 | 13. Ibid., see sections 16-20         |
| 7. Ibid., see section 60                    | 14. Ibid., see sections 21-27         |

15. Ibid., see section 29
16. Ibid., see sections 31-35
17. Ibid., see section 38
18. Ibid., see section 39
19. Ibid., see section 40
20. Ibid., see section 41
21. Ibid., see section 42
22. Ibid., see sections 43-48
23. Ibid., see sections 49-52
24. Ibid., see sections 53-62
25. Ibid., see sections 64-68
26. Ibid., see sections 76-84
27. Ibid., see section 97
28. Ibid., see section 98
29. Ibid., see section 99
30. Ibid., see section 100
31. Ibid., see section 101
32. Ibid., see section 102
33. Ibid., see sections 103-109
34. Ibid., see section 114
35. Ibid., see section 115
36. Ibid., see section 116
37. Ibid., see sections 117, 118 and 122
38. Ibid., see section 125
39. Ibid., see sections 126-128
40. Ibid., see section 129
41. Ibid., see section 130
42. Ibid., see sections 131-133
43. Ibid., see section 134
44. Ibid., see section 137

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## INTRODUCTION

Unlike most other democracies, in the case of India the institutional set up and conceptual framework of electoral law is set out in the Constitution itself, rather than an Act of the Legislature. Apart from several scattered provisions governing the subject of popular elections, the Constitution of India contains a separate chapter on elections.

The drafting Committee of the Constitution of India included the right of franchise as one of the fundamental rights and suggested including elections in the chapter on fundamental rights. But on deliberations in the Constituent Assembly it was concluded by consensus that it was not the right of franchise but its free and uninhibited exercise under the superintendence of a separate Constitutional Authority which was more pertinent to democracy.

The chapter on elections defines mainly the setting up of the Election Commission of India, its mandate and authority under the Constitution.

The principal enactments and regulations for superintendence, direction and control of the conduct of elections and related matters are the Representation of the People Act 1950, the Representation of the People Act 1951, the Presidential and Vice-Presidential Elections Act 1952, the Registration of Electors Rules 1960, the Conduct of Elections Rules 1961, and the Election Symbols (Reservation and Allotment) Order 1968.

(The Delimitation Act 1972 was a one time enactment constituting a Delimitation Commission and providing for delimitation of the territorial constituencies for electing members to the House of the People and State Legislative Assemblies on the basis of the population census of 1971.)

The presentation of the laws herein focuses on the scheme applicable to the election of the President of India, the members of the Council of States and the members of the House of the People. Lack of space did not allow the inclusion of the election of members to the States' Legislatures.

### — Section 1 —

## CONSTITUTIONAL PROVISIONS

### 1.01 The President of India

There shall be a President of India who shall be elected by the members of an electoral college consisting of:

- (a) the elected members of both Houses of Parliament; and
- (b) the elected members of the Legislative Assemblies of the States.<sup>1</sup>

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## 1.02 Manner of Election of President

As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner:

- (a) every elected member of the Legislative Assembly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;
- (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) shall be further increased by one;
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislative Assemblies of the States under sub-clauses (a) and (b) above by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

The expression “population” will continue to mean the population figures published on the basis of the national census conducted in 1971 until the relevant figures for the first census taken after the year 2000 have been published.<sup>2</sup>

## 1.03 Term of Office of President

The President shall hold office for a term of five years from the date on which he enters upon his office provided that:

- (a) the President may, by writing under his hand addressed to the Vice-President, resign his office;
- (b) the President may for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.<sup>3</sup>

## 1.04 Eligibility for Re-election

A person who holds, or who has held, office as President shall be eligible for re-election to that office.<sup>4</sup>

### **1.05 Qualification for Election as President**

No person shall be eligible for election as President unless he:

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the House of the People.

A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

A person shall not be qualified to be chosen to fill a seat in Parliament unless he:

- (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation in the prescribed form;
- (b) is in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and
- (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Office of Profit – for the purposes of this provision, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.<sup>5</sup>

### **1.06 Office of Vice-President**

There shall be a Vice-President of India who shall be *ex officio* Chairman of the Council of States. The Vice-President shall not hold any other office of profit.

During any period when the Vice-President acts as President or discharges the functions of the President, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States.<sup>6</sup>

### **1.07 Constitution of Parliament**

There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

The Council of States shall consist of:

- (a) twelve members to be nominated by the President; and
- (b) not more than two hundred and thirty-eight representatives of States and of the Union Territories.

The allocation of seats in the Council of States to be filled by representatives of States and of

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the Union Territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

The members to be nominated by the President shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: literature, science, art and social service.

The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

The representatives of the Union Territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

The House of the People shall consist of:

- (a) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States; and
- (b) not more than twenty members to represent the Union Territories, chosen in such manner as Parliament may by law provide.

For the purposes of sub-clause (a) above:

- (a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and
- (b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and number of seats allotted to it is, so far as practicable, the same throughout the State: provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six million.

In these provisions the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published.

Readjustment after each census – upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine: provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing house; provided further that such readjustment shall take effect from such date as the President may by order specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment; provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under these provisions.<sup>7</sup>

### **1.08 Elections**

The superintendence, direction, and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President shall be vested in a Commission (referred to as the Election Commission).

The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and the other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Assembly of each State, having such council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of its functions. Regional Commissioners can be appointed only to assist the Commission in the discharge of its functions under clause 1 of article 324, that is, the preparation of rolls for and conduct of elections. Functions of the Commission are not delegated to a Regional Commissioner. He only assists the Commission.

Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine: provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment; provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

The President or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission. The staff made available under any such request are to discharge the functions of preparation of rolls and the conduct of elections.<sup>8</sup>

### **1.09 No Discrimination for Inclusion in Electoral Roll on Grounds of Religion, Race, Caste or Sex**

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any

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special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.<sup>9</sup>

### **1.10 Adult Suffrage**

The elections to the House of the People, and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at any such election. No person shall be registered in more than one constituency and no person shall be registered in the electoral roll of a constituency more than once.<sup>10</sup>

### **1.11 Bar to Interference by Courts in Electoral Matters**

The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under the Constitution shall not be called in question in any court.

No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or under any law made by the appropriate Legislature.<sup>11</sup>

### **1.12 Reservation of Seats for Scheduled Castes and Scheduled Tribes in the House of the People**

Seats shall be reserved in the House of the People for:

- (a) the Scheduled Castes;
- (b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and
- (c) the Scheduled Tribes in the autonomous districts of Assam.

The number of seats reserved in any State or Union Territory for the Scheduled Castes or the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes in the State or Union Territory or of the Scheduled Tribes in the State or Union Territory or part of the State or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory.

The number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.<sup>12</sup>

### **1.13 Representation of the Anglo-Indian Community**

The President may, if he is of the opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.<sup>13</sup>

## **—Section 2—**

### **ADMINISTRATIVE MACHINERY FOR THE CONDUCT OF ELECTIONS**

#### **2.01 Delegation of Functions of Election Commission**

The functions of the Election Commission may, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the Election Commission.

(The Commission advised that the word “delegation” in the title of this paragraph is misleading since no power can be delegated. All functions of the Commission can be exercised by a Deputy Election Commissioner or a Secretary of the Commission subject to any general or special directions, if any, issued by the Commission.)<sup>14</sup>

#### **2.02 General Duties of Chief Electoral Officers**

Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer of each State shall supervise the preparation, revision and correction of all electoral rolls for, and the conduct of all elections superintended by the Electoral Commission of India in, the State under the Representation of the People Acts 1950 and 1951.

(The Chief Electoral Officer shall be an officer of the Government, not necessarily the Government of the State or Union Territory of which he is designated or nominated to be the Chief Electoral Officer. Only “consultation” of the Government is required.)<sup>15</sup>

#### **2.03 General Duties of District Election Officer**

For each district in a State, other than a Union Territory, the Election Commission shall, in consultation with the Government of the State, designate or nominate a district election officer who shall be an officer of Government.

The Election Commission may designate or nominate more than one such officer for a district if the Election Commission is satisfied that the functions of the office cannot be performed satisfactorily by one officer.

Subject to the superintendence, direction and control of the Chief Electoral Officer, the district election officer shall co-ordinate and supervise all work in the district or the area within his jurisdiction in connection with the preparation and revision of the electoral rolls

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for all parliamentary, assembly and council constituencies within his jurisdiction and conduct of elections in his jurisdiction under the Representation of the People Acts 1950 and 1951.<sup>16</sup>

### **2.03A Electoral Registration Officer**

The electoral roll for each territorial constituency shall be prepared and revised by an electoral registration officer who shall be such officer of Government or of local authority as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate in this behalf.

An electoral registration officer may, subject to prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the constituency.

The Election Commission may appoint one or more persons as assistant electoral registration officers to assist any registration officer in the performance of his functions.<sup>16A</sup>

### **2.04 Returning Officers**

For every constituency, for every election to fill a seat or seats in the Council of States and for every election by the members of the Legislative Assembly of a State to fill a seat or seats in the Legislative Council of the State, the Election Commission shall, in consultation with the Government of the State, designate or nominate a returning officer who shall be an officer of Government or of a local authority. The Election Commission may nominate the same person to be the returning officer for more than one constituency.<sup>17</sup>

### **2.05 Assistant Returning Officers**

The Election Commission may appoint one or more persons to assist any returning officer in the performance of his functions.<sup>18</sup>

### **2.06 Functions and Duties of the Returning Officer**

It shall be the general duty of the returning officer at any election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by the Representation of the People Act 1951, or orders made thereunder.

Every assistant returning officer, subject to the control of the returning officer shall be competent to perform all or any of the functions of the returning officer, provided that no assistant returning officer shall perform any of the functions of the returning officer which relate to the scrutiny of nominations unless the returning officer is unavoidably prevented from performing the said function.<sup>19</sup>

### **2.07 Presiding Officers, Polling Officers and Polling Stations**

The district election officer shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for every constituency the whole or greater

part of which lies within his jurisdiction, and shall publish in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided.

The district election officer shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election: provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the district election officer accordingly; provided further that nothing in these provisions shall prevent the district election officer from appointing the same person to be the presiding officer for more than one polling station in the same premises.

A polling officer shall, if so directed by the presiding officer perform all or any of the functions of a presiding officer.

If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorised by the district election officer to perform such functions during any such absence.

It shall be the general duty of the presiding officer at a polling station to keep order thereat and to see that the poll is fairly taken.

It shall be the duty of the polling officers at a polling station to assist the presiding officer for such station in the performance of his functions.<sup>20</sup>

## **2.08 Officers Deemed to be on Deputation to Election Commission**

The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

Similarly, the Chief Electoral Officer of a State or Union Territory, the district election officers, the electoral registration officers and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during the period be subject to the control, superintendence and discipline of the Election Commission.<sup>21</sup>

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— *Section 3* —

**DELIMITATION OF CONSTITUENCIES**

**3.01 Allocation of Seats and Delimitation of Constituencies**

The allocation of seats to the States in the House of the People and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of each State shall be as shown in the First and Second Schedules, respectively, of the Representation of the People Act 1950. The term “State” includes Union Territory. The present allocation and delimitation has been done by the Delimitation Order 1976, issued by the Delimitation Commission set up under the Delimitation Act 1972.<sup>22</sup>

**3.02 Filling of Seats in the House of the People**

All the seats in the House of the People allotted to the States shall be seats to be filled by persons chosen by direct election from parliamentary constituencies in the States.

Every parliamentary constituency shall be a single member constituency. Every State to which only one seat is allotted shall form one parliamentary constituency.

The extent of all parliamentary constituencies except the parliamentary constituencies in the Union Territory of Arunachal Pradesh shall be as determined by the orders of the Delimitation Commission made under the provisions of the Delimitation Act 1972 and the extent of the parliamentary constituencies in the Union Territory of Arunachal Pradesh shall be as determined by the order of the Election Commission under the provisions of the Government of Union Territories Act 1963.<sup>23</sup>

**3.03 Power to Maintain Delimitation Order Up-to-date**

The Election Commission may, from time to time, by notification in the Gazette of India and in the official Gazette of the State concerned:

- (a) correct any printing mistake in any of the orders made by the Delimitation Commission or any error arising therein from an inadvertent slip or omission; and
- (b) where the boundaries or name of any district or any territorial division mentioned in any of the said orders are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the orders up-to-date, so, however that the boundaries or areas or extent of any constituency shall not be changed by any such notification. (This power of the Election Commission does not extend to changing the geographical boundaries of any constituencies or to add or subtract or transfer any polling areas but only to carrying out typographical errors in describing the areas, revenue sub-divisions, or districts, etc, contained in a constituency.)

Every notification under these provisions shall be laid, as soon as may be after it is issued, before the House of the People and the Legislative Assembly of the State concerned.<sup>24</sup>

— *Section 4* —

**REGISTRATION OF POLITICAL PARTIES**

**4.01 Application for Registration**

Any association or body of individual citizens of India calling itself a political party and intending to avail itself of these provisions shall make an application to the Election Commission for its registration as a political party for the purposes of the Representation of the People Act 1951.

Every such application shall be made:

- (a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act 1988, within sixty days next following such commencement;
- (b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

Every application shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

Every such application shall contain the following particulars, namely:

- (a) the name of the association or body;
- (b) the State in which its head office is situated;
- (c) the address to which letters and other communications meant for it should be sent;
- (d) the names of its president, secretary, treasurer and other office-bearers;
- (e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;
- (f) whether it has any local units; if so, at what levels;
- (g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

The application shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

The Commission may call for such other particulars as it may deem fit from the association or body.

After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body

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reasonable opportunity of being heard, the Commission shall decide to register the association or body as a political party or not so to register it; and the Commission shall communicate its decision to the association or body: provided that no association or body shall be registered as a political party unless the memorandum or rules and regulations of such association or body conforms to the requirement of these provisions.

Before registering an association or body as a political party, the Commission shall hold a public hearing at which any person or association can challenge the application for registration.

The decision of the Commission shall be final.

After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material shall be communicated to the Commission without delay.<sup>25</sup>

#### **4.02 Recognition of Political Parties and Allotment of Symbols**

The political parties are recognised under the Election Symbol (Reservation and Allotment) Order 1968, an order of the Election Commission of India. For the purpose of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised registered political parties or unrecognised registered political parties.

The Election Commission of India has a list of symbols on which it holds its proprietary rights. The Election Commission reserves a symbol for a recognised registered political party and a candidate validly set up at an election by a recognised registered political party is mandatorily allotted the said reserved symbol by the returning officer. A candidate set up by an unrecognised registered political party gets second preference in the choice of symbol at an election and cannot be allotted the symbol reserved for a recognised registered political party. An independent candidate can choose only out of free symbols.

A political party shall be treated as a recognised registered political party in a State, if and only if either the conditions specified in clause (A) below are, or the condition specified in clause (B) below is, fulfilled by that party and not otherwise, that is to say –

- (A) that such party –
  - (a) has been engaged in political activity for a continuous period of five years; and
  - (b) has, at the general election in that State to the House of the People or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning, returned either:
    - (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State; or
    - (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;
- (B) that the total number of valid votes polled by all contesting candidates set up by such

party at the general election in the State to the House of the People, or, as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits).

The conditions in clause (A) or (B) above are not deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.<sup>25A</sup>

#### **4.03 Two Categories of Recognised Political Parties**

If a political party is recognised in four, or more, States it is known as a National Recognised Party and enjoys such status throughout India, and if a political party is treated as a recognised political party in less than four States it shall be known as a State Recognised Party and enjoys such status only in the States in which it is recognised.<sup>25B</sup>

### **— Section 5 —**

#### **REGISTRATION OF VOTERS**

##### **5.01 Electoral Roll for Every Parliamentary Constituency**

The electoral roll for every parliamentary constituency, other than a parliamentary constituency in the State of Jammu and Kashmir or in a Union Territory not having a Legislative Assembly, shall consist of the electoral rolls for all the assembly constituencies comprised within that parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such parliamentary constituency.<sup>26</sup>

##### **5.02 Disqualification for Registration in the Electoral Roll**

A person shall be disqualified for registration in an electoral roll if he:

- (a) is not a citizen of India; or
- (b) is of unsound mind and stands so declared by a competent court; or
- (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

The name of any person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included: provided that the name of any person struck off the electoral roll of a constituency by reason of a disqualification under sub-clause (c) above shall forthwith be reinstated on that roll if such disqualification is, during the period such roll is in force, removed under any law authorising such removal.<sup>27</sup>

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### 5.03 Conditions of Registration

No person shall be entitled to be registered in the electoral roll for more than one constituency.

No person shall be entitled to be registered in the electoral roll for any constituency more than once. Subject to the foregoing provisions, every person who:

- (a) is not less than eighteen years of age on the qualifying date; and
  - (b) is ordinarily resident in a constituency,
- shall be entitled to be registered in the electoral roll for that constituency.<sup>28</sup>

### 5.04 Meaning of “Ordinarily Resident”

A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein.

A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency in connection with his duties as such member.

A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness, or who is detained in prison or other legal custody at any place, shall not by reason thereof be deemed to be ordinarily resident therein. But a person declared insane by a medical (designated) authority is liable to be deleted from an electoral roll. A person in custody though he continues to be a voter, loses his right to vote.

Any person having a service qualification shall be deemed to be ordinarily resident on any date in the constituency in which, but for his having such service qualification, he would have been ordinarily resident on that date.

Any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which these provisions apply, shall be deemed to be ordinarily resident on any date in the constituency in which, but for the holding of any such office, he would have been ordinarily resident on that date.

The statement of any such person made in the prescribed form and verified in the prescribed manner, that but for his having the service qualification or but for his holding any such office as is referred to in the preceding paragraph he would have been ordinarily resident in a specified place on any date, shall, in the absence of evidence to the contrary, be accepted as correct.

The wife of any such person referred to above shall if she be ordinarily residing with such person be deemed to be ordinarily resident in the constituency specified by such person.

If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case and to such rules as may be made on this behalf by the Central Government in consultation with the Election Commission.

“Service qualification” means:

- (a) being a member of the armed forces of the Union; or
- (b) being a member of a force to which the provisions of the Army Act 1950 have been made applicable whether with or without modifications; or
- (c) being a member of an armed police force of a State, who is serving outside that State; or
- (d) being a person who is employed under the Government of India.<sup>29</sup>

### **5.05 Preparation and Revision of Electoral Rolls**

The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the Registration of Electors Rules 1960 made under the Representation of the People Act 1950.

The said electoral roll:

- (a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date:
  - (i) before each general election to the House of the People or to the Legislative Assembly of a State; and
  - (ii) before each by-election to fill a casual vacancy in a seat allotted to the constituency; and
- (b) shall be revised in any year in the prescribed manner by reference to the qualifying date of such revision as has been directed by the Election Commission: provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

The Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit: provided that subject to other provisions of the Representation of the People Act 1950, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.<sup>30</sup>

### **5.06 Correction of Entries in Electoral Rolls**

If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency:

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- (a) is erroneous or defective in any particular;
  - (b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency; or
  - (c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,

the electoral registration officer shall, subject to such directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry: provided that before taking any action on any ground under sub-clause (a) or (b) or (c) above on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in open court in respect of the action proposed to be taken in relation to him.<sup>31</sup>

### **5.07 Inclusion of Names in Electoral Rolls**

Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll. The electoral registration officer shall, if he is satisfied that the applicant is entitled to be registered in that electoral roll, direct his name to be included therein: provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

No amendment, transposition or deletion of any entry shall be made and no direction for the inclusion of a name in the electoral roll of a constituency shall be given after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.<sup>32</sup>

### **5.08 Appeals**

An appeal shall lie, within such time and in such manner as may be prescribed, to the Chief Electoral Officer, from any order of the electoral registration officer.<sup>33</sup>

### **5.09 Staff of Local Authorities to be Made Available**

Every local authority in a State shall, when so requested by the Chief Electoral Officer of the State, make available to any electoral registration officer such staff as may be necessary for the performance of any duties in connection with the preparation and revision of electoral rolls.<sup>34</sup>

### **5.10 Jurisdiction of Civil Courts Barred**

No civil court shall have jurisdiction:

- (a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll for a constituency; or

- (b) to question the legality of any action taken by or under the authority of an electoral registration officer, or of any decision given by any authority appointed under the Representation of the People Act 1950 for the revision of any such roll. However, a special leave petition to a High Court of competent jurisdiction can be filed against the final order of inclusion or deletion of a name.<sup>35</sup>

### **5.11 Making False Declarations**

If any person makes in connection with:

- (a) the preparation, revision or correction of an electoral roll; or  
(b) the inclusion or exclusion of any entry in or from an electoral roll,  
a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with a fine or with both.<sup>36</sup>

### **5.12 Breach of Official Duty in Connection with Preparation of Electoral Rolls**

If any electoral registration officer, assistant electoral registration officer or other person required by or under the Representation of the People Act 1950 to perform any official duty in connection with the preparation, revision or correction of an electoral roll or the inclusion or exclusion of any entry in or from that roll, is without reasonable cause, guilty of any act or omission in breach of such official duty, he shall be punishable with a fine which may extend to five hundred rupees.

No writ or other legal proceeding shall lie against any such officer or other person for damages in respect of any such act or omission as aforesaid.

No court shall take cognizance of any offence punishable under these provisions unless there is a complaint made by order of, or under authority from, the Election Commission or the Chief Electoral Officer of the State concerned.<sup>37</sup>

## **— Section 6 —**

### **CONDUCT OF ELECTIONS**

#### **6.01 Notification for Biennial Election to the Council of States**

For the purpose of filling the seats of members of the Council of States retiring on the expiration of their term of office the President shall by one or more notifications in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon the elected members of the Legislative Assembly or, as the case may be, the members of the electoral college, of the State concerned to elect members in accordance with the provisions of the Representation of the People Act 1951 and of the rules and orders made thereunder: provided that no notification shall be issued more than three months prior to the date on which the term of office of the retiring members is due to expire.<sup>38</sup>

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## 6.02 Notification for General Election to the House of the People

A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution.

For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of the Representation of the People Act 1951 and of the rules and orders made thereunder: provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire.

Special provisions apply to the filling of the seat allotted to the State of Sikkim in the Council of States and to the House of the People.<sup>39</sup>

## 6.03 Appointment of Dates for Nominations

As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint:

- (a) the last date for making nominations, which shall be the seventh day after the date of publication of the first-mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the twentieth day after the last date for the withdrawal of candidatures; and
- (e) the date before which the election shall be completed.<sup>40</sup>

## 6.04 Public Notice of Election

On the issue of a notification under the provisions above, the returning officer shall give public notice of the intended election in such form and manner as may be prescribed, inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered.<sup>41</sup>

## 6.05 Nomination of Candidates for Election

Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat.

On or before the date appointed each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified on this behalf in the notice of election a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer: provided that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

Where the candidate is a person who, having held any office under the Government of India or under the Government of any State has been dismissed and a period of five years has not elapsed since dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls: provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll number of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

Nothing in these provisions shall prevent any candidate from being nominated by more than one nomination paper: provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.<sup>42</sup>

### **6.06 Deposits**

A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited:

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- (a) in the case of an election from a parliamentary constituency, a sum of five hundred rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of two hundred and fifty rupees; and
  - (b) in the case of an election from an assembly or council constituency, a sum of two hundred and fifty rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of one hundred and twenty-five rupees.

Where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him.

Any sum required to be deposited shall not be deemed to have been deposited unless at the time of delivery of the nomination paper, or as the case may be, the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.<sup>43</sup>

### **6.07 Notice of Nominations**

The returning officer shall, on receiving the nomination paper inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer.<sup>44</sup>

### **6.08 Scrutiny of Nominations**

On the date fixed for scrutiny of nominations, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner prescribed.

The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:

- (a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the provisions that may be applicable;
- (b) that there has been a failure to comply with any of the stipulated requirements for a valid nomination; or
- (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

The rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, does not affect the candidature of the candidate if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

The returning officer shall hold the scrutiny on the date appointed in this behalf and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control: provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

A certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification.

Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the names have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.<sup>45</sup>

### **6.09 Withdrawal of Candidature**

Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three o'clock in the afternoon on the day fixed to the returning officer either by such candidate in person or by his proposer, or election agent who has been authorised in this behalf in writing by such candidate.

No person who has given a notice of withdrawal of his candidature shall be allowed to cancel the notice.

The returning officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it, cause the notice to be affixed in some conspicuous place in his office.<sup>46</sup>

### **6.10 Publication of List of Contesting Candidates**

Immediately after the expiry of the period within which candidatures may be withdrawn, the

returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.

The said list shall contain the names in alphabetical order determined by the local official language of the electoral roll of the constituency and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed.<sup>47</sup>

### **6.11 Candidates and Their Agents**

A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer.

Any person who is for the time being disqualified under the Constitution or under the Representation of the People Act 1951 for being a member of either House of Parliament or the House or either House of the Legislature of a State or for voting at elections, shall, so long as the disqualification subsists, also be disqualified for being an election agent at any election.

Any revocation of the appointment of an agent shall be signed by the candidate, and shall operate from the date on which it is lodged with the returning officer.

In the event of such a revocation or of the death of an election agent whether that event occurs before or during the election, or after the election but before the account of the candidate's election expenses has been lodged, the candidate may appoint in the prescribed manner another person to be his election agent and when such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.

An election agent may perform such functions in connection with the election as are authorised by or under the Representation of the People Act 1951 to be performed by an election agent.

A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station.

A contesting candidate or his election agent may appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to be present as his counting agent or agents at the counting of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the returning officer.

Any revocation of the appointment of a polling agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with such officer as may be prescribed, and in the event of such a revocation or of the death of a polling agent before

the close of the poll, the candidate or his election agent may appoint in the prescribed manner another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment in the prescribed manner to such officer as may be prescribed.

Any revocation of the appointment of a counting agent shall be signed by the candidate or his election agent and shall operate from the date on which it is lodged with the returning officer, and in the event of such revocation or of the death of a counting agent before the commencement of the counting of votes, the candidate or his election agent may appoint in the prescribed manner another counting agent at any time before the counting of the votes is commenced and shall forthwith give notice of such appointment in the prescribed manner to the returning officer.

At every election where a poll is taken, each contesting candidate at such election and his election agent shall have a right to be present at any polling station provided for the taking of the poll or at the place fixed for the poll.

A contesting candidate or his election agent may himself do any act or thing which any polling agent or the counting agent of such contesting candidate if appointed, would have been authorised by or under the Act to do, or may assist any polling agent or the counting agent of such contesting candidate in doing any such act or thing.

Where any act or thing is required or authorised by or under the Act to be done in the presence of the polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.<sup>48</sup>

## **6.12 General Procedure at Elections**

If a candidate whose nomination has been found valid on scrutiny and who has not withdrawn his candidature dies and a report of his death is received before the publication of the list of contesting candidates or if a contesting candidate dies and a report of his death is received before the commencement of the poll, the returning officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and report the fact to the Election Commission and also to the appropriate authority and all proceedings with reference to the election shall be commenced anew in all respects as if for a new election: provided that no further nomination shall be necessary in the case of a person who was a contesting candidate at the time of the countermanding of poll; provided further that no person who has given a notice of withdrawal of his candidature before the countermanding of the poll shall be ineligible for being nominated as a candidate for the election after such countermanding.

The “appropriate authority” means, in relation to an election to the House of the People or the Council of States, the Central Government, and in relation to an election to the Legislative Assembly or the Legislative Council of a State, the State Government.

If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken.

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If the number of such candidates is equal to the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be duly elected to fill those seats.

If the number of such candidates is less than the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be elected and the Election Commission shall, by notification in the Official Gazette call upon the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college concerned, as the case may be, to elect a person or persons to fill the remaining seat or seats: provided that where the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college having already been called upon has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Election Commission shall not be bound to call again upon the constituency, or such members to elect a person or persons until it is satisfied that if called upon again, there will be no such failure on the part of the constituency or such members.<sup>49</sup>

### **6.13 The Poll**

The Election Commission shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed: provided that the total period allotted on any one day for polling at an election in a Parliamentary or Assembly constituency shall not be less than eight hours.

If at an election the proceedings at any polling station or at the place fixed for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause the presiding officer for such polling station or returning officer presiding over such polling station or returning officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later after obtaining instructions from the Election Commission, and where the poll is so adjourned by a presiding officer, he shall forthwith inform the returning officer concerned.

Whenever a poll is adjourned, the returning officer shall immediately report the circumstances to the appropriate authority and the Election Commission, and shall as soon as may be, with the previous approval of the Election Commission, appoint the day on which the poll shall recommence, and fix the polling station or place at which, and the hours during which, the poll will be taken, and shall not count the votes cast at such election until such adjourned poll shall have been completed.

In every such case as aforesaid, the returning officer shall notify in such manner as the Election Commission may direct the date, place and hours of polling fixed under the foregoing provisions. The total minimum number of hours for polling continues to be eight hours in an adjourned poll; eight hours including the number of hours for which polling went on uninterrupted.

If at any election:

- (a) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained; or
    - (aa) any voting machine develops a mechanical failure during the course of the recording of votes; or
  - (b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll,
- the returning officer shall forthwith report the matter to the Election Commission.

Thereupon the Election Commission shall, after taking into account the report of the returning officer and all material circumstances into account, either:

- (a) declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the day so appointed and the hours so fixed in such manner as it may deem fit; or
- (b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that the mechanical failure of the voting machine or the error or irregularity in procedure is not material, issue such directions to the returning officer as it may deem proper for the further conduct and completion of the election.

If at any election:

- (a) booth capturing has taken place at a polling station or at a place fixed for the poll in such manner that the result of the poll at that polling station or place cannot be ascertained; or
  - (b) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained,
- the returning officer shall forthwith report the matter to the Election Commission.

The Election Commission shall, on the receipt of a report from the returning officer and after taking all material circumstances into account, either:

- (a) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or
- (b) if satisfied that in view of the large number of polling stations or places involved in the booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency.

“Booth capturing” includes among other things, all or any of the following activities:

- (a) seizure of a polling station or a place fixed for the poll by any person or persons

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- making polling authorities surrender the ballot papers or voting machines and doing of any act which affects the orderly conduct of elections;
- (b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only their own supporters to exercise their right to vote and prevent others from voting;
  - (c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;
  - (d) seizure of a place for counting of votes by any person or persons making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;
  - (e) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of election of a candidate.

At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy.

With a view to preventing personation of electors provisions may be made by rules under the Act by the Central Government in consultation with the Election Commission:

- (a) for the marking with indelible ink of the thumb or any other finger of every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station before delivery of such paper or papers to him;
- (b) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under the Representation of the People Act 1950, electors of the constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto; and
- (c) for prohibiting the delivery of any ballot paper to any person for voting at a polling station if at the time such person applies for such paper he has already such a mark on his thumb or any other finger or does not produce on demand his identity card before the presiding officer or a polling officer of the polling station.

The giving and recording of votes by voting machines in such manner as may be prescribed, may be adopted in such constituency or constituencies as the Election Commission may, having regard to the circumstances of each case, specify.

No person who is not, and except as expressly provided by the Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

No person shall vote at a general election in any constituency if he is subject to any of the disqualifications.

No person shall vote at a general election in more than one constituency of the same class,

and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police: provided that nothing in this provision shall apply to a person subjected to preventive detention under any law for the time being in force.<sup>50</sup>

### **6.14 Postal Voting**

The following persons shall, subject to their fulfilling the requirements hereinafter specified, be entitled to vote by post, namely:

- (a) at an election in a parliamentary or assembly constituency:
  - (i) special voters;
  - (ii) service voters;
  - (iii) voters on election duty; and
  - (iv) electors subjected to preventive detention;
- (b) at an election in a council constituency:
  - (i) voters on election duty;
  - (ii) electors subjected to preventive detention; and
  - (iii) electors in the whole or any specified parts of the constituency if directed by the Election Commission in this behalf;
- (c) at an election by assembly members:
  - (i) electors subjected to preventive detention; and
  - (ii) all electors if directed by the Election Commission in this behalf.

A voter who wishes to vote by post at an election shall send an intimation in the prescribed form to the returning officer so as to reach him at least ten days before the date of poll; and on receipt of the intimation the returning officer shall issue a postal ballot paper to him.

A voter on election duty who wishes to vote by post at an election shall send an application in the prescribed form to the returning officer so as to reach him at least seven days or such shorter period as the returning officer may allow before the date of poll; and if the returning officer is satisfied that the applicant is a voter on election duty, he shall issue a postal ballot paper to him.

Where such voter, being a polling officer, presiding officer or other public servant on election duty in the constituency of which he is an elector, wishes to vote in person at an election in a parliamentary or assembly constituency and not by post, he shall send an application in the prescribed form to the returning officer so as to reach him at least four

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days, or such shorter period as the returning officer may allow, before the date of poll; and if the returning officer is satisfied that the applicant is such public servant and voter on election duty in the constituency, he shall:

- (a) issue to the applicant an election duty certificate in the prescribed form;
- (b) mark "EDC" against his name in the marked copy of the electoral roll to indicate that an election duty certificate has been issued to him; and
- (c) ensure that he is not allowed to vote at the polling station where he would otherwise have been entitled to vote.

The appropriate Government shall, within 15 days of the calling of an election, ascertain and intimate to the returning officer the name of the electors, if any, subjected to preventive detention together with their addresses and electoral roll numbers and the particulars about their places of detention.

The returning officer shall issue a postal ballot paper to every elector subjected to preventive detention whose name has been intimated to him.

Every postal ballot paper shall have a counterfoil attached thereto, and the said ballot paper and the counterfoil shall be in such form, and the particulars therein shall be in such language or languages as the Election Commission may direct.

The names of the candidates shall be arranged on the postal ballot paper in the order in which they appear in the list of contesting candidates.

If two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner.

A postal ballot paper shall be sent by post under certificate of posting to the elector together with:

- (a) a declaration in the prescribed form;
  - (b) a cover in the prescribed form;
  - (c) a large cover addressed to the returning officer in the prescribed form; and
  - (d) instructions for the guidance of the elector in the prescribed form,
- provided that the returning officer may, in the case of a special voter or a voter on election duty, deliver the ballot paper and forms, or cause them to be delivered, to such voter personally.

The returning officer shall at the same time:

- (a) record on the counterfoil of the ballot paper the electoral roll number of the elector as entered in the marked copy of the electoral roll;
- (b) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him without however recording therein the serial number of the ballot paper issued to that elector; and
- (c) ensure that that elector is not allowed to vote at a polling station.

Before any ballot paper is issued to an elector at an election in a local authorities' constituency or by assembly members, the serial number of the ballot paper shall be effectively concealed in such manner as the Election Commission may direct.

Every officer under whose care or through whom a postal ballot paper is sent shall ensure its delivery to the addressee without delay.

After ballot papers have been issued to all the electors entitled to vote by post, the returning officer shall:

- (a) at an election in a parliamentary or assembly constituency, seal up in a packet that part of the marked copy of the electoral roll which relates to service voters and record on the packet a brief description of its contents and the date on which it was sealed and send the other relevant parts of the marked copy to the several presiding officers or mark the names of electors to whom ballot papers are issued at the polling stations without however recording therein the serial numbers of the ballot papers issued to the electors; and
- (b) at any other election, seal up in a packet the marked copy of the electoral roll and record on the packet a brief description of its contents and the date on which it is sealed.

The returning officer shall also seal up in a separate packet the counterfoil of the ballot papers issued to electors entitled to vote by post and record on the packet a brief description of its contents and the date on which it was sealed.

An elector who has received a postal ballot paper and desires to vote shall record his vote on the ballot paper in accordance with the directions contained in prescribed forms.

The elector shall sign the declaration in the prescribed form in the presence of, and have the signature attested by, a stipendiary magistrate or such other officer specified below, as may be appropriate, to whom he is personally known or to whose satisfaction he has been identified:

- (a) in the case of a service voter, such officer as may be appointed in this behalf by the Commanding Officer of the unit, ship or establishment in which the voter or her husband, as the case may be, is employed or such officer as may be appointed in this behalf by the diplomatic or consular representative of India in the country in which such voter is resident;
- (b) in the case of a special voter, an officer not below the rank of a Deputy Secretary to the Government;
- (c) in the case of a voter on election duty on election day, any gazetted officer or the presiding officer of the polling station at which he is on election duty;
- (d) in the case of an elector under preventive detention, the Superintendent of the jail or the Commandant of the detention camp in which the elector is under detention; and
- (e) in any other case, such officers as may be notified in this behalf by the Election Commission.

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If an elector is unable through illiteracy, blindness or other physical infirmity to record his vote on a postal ballot paper and sign the declaration, he shall take the ballot paper, together with the declaration and the covers received by him to an officer competent to attest his signature and request the officer to record his vote and sign his declaration on his behalf.

Such officer shall thereupon mark the ballot paper in accordance with the wishes of the elector in his presence, sign the declaration on his behalf and complete the appropriate certificate.

When a postal ballot paper and other papers sent to an elector are for any reason returned undelivered, the returning officer may re-issue them by post under certificate of posting or deliver them or cause them to be delivered to the elector personally on a request being made by him.

If any elector has inadvertently damaged the ballot paper or any of the other papers sent to him in such a manner that they cannot conveniently be used, a second set of the papers shall be issued to him after he has returned the spoiled papers and satisfied the returning officer of the inadvertence.

The returning officer shall cancel the spoiled papers so returned and keep them in a separate packet after noting thereon the particulars of the election and the serial numbers of the cancelled ballot papers.

After an elector has recorded his vote and made his declaration, he shall return the ballot paper and declaration to the returning officer in accordance with the instructions communicated to him so as to reach the returning officer before the hour fixed for the commencement of counting of votes.

If any cover containing a postal ballot paper is received by the returning officer after the expiry of the time fixed, he shall note thereon the date and time of its receipt and shall keep all such covers together in a separate packet.

The returning officer shall keep in safe custody until the commencement of the counting of votes all covers containing postal ballot papers received by him.<sup>51</sup>

### **6.15 Counting of Votes**

At every election where a poll is taken, votes shall be counted by or under the supervision and direction of the returning officer, and each contesting candidate, his election agent and his counting agents shall have a right to be present at the time of counting.

If at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission.

Thereupon, the Election Commission shall, after taking all material circumstances into account, either:

- (a) direct that the counting of votes shall be stopped, declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or
- (b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election, issue such directions to the returning officer as it may deem proper for the resumption and completion of the counting and for the further conduct and completion of the election in relation to which the votes have been counted.

If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of those candidates to be declared elected, the returning officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

When the counting of the votes has been completed, the returning officer shall, unless otherwise specifically directed by the Election Commission to the contrary, forthwith declare the result of the election in the manner provided by the Representation of the People Act 1951 or the rules made thereunder.

As soon as may be after the result of an election has been declared, the returning officer shall report the result to the appropriate authority and the Election Commission, and in the case of an election to a House of Parliament or of the Legislature of a State also to the Secretary of that House. The Election Commission notifies the results of the returned candidates by a notification called "due constitution" notification, issued under section 73 of the Representation of the People Act 1951.

The date on which a candidate is declared by the returning officer to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of the candidate. But the term of a House is counted from the date of the first sitting of the House.<sup>52</sup>

### **6.16 Multiple Elections**

Any person who is chosen a member of both the Houses of the People and the Council of States and who has not taken his seat in either House may, by notice in writing signed by him and delivered to the Secretary to the Election Commission within ten days from the date, or the latter of the dates, on which he is so chosen, intimate in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.

In default of such intimation within the aforesaid period, his seat in the Council of States shall, at the expiration of that period, become vacant.

Any intimation given shall be final and irrevocable.

The date on which a person is chosen to be a member of either House of Parliament shall be in the case of an elected member, the date of his election and in the case of a nominated member, the date of first publication in the Gazette of India of his nomination.

If a person who is already a member of the House of the People and has taken his seat in such House is chosen a member of the Council of States, his seat in the House of the People shall, on the date on which he is so chosen, become vacant.

If a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall, on the date on which he is so chosen, become vacant.

If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed time he resigns all but one of the seats by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to such other authority or officer as may be prescribed, all the seats shall become vacant.<sup>53</sup>

### **6.17 Publication of Election Results and Nominations**

After the elections held in any year, there shall be notified by the appropriate authority in the Official Gazette the names of members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges for the various Union Territories at the said elections together with the names of any persons nominated by the President to the Council of States.

Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by the Election Commission in the Official Gazette as soon as may be after the results of the elections in all the constituencies other than those in which the poll could not be taken for any reason on the date originally fixed or for which the time for completion of the election has been extended have been declared by the returning officer or, as the case may be, the names of members elected for those constituencies and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted: provided that the issue of such notification shall not be deemed –

- (a) to preclude:
  - (i) the taking of the poll and the completion of the election in any parliamentary or assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed; or
  - (ii) the completion of the election in any parliamentary or assembly constituency or constituencies for which time has been extended; or
- (b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said notification.<sup>54</sup>

### **6.18 Election Expenses**

Every candidate at an election shall, either by himself or by his election agent, keep a

separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.

The account shall contain such particulars as may be prescribed.

The total of the said expenditure shall not exceed such amount as may be prescribed.

Every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate or, if there are more than one returned candidate at the election and the dates of their election are different, the latter of those two dates lodge with the district election officer an account of his expenses which shall be a true copy of the account kept by him or by his election agent.

The reference to the district election officer shall, in relation to a constituency in a Union Territory, be construed as a reference to the returning officer for that constituency.<sup>55</sup>

## **— Section 7 —**

### **ELECTION PETITION**

#### **7.01 High Court to Try Election Petitions**

No election shall be called in question except by an election petition presented in accordance with these provisions to the High Court.

The jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose: provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

No High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.<sup>56</sup>

#### **7.02 Presentation of Petitions**

An election petition calling in question any election may be presented on one or more of the grounds specified to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and the dates of their election are different, the latter of those two dates.

Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.<sup>57</sup>

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### 7.03 Parties of the Petition

A petitioner shall join as respondents to his petition:

- (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) any other candidate against whom allegations of any corrupt practice are made in the petition.<sup>58</sup>

### 7.04 Contents of Petition

An election petition:

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date, place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 for the verification of pleadings: provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.<sup>59</sup>

### 7.05 Relief that May be Claimed by the Petitioner

A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.<sup>60</sup>

### 7.06 Trial of Election Petitions

The High Court shall dismiss an election petition which does not comply with the requirements of the Representation of the People Act 1951.

As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions.

Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

Any candidate not already a respondent shall, upon application made by him to the High

Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.<sup>61</sup>

### **7.07 Procedure before the High Court**

Every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure 1908 to the trial of suits: provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

The provisions of the Indian Evidence Act 1872 shall be deemed to apply in all respects to the trial of an election petition.

No document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture: provided that:

- (a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the High Court; and
- (b) an answer given by a witness to a question put by or before the High Court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

When a certificate of indemnity has been granted to any witness, it may be pleaded by him

in any court and shall be a full and complete defence to or upon any charge arising out of the matter to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by any law.

The reasonable expenses incurred by any person in attending to give evidence may be allowed by the High Court to such person and shall, unless the High Court otherwise directs, be deemed to be part of the costs.

When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election: provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the High Court of his intention to do so and has also given the security and the further security required.

Every notice shall be accompanied by the statement and particulars required in the case of an election petition and shall be signed and verified in like manner.<sup>62</sup>

### **7.08 Decision of the High Court**

At the conclusion of the trial of an election petition the High Court shall make an order:

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

At the time of making an order, the High Court shall also make an order:

- (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording:
  - (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
  - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and
- (b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid,

provided that a person who is not a party to the petition shall not be named in the order unless:

- (a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

If the High Court is of the opinion:

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat; or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected:
  - (i) by the improper acceptance of any nomination; or
  - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent; or
  - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or
  - (iv) by any non-compliance with the provisions of the Constitution or of the Representation of the People Act 1951 or the rules or orders thereunder,

the High Court shall declare the election of the returned candidate to be void.

If in the opinion of the High Court a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied:

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;
- (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.

If a person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion:

- (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
- (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have obtained a majority of the valid votes,

the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

If during the trial of an election petition it appears that there is an equality of votes between any candidates at the election and that the addition of a vote would entitle any of those candidates to be declared elected, then:

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- (a) any decision may by the returning officer shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and
  - (b) in so far as that question is not determined by such a decision the High Court shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

The High Court shall, as soon as may be after the conclusion of the trial of an election petition, intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision.

As soon as may be after receipt of any order made by the High Court, the Election Commission shall forward copies of the order to the appropriate authority and, in the case where such order relates to an election to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned and shall cause the order to be published:

- (a) where the order relates to an election to a House of Parliament, in the Gazette of India as well as in the Official Gazette of the State concerned; and
- (b) where the order relates to an election to the House or a House of the Legislature of the State, in the Official Gazette of the State.

Except where otherwise provided, an order of the High Court takes effect as soon as it is pronounced by the High Court.

Where by an order the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has before the date thereof participated as a member of Parliament or as a member of the Legislature of a State shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.<sup>63</sup>

### **7.09 Withdrawal and Abatement of Election Petitions**

An election petition may be withdrawn only by leave of the High Court.

Where an application for withdrawal is made, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.

If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.

No application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed.

If the application is granted:

- (a) the petitioner shall be ordered to pay the costs of the respondents incurred or such portion thereof, as the High Court may think fit;
- (b) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;
- (c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.

When an application for withdrawal is granted by the High Court and no person has been substituted as petitioner in place of the party withdrawing, the High Court shall report the fact to the Election Commission and thereupon the Election Commission shall publish the report in the Official Gazette.

An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

Where an election petition abates, the High Court shall cause the fact to be published in such manner as it may deem fit.

Any person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit.

If before the conclusion of the trial of an election petition, the sole respondent dies or gives notice that he does not intend to oppose the petition or any of the respondents dies or gives such notice and there is no other respondent who is opposing the petition, the High Court shall cause notice of such event to be published in the Official Gazette, and thereupon any person who might have been a petitioner may, within fourteen days of such publication, apply to be substituted in place of such respondent to oppose the petition, and shall be entitled to continue the proceedings upon such terms as the High Court may think fit.<sup>64</sup>

### **7.10 Appeals**

An appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court in respect of the trial of an election petition.

Every appeal shall be preferred within a period of thirty days from the date of the order of the High Court: provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

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An application may be made to the High Court for stay of operation of an order made by the High Court before the expiration of the time allowed for appealing therefrom and the High Court may, on sufficient cause being shown and on such terms and conditions as it may think, stay the operation of the order; but no application for stay shall be made to the High Court after an appeal has been preferred to the Supreme Court.

Where an appeal has been preferred against an order, the Supreme Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from.

When the operation of an order is stayed by the High Court, the order shall be deemed never to have taken effect; and a copy of the stay order shall immediately be sent by the High Court or, as the case may be, the Supreme Court, to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned.

Every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from a final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure 1908 and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the Court) shall, so far as may be apply in relation to such appeal.

As soon as an appeal is decided, the Supreme Court shall intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned and as soon as may be thereafter shall send to the Election Commission an authenticated copy of the decision; and upon its receipt, the Election Commission shall:

- (a) forward copies thereof to the authorities to which copies of the order of the High Court were forwarded; and
- (b) cause the decision to be published in the Gazette or Gazettes in which that order was published.<sup>65</sup>

### **7.11 Costs and Security for Costs**

At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of two thousand rupees as security for costs of the petition.

During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct.

No person shall be entitled to be joined as a respondent unless he has given such security for costs as the High Court may direct.

Costs shall be in the discretion of the High Court: provided that where a petition is

dismissed, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the High Court shall make an order for costs in favour of the returned candidate.

If in any order as to costs there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full, or so far as possible, out of the security deposit and the further security, if any, made by such party on an application made in writing in that behalf within a period of one year, from the date of such order to the High Court by the person in whose favour the costs have been awarded.

If there is any balance left of any of the said security deposits after payment of the costs referred to, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of one year the whole of the said security deposits may, on an application made in that behalf in writing to the High Court by the person by whom the deposits have been made, or if such person dies after making such deposits by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be.

Any order as to costs may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a presidency-town, before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit: provided that where any such costs or any portion thereof may be recovered by an application, no application shall lie within a period of one year from the date of such order unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made owing to the insufficiency of the amount of the security deposits.<sup>66</sup>

## — Section 8 —

### CORRUPT PRACTICES AND ELECTORAL OFFENCES

#### **8.01 Corrupt Practice**

The following shall be deemed to be corrupt practices for the purpose of the Representation of the People Act 1951 –

Bribery, that is to say:

- (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly, of inducing:
  - (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at an election; or

- (b) an elector to vote or refrain from voting at an election, or as a reward to:
- (i) a person having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or
  - (ii) an elector for having voted or refrained from voting.
- (B) The receipt of, or agreement to receive, any gratification, whether as a motive or a reward:
- (a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or
  - (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right, provided that:

- (a) without prejudice to the generality of these provisions any person as is referred to therein who:
  - (i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or
  - (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,
 shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of these provisions;
- (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of these provisions.

The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the grounds of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate constitutes a corrupt practice: provided that no symbol allotted to a candidate shall be deemed to be a religious symbol or a national symbol.

The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or by any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate constitutes a corrupt practice.

The propagation of the practice or the commission of *sati* or its glorification by a candidate

or his agent or by any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate constitutes a corrupt practice.

The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election is deemed to be a corrupt practice.

The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided or a place fixed for the poll: provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power; provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice.

The incurring or authorising of expenditure in contravention of the Act is deemed to be a corrupt practice.

The obtaining or procuring or abetting or attempting to obtain or to procure by a candidate or his agent, or by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of Government and belonging to any of the following classes, namely:

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patals, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of a commission on the amount of land revenue collected by them but who do not discharge any police functions; and
- (g) such other class of persons in the service of the Government as may be prescribed, provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to any candidate or his agent or any agent or any other person acting with the consent of the

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candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

Booth capturing by a candidate or his agent or other person constitutes a corrupt practice.<sup>67</sup>

## **8.02 Electoral Offences**

Any person who in connection with an election promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

No person shall convene, hold or attend any public meeting in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

Any person who contravenes these provisions is punishable with a fine which may extend to two hundred and fifty rupees.

Any person who at a public meeting acts or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both. This provision applies to any public meeting of a political nature held in any constituency between the date of the issue of a notification calling upon the constituency to elect a member or members and the date on which such election is held.

If any police officer reasonably suspects any person of committing an offence under the foregoing provisions, he may, if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name or address, the police officer may arrest him without warrant.

No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

No person shall print or cause to be printed any election pamphlet or poster:

- (a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and
- (b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document –
  - (i) where it is printed in the capital of the State, to the Chief Electoral Officer; and
  - (ii) in any other case, to the district magistrate of the district in which it is printed.

For the purposes of these provisions:

- (a) any process for multiplying copies of a document, other than copying it by hand shall be deemed to be printing and the expression "printer" shall be construed accordingly; and
- (b) "election pamphlet or poster" means any printed pamphlet, handbill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any handbill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

Any person who contravenes any of these provisions is punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election shall maintain, and aid in maintaining, the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

Any person who contravenes this provision shall be punishable with imprisonment for a term which may extend to three months or with a fine or with both.

No person who is a district election officer or a returning officer, or an assistant returning officer, or a presiding or polling officer at an election, or an officer or clerk appointed by the returning officer or the presiding officer to perform any duty in connection with an election shall in the conduct of the management of the election do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

No such person as aforesaid, and no member of a police force, shall endeavour:

- (a) to persuade any person to give his vote at an election; or
- (b) to dissuade any person from giving his vote at an election; or
- (c) to influence the vote of any person at an election in any manner.

Any person who contravenes these provisions commits an offence.

No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred metres of the polling station, namely:

- (a) canvassing for votes; or
- (b) soliciting the vote of any elector; or
- (c) persuading any elector not to vote for any particular candidate; or
- (d) persuading any elector not to vote at the election; or
- (e) exhibiting any notice or sign (other than official notices) relating to the election.

Any person who contravenes these provisions is guilty of an offence.

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No person shall, on the date or dates on which a poll is taken at any polling station:

- (a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighbourhood thereof, any apparatus for amplifying or reproducing the human voice, such as a megaphone or a loudspeaker; or
  - (b) shout, or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof,
- so as to cause annoyance to any person visiting the polling station for the poll, or so as to interfere with the work of the officers and other persons on duty at the polling station.

Any person who contravenes, or wilfully aids or abets the contravention of, these provisions commits an offence. If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence under these provisions, he may direct any police officer to arrest such person, and thereupon the police officer shall arrest him. Any police officer may take such steps, and use such force, as may be reasonably necessary for preventing any contravention of the foregoing provisions, and may seize any apparatus used for such contravention.

Any person who during the hours fixed for the poll at any polling station misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling station by the presiding officer or by any police officer on duty or by any person authorised in this behalf by such presiding officer. These powers must not be exercised so as to prevent any elector who is otherwise entitled to vote at a polling station.

If any person who has been removed from a polling station re-enters the polling station without the permission of the presiding officer, he shall be punishable with imprisonment for a term which may extend to three months, or with a fine, or with both.

If any elector to whom a ballot paper has been issued refuses to observe the procedure prescribed for voting, the ballot paper issued to him shall be liable for cancellation.

If any person on official duty to whom this provision applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

The persons to whom this provision applies are the district election officers, returning officers, assistant returning officers, presiding officers, polling officers, and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this provision be construed accordingly but shall not include duties imposed otherwise than by the Representation of the People Act 1951.

If any person in the service of the Government acts as an election agent or a polling agent or

a counting agent of a candidate at an election, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

Any person who at any election fraudulently takes or attempts to take, a ballot paper out of a polling station or wilfully aids or abets the doing of any such act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

If the presiding officer of a polling station has reason to believe that any person is committing or has committed an offence, such officer may, before such person leaves the polling station, arrest or direct a police officer to arrest such person and may search such person or cause him to be searched by a police officer: provided that when it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

Any ballot paper found upon the person arrested on search shall be made over for safe custody to a police officer by the presiding officer, or when the search is made by a police officer, shall be kept by such officer in safe custody.

Whoever commits an offence of booth capturing is punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than one year and with fine.

A person shall be guilty of an electoral offence if at any election he:

- (a) fraudulently defaces or fraudulently destroys any nomination paper; or
- (b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer; or
- (c) fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper or any declaration of identity or official envelope used in connection with voting by postal ballot; or
- (d) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot paper; or
- (e) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election; or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or wilfully aids or abets the doing of any such act.

Any person guilty of an electoral offence under the foregoing provisions shall:

- (a) if he is a returning officer or an assistant returning officer or a presiding officer at a polling station or any other officer or clerk employed on official duty in connection with the election, be punishable with imprisonment for a term which may extend to two years or with fine or with both;
- (b) if he is any other person, be punishable with imprisonment for a term which may extend to six months or with fine or with both.<sup>68</sup>

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## NOTES

1. Constitution of India, see articles 52 and 54
2. Ibid., see article 55
3. Ibid., see article 56
4. Ibid., see article 57
5. Ibid., see articles 58 and 84
6. Ibid., see articles 63 and 64
7. Ibid., see articles 79-82
8. Ibid., see article 324
9. Ibid., see article 325
10. Ibid., see article 326
11. Ibid., see article 329
12. Ibid., see article 330
13. Ibid., see article 331
14. Representation of the People Act 1951, see section 19A
15. Ibid., see section 20
16. Ibid., see section 20A
- 16A. Representation of the People Act 1950, see sections 13B and 13C
17. Representation of the People Act 1951, see section 21
18. Ibid., see section 22
19. Ibid., see sections 23-24
20. Ibid., see sections 25-28
21. Ibid., see section 28A
22. Representation of the People Act 1950, see section 3
23. Ibid., see section 4
24. Ibid., see section 11
25. Representation of the People Act 1951, see section 29A
- 25A. Notes provided by the Election Commission
- 25B. Ibid.
26. Representation of the People Act 1950, see section 13D
27. Ibid., see section 16
28. Ibid., see sections 17-19
29. Ibid., see section 20
30. Ibid., see section 21
31. Ibid., see section 22
32. Ibid., see section 23
33. Ibid., see sections 24-25
34. Ibid., see section 29
35. Ibid., see section 30
36. Ibid., see section 31
37. Ibid., see section 32
38. Representation of the People Act 1951, see section 12
39. Ibid., see sections 12A, 14 and 14A
40. Ibid., see section 30
41. Ibid., see section 31
42. Ibid., see sections 32-33
43. Ibid., see section 34
44. Ibid., see section 35
45. Ibid., see section 36
46. Ibid., see section 37
47. Ibid., see section 38
48. Ibid., see sections 40-51
49. Ibid., see sections 52-53
50. Ibid., see sections 56-62
51. Conduct of Election Rules 1961, see rules 18-27
52. Representation of the People Act 1951, see sections 64-67A
53. Ibid., see sections 68-70
54. Ibid., see sections 71-73
55. Ibid., see sections 77-78
56. Ibid., see sections 80-80A
57. Ibid., see section 81
58. Ibid., see section 82
59. Ibid., see section 83
60. Ibid., see section 84
61. Ibid., see section 86
62. Ibid., see sections 87-97
63. Ibid., see sections 98-107
64. Ibid., see sections 109-116
65. Ibid., see sections 116A-116C
66. Ibid., see sections 117-122
67. Ibid., see section 123
68. Ibid., see sections 125-136

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## INTRODUCTION

The electoral system of Pakistan is influenced by political and constitutional arrangements which consist of a presidential and prime ministerial parliamentary system.

There are two Houses, the National Assembly and the Senate, which constitute the Parliament. The Senate is elected by the members of each Provincial Assembly on a single transferable preferential vote system and the National Assembly is elected on a first-past-the-post method.

Pakistan has a federal system of government with a central Government and provincial assemblies.

This compilation deals with the election laws governing National Assembly elections only. The relevant constitutional provisions and the other major elements forming the legislative framework for these elections are set out below.

The main election laws dealt with herein are the Representation of the People Act 1976 (RPA), the Delimitation of Constituencies Act 1974, the Electoral Rolls Act 1974 and the Political Parties Act 1962.

### — Section 1 —

#### CONSTITUTIONAL PROVISIONS RELATING TO ELECTIONS

##### 1.01 National Assembly

The National Assembly consists of two hundred and seven Muslim members who are elected by direct and free vote.

A person is entitled to vote if –

- (a) he is a citizen of Pakistan;
- (b) he is not less than twenty-one years of age;
- (c) his name appears on the electoral roll; and
- (d) he is not declared by a competent court to be of unsound mind.

In addition to the number of seats referred to above, there are in the National Assembly ten additional seats reserved as follows:

Christians	4
Hindus and persons belonging to scheduled castes	4
Sikh, Buddhist and Parsi communities and other non-Muslims	1
Persons belonging to the Qadiani group or the Lahori group	1

The seats in the National Assembly are allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital on the basis of population in accordance with the last preceding census officially published.

Until the expiration of a period of ten years from the commencing day or the holding of the third general election to the National Assembly, whichever occurs later, twenty seats, in addition to the two hundred and seven Muslim seats, are reserved for women and allocated to the Provinces in accordance with the Constitution and Law.

The members to fill seats reserved for women which are allocated to a Province must be elected in accordance with law on the basis of proportional representation by means of a single transferable vote by the electoral college consisting of the persons elected to the Assembly from that Province.<sup>1</sup>

### **1.02 The Senate**

The Senate consists of eighty-seven members, of whom –

- (a) fourteen are elected by the members of each Provincial Assembly;
- (b) eight are elected by the members from the Federally Administered Tribal Areas in the National Assembly;
- (c) three are elected from the Federal Capital in such manner as the President may, by Order, prescribe; and
- (d) five are elected by the members of each Provincial Assembly to represent *ulema*, technocrats and other professionals.

Elections to fill seats in the Senate allocated to each Province are held in accordance with the system of proportional representation by means of the single transferable vote.<sup>2</sup>

### **1.03 Qualification for Membership of Majlis-e-Shoora (Parliament)**

A person is not qualified to be elected or chosen as a member of Parliament unless –

- (a) he is a citizen of Pakistan;
- (b) he is, in the case of National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll for election to a Muslim seat or a non-Muslim seat, as the case may be, in that Assembly;
- (c) he is, in the case of Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership;
- (d) he is of good character and is not commonly known as one who violates Islamic Injunctions;

- 
- (e) he has adequate knowledge of Islamic teachings and practises obligatory duties prescribed by Islam as well as abstains from major sins;
  - (f) he is sagacious, righteous and non-profligate and honest and *ameen*;
  - (g) he has not been convicted for a crime involving moral turpitude or for giving false evidence;
  - (h) he has not, after the establishment of Pakistan, worked against the integrity of the country or opposed the Ideology of Pakistan;
- provided that the disqualifications specified in sub-paragraphs (d) and (e) do not apply to a person who is a non-Muslim, but such a person must have good moral reputation; and
- (i) he possess such other qualifications as may be prescribed by Act of Parliament.<sup>3</sup>

#### **1.04 Chief Election Commissioner**

The Constitution establishes the office of Chief Election Commissioner who is appointed by the President in his discretion.<sup>4</sup> There is also established by the Constitution, an Election Commission.<sup>5</sup> (These entities are discussed below in Section 2, Election Administration.)

#### **1.05 Election Dispute**

No election to a House Assembly can be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Parliament.<sup>6</sup>

All elections under the Constitution must be by secret ballot.<sup>7</sup>

## **— Section 2 —**

### **ELECTION ADMINISTRATION**

#### **2.01 Election Commission**

The Election Commission consists of –

- (a) the Commissioner who is Chairman of the Commission; and
- (b) two members, each of whom must be a Judge of a High Court, appointed by the President after consultation with the Chief Justice of the High Court concerned and with the Commissioner.

The Election Commission has the duty to make such arrangements as are necessary to ensure that every election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.

The Commission regulates its own procedure. If, upon any matter requiring a decision of the Commission, there is difference of opinion among its members, the opinion of the majority must prevail and the decision of the Commission must be expressed in terms of the opinion of the majority.

The Commission may exercise its powers and perform its functions notwithstanding that there is a vacancy in the office of anyone of its members or that anyone of its members is, for any reason, unable to attend its proceedings and the decision of the other two members has the effect of the decision of the Commission.

The Commission may authorise its chairman or any of its members or any of the officers of the Commission to exercise and perform all or any of its powers and functions under the Representation of the People Act, 1976.

The Commission may require all executive authorities in the Federation and in the Provinces to render such assistance to the Commission as the Commission may need in the discharge of their functions.

The Commissioner or the Commission may require any person or authority to perform such functions or render such assistance as he or it may direct in pursuance of the Act.

The Provincial Government or an officer authorised by it in this behalf may, upon a request made in this behalf by the Commission, by order in writing, requisition any such vehicle, vessel or animal as is needed or is likely to be needed for the purpose of transporting to and from any polling station ballot boxes or other election material or any officer or other person engaged for the performance of any duties in connection with election: provided that no vehicle, vessel or animal which is being used by a candidate or his election agent for any purpose connected with the election of such candidate shall be so requisitioned.

Any person authorised in this behalf by the Provincial Government may take possession of any vehicle, vessel or animal requisitioned and may for that purpose use such force, including police force, as may be reasonably necessary.

Where any vehicle, vessel or animal is requisitioned under the foregoing provisions, there must be paid to the owner thereof compensation the amount of which must be determined by the Provincial Government or the officer requisitioning the vehicle, vessel or animal on the basis of the fares and rates prevailing in the locality for its hire: provided that, where the owner of the vehicle, vessel or animal being aggrieved by the amount of compensation so determined makes an application to the Provincial Government within a period of thirty days from the date the amount has been determined for the matter being referred to an arbitrator, the amount of compensation to be paid must be such as the arbitrator appointed in this behalf by the Provincial Government may determine.<sup>8</sup>

## **2.02 Election Commissioner**

The office of Election Commissioner, establishment by the Constitution, must be filled by a person who is, or has been, a Judge of the Supreme Court or is, or has been, a Judge of a High Court and is qualified to be appointed a Judge of the Supreme Court.

Before entering upon office, the Commissioner must make before the Chief Justice of Pakistan oath in the prescribed form.

The Commissioner holds office for a term of three years from the day he enters upon his office: provided that the National Assembly may by resolution extend the term of the Commissioner by a period not exceeding one year.

The Commissioner cannot be removed from office except in the prescribed form for the removal from office of a Judge.

The Commissioner may, by writing addressed to the President, resign his office.

The Commissioner must not –

- (a) hold any other office of profit in the service of Pakistan; or
- (b) occupy any other position carrying the right to remuneration for the rendering of services.

Any person who has held office as Commissioner must not hold any office of profit in the service of Pakistan before the expiration of two years after he has ceased to hold that office: provided that –

- (a) this clause must not be construed as preventing a person who was a Judge of the Supreme Court or of a High Court immediately before his appointment as Commissioner from resuming his duties as such Judge on the expiration of his term as Commissioner; and
- (b) a person who has held office as Commissioner, with the concurrence of both Houses, be reappointed to that office before the expiration of two years after he has ceased to hold that office.

At any time when –

- (a) the office of Commissioner is vacant; or
  - (b) the Commissioner is absent or is unable to perform the functions of his office due to any other cause,
- a Judge of the Supreme Court nominated by the Chief Justice of Pakistan must act as Commissioner.

The Commissioner is charged with the duty of –

- (a) preparing electoral rolls for election to the National Assembly and Provincial Assemblies, and revising such rolls annually;
- (b) organising and conducting election to the Senate or to fill casual vacancies in a House or a Provincial Assembly; and
- (c) appointing Election Tribunals.<sup>9</sup>

### **2.03 Appointment of Election Officers**

The Commission is required to appoint from amongst the officers of the Federal Government, Provincial Governments, corporations controlled by any such Government and

local authorities, a district returning officer for each district and a returning officer for each constituency. A person may be appointed as returning officer for two or more constituencies.

The Commission may appoint, from amongst the officers of the Federal Government, Provincial Governments, corporations controlled by any such Government and local authorities, as many assistant returning officers as may be necessary.

An assistant returning officer must assist the returning officer in the performance of his functions and may exercise and perform, under the control of the returning officer, the powers and functions of the returning officer.

Subject to the superintendence, direction and control of the Commission, the district returning officer must co-ordinate and supervise all work in the district in connection with the conduct of elections and must also perform such other duties and functions as may be entrusted to him by the Commission.

The Commission or the Commissioner may, at any time, for reasons stated in writing, suspend any officer performing any duty in connection with an election, or any other public functionary, or any member of the police force or any other law enforcing agency who obstructs or prevents or attempts to obstruct or prevent the conduct of fair and impartial poll or interferes or attempts to interfere with an elector when he records his vote, or influences in any manner the polling staff or an elector or does any other act calculated to influence the result of election, and make such arrangements as it or he may consider necessary for the performance of the functions of the officer so suspended.

Where the Commission or the Commissioner suspends any officer, the Commission or the Commissioner must refer the matter to the appropriate authority for taking disciplinary action against such officer.

A returning officer must appoint for each polling station a presiding officer and such number of assistant presiding officers and polling officers to assist the presiding officer as the returning officer may consider necessary: provided that a person who is, or has at any time been, in the employment of any candidate must not be appointed as a presiding officer, assistant presiding officer or polling officer.

A list of such presiding officers and polling officers must be submitted to the district returning officer at least fifteen days before the polling day for its approval and no change in the personnel must be made except with the approval of the Commission.

A presiding officer is required to conduct the poll in accordance with the provisions of the RPA, and is responsible for maintaining order at the polling station and must report to the returning officer any fact or incident which may, in his opinion, affect the fairness of the poll. The presiding officer may entrust such of his functions as may be specified by him to any assistant presiding officer who must perform the functions so entrusted.

The returning officer may, at any time during the poll, for reasons to be recorded in writing,

suspend any presiding officer, assistant presiding officer or polling officer and make such arrangements as he may consider necessary for the performance of the functions of the officer so suspended.<sup>10</sup>

### — Section 3 —

## DELIMITATION OF CONSTITUENCIES

### 3.01 Commission to Delimit

The Election Commission is required to delimit territorial constituencies for elections to the National Assembly.<sup>11</sup>

### 3.02 Allocation of Seats in the National Assembly

On the basis of population, the seats in the National Assembly for each Province, the Federally Administered Tribal Areas and the Federal Capital are allocated as follows:

	Muslim Seats	Seats Reserved for Women
The North-West Frontier Province	26	2
Federally Administered Tribal Areas	8	–
Federal Capital	1	–
The Punjab	115	12
Sind	46	4
Baluchistan	11	2
<b>Total</b>	<b>207</b>	<b>20</b>

The total reserved for women must not be effective after the holding of the third general election to the National Assembly under the Constitution.<sup>12</sup>

### 3.03 Delimitation of Constituencies

For the purpose of election to the National Assembly, the Commission must divide –

- (a) each Province into as many separate territorial constituencies as the number of Muslim seats allocated to that Province; and
- (b) the Federally Administered Tribal Areas and the Federal Capital into as many territorial constituencies as the number of Muslim seats respectively allocated to the said Areas and the Federal Capital and the delimitation of the said Areas must be as set out in the Schedule.

All constituencies for Muslim seats must as far as practicable, be delimited having regard to the distribution of population, including non-Muslims, in geographically compact areas, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies.<sup>13</sup>

### **3.04 Reports of Commission and List of Constituencies**

For the purpose of delimiting constituencies, the Commission may receive and consider representations, hold inquiries, summon witnesses and record evidence, and must prepare and publish in the official Gazette a preliminary report and list of constituencies specifying the areas proposed to be included in each constituency.

Any person entitled to vote at an election to the National Assembly may, within fifteen days of the publication of the report, make a representation to the Commission in respect of the delimitation of constituencies.

The Commission must, after hearing and considering the representations, if any, received by it, make such amendments, alterations or modifications, in the preliminary list published as it thinks fit or necessary, and must publish in the official Gazette the final report and list of constituencies showing the areas included in each constituency.

The Commission may, at any time, of its own motion, make such amendments, alterations or modifications in the final list of constituencies or in the areas included in a constituency, as it thinks necessary.<sup>14</sup>

### **3.05 Bar of Jurisdiction**

The validity of the delimitation of any constituency, or of any proceedings taken or anything done by or under the authority of the Commission, under the Delimitation of Constituencies Act cannot be called in question in any court.<sup>15</sup>

## **— Section 4 —**

### **POLITICAL PARTIES**

#### **4.01 Formation of a Political Party**

A political party is deemed to have been formed –

- (a) on the day of its manifesto, that is to say, its foundation document or constitution, is adopted by its general body; or
- (b) in the case of a political party which, before the day referred to above, started to indulge itself in such political activities as holding of public meetings and press conferences or taking out of processions, on such day as the Election Commission may determine having regard to the circumstances of the case.

No political party can be formed with the object of propagating any opinion, or acting in any manner, prejudicial to the Islamic Ideology, or the sovereignty or integrity of Pakistan, or morality, or the maintenance of public order.<sup>16</sup>

#### **4.02 Political Parties to Submit Accounts, etc**

Every political party must, in such manner and form and at such times as may be provided by the rules made by the Federal Government, account for the source of its funds to, and submit its finances and accounts to audit by, an officer or authority authorised by the Election Commission in this behalf.

Every political party must maintain in the form prescribed proper accounts of all its income and expenditure, assets and liabilities and must, within seventy-five days of the close of each financial year (July-June), submit a statement of its finances and accounts to be audited by an officer or authority authorised by the Election Commission: provided that every political party submits a statement of its finances and accounts at the national level to be audited within thirty days of its being formed.

A political party must furnish to the officer or authority authorised by the Election Commission such documents of finances and accounts submitted to it or him by the political party, as such officer or authority may require for the purposes of audit.

The officer or authority authorised by the Election Commission to audit the accounts of a political party must submit his audit report to the Commission within forty-five days of presentation by the political party of a statement of its finances and accounts to him.<sup>17</sup>

#### **4.03 Lawful Political Activities**

It is lawful –

- (a) for any body of individuals or association of persons to form, organise or set up a political party; or
- (b) for any person, not being in the service of Pakistan –
  - (i) to be a member or office bearer of, or be otherwise associated with, a political party; or
  - (ii) for the purposes of an election to be held under the Constitution, to hold himself out or any other person not being a person in the service of Pakistan, as member or to have the support of a political party, the formation, organisation or setting up of which is not prohibited by the Act.

If the Federal Government is of the opinion that a political party is a foreign aided party or has been formed or is operating in a manner prejudicial to the Islamic Ideology or the sovereignty or integrity of Pakistan, or morality or the maintenance of public order, it must make a declaration to that effect and publish the same in the official Gazette and, within fifteen days of such publication, refer the matter to the Supreme Court.

If, upon a reference made to it in respect of a political party, the Supreme Court is satisfied

that the party is a foreign-aided party, or has been formed or is operating in a manner referred to above, the Supreme Court must decide accordingly.

On the date of the decision of the Supreme Court in respect of a political party, the party stands dissolved and all its properties and funds stand forfeited to the Federal Government.

Where a reference has been made to the Supreme Court in respect of a political party, the Supreme Court may make such interim order prohibiting the party and its member from indulging or taking part in any political activity, or freezing the funds of the party, as the Court may deem fit.<sup>18</sup>

#### **4.04 Disqualification on Ground of Defection**

If a member of a House –

- (a) having been elected as such as a candidate or nominee of a political party, or
- (b) having been elected as such otherwise than as a candidate or nominee of a political party and having become a member of a political party after such election,

defects or withdraws himself from the political party he shall, from the date of such defection or withdrawal, be disqualified from being a member of the House for the unexpired period of his term as such member, unless he has been re-elected at a by-election held after his disqualification.

If any question arises whether a member of a House has become disqualified from being a member, the question must, on a reference by the Leader of the Parliamentary party concerned, be determined by the Election Commission.

An appeal against a decision of the Election Commission lies to the Supreme Court, within thirty days of the decision.<sup>19</sup>

#### **4.05 Penalties**

An office-bearer of a political party which contravenes the provisions requiring the submission of accounts by a political party is guilty of an offence, punishable with simple imprisonment for a term up to six months or with a fine not exceeding ten thousand rupees, or both.<sup>20</sup>

### **— Section 5 —**

## **THE ELECTORAL ROLLS**

### **5.01 Registration Officers**

The Commissioner is required to appoint a registration officer for an electoral area or group of electoral areas for the purpose of preparation, revision, correction and amendment of the

electoral rolls and may, for that purpose, appoint as many assistant registration officers as may be necessary.

An assistant registration officer may, under the control of the registration officer, perform the functions of a registration officer, and a registration officer may require any person to assist him in the performance of his functions.

The registration officer must appoint such number of enumerators and supervisors as may be necessary to assist.<sup>21</sup>

### **5.02 Preparation of Preliminary Electoral Rolls**

Subject to the superintendence, direction and control of the Commissioner, the registration officer is required to revise the existing electoral rolls by –

- (a) including therein the name of every person entitled to be enrolled as a voter in an electoral area;
- (b) deleting therefrom the names of such voters as have died since the preparation of the existing electoral rolls; and
- (c) deleting therefrom the names of every person who is not entitled to be enrolled as a voter in any electoral area.

A person is entitled to be enrolled as a voter in an electoral area if he –

- (a) is a citizen of Pakistan;
- (b) is not less than twenty one years of age on the first day of January in the year in which the preparation or revision of the electoral rolls commences;
- (c) is not declared by a competent court to be of unsound mind; and
- (d) is, or is deemed to be resident in the electoral area.<sup>22</sup>

### **5.03 Meaning of Resident**

A person is deemed to be resident in an electoral area if he ordinarily resides, or owns or is in possession of a dwelling house or other immovable property, in that area.

Where a person owns or possesses dwelling houses or other immovable property in more than one electoral area, he may, at his option, be enrolled in any one such area.

A person who is in the service of Pakistan or holds any public office is deemed to be resident in the electoral area where he is posted, unless he applies in writing to the registration officer for enrolment in the electoral area in which he would have been enrolled if he had not been in such service or had not held such office. The wife of any such person and such of his children as are entitled to be enrolled are, if they ordinarily reside with such person, deemed to be residents in the electoral area in which such person is deemed to be resident.

A person who is detained in prison or held in other custody at any place in Pakistan is

deemed to be resident in the electoral area in which he would have been resident if he had not been so detained or held in such custody.<sup>23</sup>

#### **5.04 Information to be Supplied by Occupants of Dwelling Houses, etc**

The registration officer may, for the purpose of preparing or revising the existing electoral rolls, cause to be obtained a statement in the prescribed form from persons ordinarily residing or owning or possessing a dwelling house or other immovable property, in an electoral area.

Every statement must contain a certificate from the enumerator to the effect that the statement was obtained after a personal visit to the house and also a certificate by the supervisor to the effect that the entries therein were verified or corrected in each statement after a house-to-house visit.

The draft electoral roll or the list of additions to, deletions from and corrections of, the electoral roll for the time being in force for the purposes of annual revision, must not be published until the entries in the draft roll or the roll under revision have been verified for the extent of at least ten per cent by a house-to-house visit by a person other than the persons obtaining and verifying the statement.<sup>24</sup>

#### **5.05 Preliminary Publication**

The preliminary electoral rolls together with a notice inviting claims and objections and applications for corrections, if any, with respect thereto, must be published and displayed in such manner and form as may be prescribed.<sup>25</sup>

#### **5.06 Revising Authorities, Claims and Objections**

The Commissioner is required to appoint a Revising Authority for any electoral area or group of electoral areas, for the purpose of receiving and deciding claims, objections and applications for corrections relating thereto.

Every claim for inclusion of a name in the electoral roll, and every objection to, or application for correction of, any entry therein must be made to the Revising Authority on the prescribed form within a period of twenty-one days next following the date of the publication of the preliminary electoral rolls.

A claim or objection must be addressed to the Revising Authority of the electoral area concerned and must either be presented to that Authority or to the registration officer of the electoral area or to such other officer as may be designated in that behalf by the Commissioner or be sent by post to the Revising Authority.

A claim must be signed by the person making it and must, unless sent by post, be presented by the claimant himself or by any agent authorised by him in writing in this behalf.

No person can prefer an objection to the inclusion of any name in the electoral roll unless his name is entered in that electoral roll.

A person claiming to be enrolled in the electoral roll of an electoral area or objecting to the inclusion of any name in the electoral roll may furnish such proof in the relevant prescribed form, as he may like to adduce in support of his claim or objection.

Where an objection is made to the inclusion in the electoral roll of any person whose name appears therein, such objection must contain in respect of such person all the particulars required to fill in the roll.

A person may apply for transfer of his name from the electoral roll of one electoral area to the electoral roll of another by filing –

- (a) an objection to the inclusion of his name in the roll in which it has been included, and
  - (b) a claim for the inclusion of his name in the other,
- with the appropriate Revising Authority or Revising Authorities, if it is preferred before the final publication of the electoral roll or with the appropriate registration officer or registration officers, if it is preferred after such final publication.

The claim or objection or application for correction not made within the period specified or in the prescribed manner must be rejected.

A registration officer may apply to the Revising Authority –

- (a) for the inclusion in the electoral roll of the name of any person left out due to inadvertence or the absence of timely information while preparing the preliminary electoral rolls; or
- (b) for the exclusion of any name from the electoral roll or any correction of clerical, printing or other error which he is himself authorised to make.

Except where a claim or objection or an application for correction is rejected or is decided without further inquiry as being valid *prima facie*, the Revising Authority must, give its decision after holding a summary inquiry into each claim, objection or application, after giving notice to the parties concerned.

Every decision of the Revising Authority is final and must be communicated to the appropriate registration officer.<sup>26</sup>

### **5.07 Correction of Electoral Rolls**

The registration officer –

- (a) must correct the electoral roll in accordance with the decisions of the Revising Authority, and
- (b) may further correct any clerical, printing or other error subsequently discovered

in the roll, but not so as to include therein, or exclude therefrom, the name of any elector.<sup>27</sup>

### **5.08 Final Publication**

After making additions, deletions, modifications or corrections, if any, the registration officer is required to publish in the prescribed manner and form the final electoral roll for each electoral area.<sup>28</sup>

### **5.09 Annual Revision of Electoral Roll**

An electoral roll must be revised and corrected annually in the prescribed manner and form –

- (a) so as to include the name of any qualified person whose name does not appear on such roll, or
- (b) so as to delete the name of any person who has died or who is or has become disqualified for enrolment, or
- (c) for correcting any entry or for supplying any omission in such roll.

If, however, for any reason, the electoral roll for any electoral area is not revised, the validity or continued operation of the electoral roll is not affected thereby.<sup>29</sup>

### **5.10 Enrolment and Correction at a Time Other than the Annual Revision**

Any person whose name is not included in an electoral roll for the time being in force and who claims that he was or is entitled to be enrolled on that roll may apply to the appropriate registration officer for inclusion of his name therein, and if the registration officer is satisfied after giving such notice and making such inquiry as he may consider necessary that the applicant was or is entitled to have his name enrolled, he must for the purpose of correcting the roll insert the name of such person in that roll.

Any person may apply to the registration officer for the correction of any entry in an electoral roll for the time being in force; and –

- (a) if the entry relates to the applicant and the registration officer is satisfied after giving such notice and making such inquiry as he may consider necessary that the entry relates to the application and is erroneous or defective in any particular, he must correct the roll accordingly; and
- (b) if the entry does not relate to the applicant and the registration officer is satisfied after making such inquiry as he may consider necessary that the entry is erroneous or defective or should be deleted, he must correct the roll accordingly.<sup>30</sup>

### **5.11 Preparation of Rolls Afresh**

If the Commissioner, on account of any gross error or irregularity in or in the preparation of an electoral roll for any electoral area or a part thereof, considers it necessary so to do, he

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may by order direct that the roll for such area or part stands cancelled and that a fresh electoral roll for that area or part be prepared.<sup>31</sup>

### **5.12 Cut-off Date for Corrections**

No revision or correction of any electoral roll for an electoral area can be made at any time after the constituency of which such electoral area forms part has been called upon to elect its representative and before such representative has been elected.<sup>32</sup>

### **5.13 Maintenance of Electoral Rolls**

An electoral roll as revised and corrected must be maintained in the prescribed manner and kept open to public inspection; and copies of such roll must be supplied to any person applying therefor, on payment of such fee as may be prescribed.<sup>33</sup>

### **5.14 Access to Register of Births and Deaths, etc**

The person in charge of any register of births and deaths and any authority to whom an application for registration is to be made under the National Registration Act must at the request of a registration officer furnish him with such information, including extracts from such register or, as the case may be, application, as may be necessary.<sup>34</sup>

### **5.15 Multiple Registration Prohibited**

No person must be enrolled –

- (a) on the electoral roll for any electoral area more than once, or
- (b) on the electoral rolls for more than one electoral area.<sup>35</sup>

### **5.16 Validity of Electoral Rolls Not Affected by any Mistake**

An electoral roll is not invalid by reason of any misdescription of a person enrolled thereon or of omission of the name of any person entitled to be so enrolled or of inclusion of the name of any person not so entitled.<sup>36</sup>

### **5.17 Commissioner's Power to Include a Name in an Electoral Roll**

The Commissioner may, subject to cut-off time provisions, at any time order –

- (a) the inclusion in an electoral roll of the name of any person entitled to be enrolled on such electoral roll, and such name must, from the date of the order, form part of the electoral roll;
- (b) the exclusion from an electoral roll of the name of any person who has died or has become disqualified to be a voter, and such name must, from the date of such order, stand excluded from the roll; and
- (c) the removal of the name of any person from an electoral roll where such removal becomes necessary due to the repetition of the name in the same electoral roll or in the electoral rolls of more than one electoral area.<sup>37</sup>

### **5.18 Bar of Jurisdiction**

No court shall question the validity of the electoral rolls prepared or revised under this Act or the legality or propriety of any proceedings or action taken thereunder by or under the authority of the Commissioner or a registration officer.<sup>38</sup>

## **— Section 6 —**

### **CONDUCT OF ELECTIONS**

#### **6.01 Notification of Election**

As soon as the President makes an announcement of the date on which the polls will be taken, the Election Commission must, by notification in the official Gazette, call upon a constituency to elect a representative and appoint –

- (a) the last date for making nominations, which must be the sixth day after the date of publication of the notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (b) the dates for the scrutiny of nominations, which shall be the two days immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (c) the last date for filing of appeals against acceptance or rejection of nominations, which must be the fourth day following the last date for the scrutiny of nominations or, if that day is a public holiday the next succeeding day which is not a public holiday;
- (d) the last date for decision of appeals, which must be the sixth day following the last date for filing of appeals or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (e) the last date for the withdrawal of candidature, which must be the day following the last date for decision of appeals or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (f) the last date for publication of the revised list of candidates, which must be the second day following the last date for decision of appeals; and
- (g) the date or dates on which a poll, if necessary will be taken, which or the first of which must be a date not earlier the twenty-second day after the publication of the revised list of candidates.

A returning officer must, as soon as may be after the publication of a notification of the election date, give public notice of the dates specified by the Commission in respect of the constituency or constituencies of which he is returning officer; and the public notice must be published at some prominent place or places within the constituency to which it relates.<sup>39</sup>

#### **6.02 Nomination for Election**

A returning officer must, by the public notice referred to in the foregoing provisions, invite

nominations specifying the time by which and the place at which nomination papers will be received by him.

Any elector of a constituency may propose or second the name of any duly qualified person to be a member for that constituency.

Every nomination must be made by a separate nomination paper in the prescribed form which has to be signed by both the proposer and the seconder and must contain, duly signed by the candidate –

- (a) a declaration that he has consented to that nomination and that he is not subject to any disqualification for being elected as a member;
- (b) a declaration about his party affiliation, if any;
- (c) a declaration that an amount of loan, as may be prescribed, obtained from any bank, financial institution, co-operative society or corporate body in his own name or in the name of his spouse or dependant or any business concern mainly owned by the aforesaid, does not remain unpaid for more than one year from the due date; and
- (d) a declaration that no loan, the amount of which may be prescribed, obtained by him, his spouse or dependant or a business concern mainly owned by him or anyone of the aforesaid from any bank, financial institution, co-operative society or corporate body was written off or such amount which was written off has since been paid. This declaration must be made in respect of a loan written off after the twenty-third day of March 1985.

Where a candidate desires to make payment of any loan specified in (c) and (d) above and gives an undertaking to the returning officer for payment of such loan before the 13th day of September 1993, the returning officer must allow such candidate to file nomination paper without the declarations specified in the foregoing provisions.

Where a candidate pays back the loan in respect of which he has given an undertaking, the earlier non-payment or writing off of the loan is not deemed to be corrupt practice.

Where a candidate does not make payment of loan in respect of which he has given an undertaking within the period specified, in addition to any penalty which may be levied upon him under any law for the time being in force, his name must not be published in the list of contesting candidates required to be published by the returning officer and his name must not appear in the ballot paper.

Every nomination paper must be delivered to the returning officer by the candidate or by his proposer or seconder or, if so authorised in writing by the candidate, by his nominee, and the returning officer must acknowledge receipt of the nomination paper specifying the date and time of receipt.

A person may be nominated in the same constituency by not more than five nomination papers.

The returning officer must assign a serial number to every nomination paper and endorse

thereon the name of the person presenting it, and the date and time of its receipt, and inform such person of the time and place at which he will hold scrutiny.

The returning officer must cause to be fixed at a conspicuous place in his office a notice of every nomination paper received by him containing the particulars of the candidate as shown in the nomination paper.

No nomination paper must be accepted unless –

- (a) a sum of rupees (four thousand) for election to a seat in the National Assembly is deposited in cash by the candidate or by any person on his behalf at the time of its delivery; or
- (b) it is accompanied by a bank draft for a sum as aforesaid drawn in favour of the returning officer or a receipt showing that a sum as aforesaid has been deposited by the candidate or by any person on his behalf at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury.

The candidates, their election agents, the proposers and seconders and one other person authorised in this behalf by each candidate may attend the scrutiny of nomination papers, and the returning officer must give them reasonable opportunity for examining all nomination papers delivered to him.

The returning officer must, in the presence of the persons attending the scrutiny, examine the nomination papers and decide any objection raised by any such person to any nomination.

The returning officer may, either of his own motion, or upon any objection by any other person, conduct such summary enquiry as he may think fit and may reject a nomination paper if he is satisfied that –

- (a) the candidate is not qualified to be elected as a member;
  - (b) the proposer or the seconder is not qualified to subscribe to the nomination paper;
  - (c) the procedure has not been followed;
  - (d) the signature of the proposer or the seconder is not genuine,
- provided that –
- (i) the rejection of a nomination paper does not invalidate the nomination of a candidate by any other valid nomination paper;
  - (ii) the returning officer must not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll; and
  - (iii) the returning officer must not enquire into the correctness or validity of any entry in the electoral roll.

The returning officer must endorse on each nomination paper his decision accepting or rejecting it and shall, in the case of rejection, record brief reasons therefor.

A candidate may prefer an appeal against the decision of the returning officer rejecting or, as the case may be, accepting the nomination paper of the candidate to the Tribunal constituted for the constituency to which the nomination relates and consisting of not less than two nor more than three Judges of the High Court nominated by the Commissioner, with the approval of the President; and such appeal must be summarily decided within such time as may be notified by the Commission and any order passed thereon is final.

An announcement of the day and time appointed for the hearing of an appeal over the radio or television or by publication in the Press is deemed to be sufficient notice of the day and time so appointed.

The returning officer must, after the scrutiny of nomination papers, prepare and publish in the prescribed form a list of validly nominated candidates.

In case an appeal against the decision of the returning officer is accepted by the Tribunal, the returning officer must revise the list of validly nominated candidates accordingly.

The returning officer must, on the second day following the last date for decision of appeal prepare and publish in the prescribed manner the revised list of validly nominated candidates.

Any validly nominated candidate may, by notice in writing signed by him and delivered to the returning officer on or before the withdrawal date either by the candidate himself or through an advocate duly authorised in writing by him, withdraw his candidature. A notice of withdrawal is not open to recall or cancellation.

On receiving a notice of withdrawal, the returning officer must, if he is satisfied that the signature on the notice is that of the candidate, cause a copy of the notice to be affixed at a conspicuous place in his office.

The returning officer must, on the withdrawal day, prepare and publish in the prescribed manner a list of contesting candidates which shall, if there are more than one contesting candidates, indicate their respective symbols and supply a copy of the list to each of them.

A contesting candidate may retire from the contest by a notice in writing signed by him and delivered to the returning officer on any day not later than four days before the polling day either by such candidate in person or by an agent authorised in this behalf in writing by such candidate. No person who has given a notice of retirement can cancel the notice.

The returning officer must, upon receiving a notice of retirement, cause a copy thereof to be affixed at some conspicuous place in his office and also to be published in such manner as he may think fit. A person in respect of whom a notice of retirement has been published is deemed to have withdrawn his candidature.

If a contesting candidate dies before the day for taking of the poll, the returning officer must, by notice, terminate the proceedings relating to the election.

Where the proceedings relating to an election have been terminated, fresh proceedings must be commenced in accordance with the provisions of the Act, as if for a new election: provided that it is not necessary for other contesting candidates to file fresh nomination papers or make a further deposit.

Where, after scrutiny, there remains only one validly nominated candidate or where after withdrawal or retirement, there remains only one contesting candidate, the returning officer must, by public notice, declare such candidate to be elected to the seat: provided that, if after scrutiny any candidate indicates that he intends to file an appeal against the rejection of his nomination paper, no person must be declared elected until the period appointed for filing such appeal has expired and no such appeal has been filed or, where an appeal is filed, until the disposal of such appeal.

The returning officer is required to submit to the Commission a return of the election in respect of which he has made a declaration.

The Commission must, after such inquiry as it may deem necessary in any case, publish in the official Gazette the name of the candidate declared elected.<sup>40</sup>

### **6.03 Contested Election and Allocation of Symbols**

If there are more contesting candidates than one in respect of any constituency, the returning officer must –

- (a) allocate, subject to any direction of the Commission, one of the prescribed symbols to each contesting candidate; and in so doing shall, so far as possible, have regard for any preference indicated by the candidate at the time of filing his nomination papers;
- (b) publish in such manner as the Commission may direct the names of the contesting candidates arranged in the Urdu alphabetical order specifying against each the symbol allocated to him; and
- (c) give public notice of the poll,

provided that the Commission may, on an application made to it in this behalf, allot one of the prescribed symbols to any political party or a combination of two or more political parties who have agreed to put up joint candidates for election. The returning officer must arrange to exhibit prominently at each polling station the name of and symbol of each contesting candidate.<sup>41</sup>

### **6.04 Election Agent**

A candidate may appoint a person qualified to be elected as a member to be his election agent.

The appointment of an election agent may, at any time be revoked in writing by the candidate and, when it is so revoked or the election agent dies, another person may be appointed by the candidate to be his election agent.

When an election agent is appointed, the candidate is required to send to the returning

officer a notice in writing of the appointment containing the name, father's name and address of the election agent.

Where no appointment of an election agent is made, a candidate is deemed to be his own election agent and must, so far as the circumstances permit, be subject to the Act, both as a candidate and as an election agent.<sup>42</sup>

### **6.05 Polling Agent**

The contesting candidate or his election agent may, before the commencement of the poll, appoint for each polling station as many polling agents as may be prescribed and must give notice thereof in writing to the presiding officer.

The appointment of a polling agent may at any time be revoked by the candidate or his election agent and, when it is so revoked or the polling agent dies, another person may be appointed by the candidate or the election agent to be a polling agent, and a notice of such appointment must be given to the presiding officer.<sup>43</sup>

### **6.06 The Poll – Duration and Time**

Polls for a general election for an Assembly must be held on the same day, but if the Commission is satisfied that polls cannot take place in a constituency on account of a natural calamity or for any other reason beyond its control, the Commission may fix another day for holding the poll in that constituency.

The Commission must fix the hours, which must not be less than eight, during which the poll must be held and the returning officer must give public notice of the hours so fixed and hold the poll accordingly.

The presiding officer of a polling station may stop the poll and inform the returning officer that he has done so if –

- (a) the poll at the polling station is, at any time, so interrupted or obstructed for reasons beyond the control of the presiding officer that it cannot be resumed during the polling hours fixed; and
- (b) any ballot box used at the polling station is unlawfully taken out of the custody of the presiding officer, or is accidentally or intentionally destroyed, or is lost or is damaged or tampered with to such an extent that the result of the polling station cannot be ascertained.

Where a poll has been stopped, the returning officer must immediately report the circumstances to the Commission and the Commission must direct a fresh poll at that polling station, unless it is satisfied that the result of the election has been determined by the polling that has already taken place at that polling station, taken with the result of the polling at other polling stations, in the same constituency.

Where the Commission orders a fresh poll, it shall, by notification in the official Gazette –

- (a) appoint a day for a fresh poll and fix the place at which and the hours during which such fresh poll shall be taken; and
- (b) the returning officer must give public notice of the day so appointed and the place and hours so fixed.

At a fresh poll taken at a polling station all electors entitled to vote thereat must be allowed to vote and no vote cast at the poll stopped can be counted.<sup>44</sup>

### **6.07 Election by Secret Ballot**

An election must be decided by secret ballot.<sup>45</sup>

### **6.08 Postal Ballot**

The following persons may cast their votes by postal ballot in such manner as may be prescribed, namely –

- (a) a person or the spouse of a person in the service of Pakistan or who holds any public office, and a person detained in prison or held in other custody at any place in Pakistan; and
- (b) a person appointed by the returning officer, including police personnel, for the performance of any duty in connection with an election at polling station other than the one at which he is entitled to cast his vote.

An elector who, being entitled to do so, intends to cast his vote by postal ballot must –

- (a) in the case of a person referred to at paragraph (a) above within the time specified; and
- (b) in the case of a person referred to at paragraph (b) above as soon as may be after his appointment,

apply to the returning officer of the constituency in which he is an elector for a ballot paper for voting by postal ballot; and every such application must specify the name of the elector, his address and his serial number in the electoral roll.

The returning officer must immediately upon the receipt of an application by an elector send by post to such elector a ballot paper and envelope bearing on its face a form of certificate of posting, showing the date thereof to be filled in by the proper official of the Post Office at the time of posting by the elector.

An elector on receiving his ballot paper for voting by postal ballot must record his vote in the prescribed manner and, after so recording, post the ballot paper to the returning officer in the envelope sent to him, so as to reach the returning officer before the consolidation of results by him.<sup>46</sup>

### **6.09 Ballot Boxes**

The returning officer must provide each presiding officer with such number of ballot boxes as may be necessary.

Not more than one ballot box can be used at a time for the purpose of the poll at any polling station, or at any polling booth, where there are more than one polling booths at a polling station.

Before the time fixed for the commencement of the poll, the presiding officer must –

- (a) ensure that every ballot box to be used is empty;
- (b) show the empty ballot box to the contesting candidates and their election agents or polling agents whoever may be present, and record their statements in this behalf in the prescribed form and obtain their signatures on them;
- (c) after the ballot box has been shown to be empty, close and seal it with his own seal and with the seal of such of the candidates, or their election agents or polling agents as may be present and may desire to put their own seals on it; and
- (d) place the ballot box so as to be conveniently accessible to the electors, and at the same time within his view and within the view of such candidates or their election agents or polling agents as may be present.

If one ballot box is full or cannot further be used for receiving ballot papers, the presiding officer must seal that ballot box with his own seal and with the seals of the candidates or their polling agents who may wish to seal it and keep it in a secure place in the polling station and use another ballot box in the manner laid down.

A presiding officer must make such arrangements at the polling station that every elector may be able to secretly mark his ballot paper before folding and inserting it in the ballot box.<sup>47</sup>

### **6.10 Maintenance of Order at the Polling Station**

The presiding officer must keep order at the polling station and may remove or cause to be removed any person who misconducts himself at a polling station or fails to obey any lawful orders of the presiding officer.

Any person removed from a polling station must not, without the permission of the presiding officer, again enter the polling station during the poll and is, if he is accused of an offence in the polling station, liable to be arrested without a warrant by a police officer.

The foregoing powers must not be exercised in such a way as to deprive an elector of an opportunity to cast his vote at the polling station at which he is entitled to vote.<sup>48</sup>

### **6.11 Voting Procedure**

Where an elector presents himself at the polling station to vote, the Presiding Officer must issue a ballot paper to the elector after satisfying himself about the identity of the elector and must, for that purpose, require the elector to produce his identity card provided for in the National Registration Act of 1973.

Before a ballot paper is issued to an elector –

- (a) the number and name of the elector as entered in the electoral roll must be called out;

- (b) the entry relating to the elector on the electoral roll must be struck off to indicate that a ballot paper has been issued to him;
- (c) he shall be required to receive a personal mark, made with indelible ink, on any finger of either hand as indicated by the Commission;
- (d) the ballot paper must be stamped on its back with the official mark and signed by the presiding officer; and
- (e) the presiding officer must record on the counterfoil of the ballot paper the number of the elector on the electoral roll, stamp it with the official mark, sign it and obtain on it the thumb impression of the elector.

A ballot paper must not be issued to a person who –

- (a) fails or refuses to produce his identity card provided for in the National Registration Act;
- (b) refuses to have his identity card punched by the presiding officer or polling officer to indicate the issue of a ballot paper to him;
- (c) refuses to put his thumb impression on the counterfoil or whose thumb bears traces of its having already been used for putting an impression; or
- (d) refuses to receive the personal mark with indelible ink or who already bears such a mark or traces of such a mark.

If a contesting candidate or his election agent or polling agent alleges that an elector to whom a ballot paper is about to be issued already has one or more ballot papers in his possession, the presiding officer may require the elector to satisfy him that he does not have any other ballot paper in his possession and may also take such measures as he thinks fit to ensure that such elector does not insert more than one ballot paper in the ballot box.

On receiving the ballot paper, the elector must –

- (a) forthwith proceed to the place reserved for marking the ballot paper;
- (b) put the prescribed mark on the ballot paper at any place within the space containing the name and symbol of the contesting candidate for whom he wishes to vote; and
- (c) after he has so marked the ballot paper, fold and insert it in the ballot box.

The elector must vote without undue delay and must leave the polling station immediately after he has inserted his ballot paper in the ballot box.

Where an elector is blind or is otherwise so incapacitated that he cannot vote without the assistance of a companion, the presiding officer must allow him such assistance and thereupon such elector may do with such assistance anything which an elector is required or permitted to do under the Act.<sup>49</sup>

## **6.12 Tendered Ballot Papers**

If a person representing himself to be an elector applies for a ballot paper when another person has already represented himself to be that elector and has voted under the name of the person so applying, he shall be entitled to receive a ballot paper (referred to as “tendered ballot paper”) in the same manner as any other elector.

A ballot paper issued pursuant to the foregoing provisions must, after it has been marked and folded by the elector, be placed in the same condition in separate packet bearing the label "Tendered Ballot Paper" instead of being placed in the ballot box and must not be included in the count by the presiding officer or the returning officer.

The name of the person applying for a ballot paper and his number on the electoral roll must be entered in a list ("the tendered votes list") to be prepared by the presiding officer.<sup>50</sup>

### **6.13 Challenge of Electors**

If, at the time a person applies for ballot paper for the purpose of voting, a candidate or his polling agent declares to the presiding officer that he has reasonable cause to believe that person has already voted at the election, at the same or another polling station, or is not the person against whose name entered in the electoral roll he is seeking to vote, and undertakes to prove the charge in a court of law and deposits with the presiding officer in cash a sum of two rupees, the presiding officer may, after warning the person of the consequences and obtaining on the counterfoil, his thumb impression and if he is literate also his signature, issue a ballot paper to that person.

If the presiding officer issues a ballot paper to such person he must enter the name and address of that person in a list to be prepared by him and obtain thereon the thumb impression and, if he is literate, also the signature of that person.

A ballot paper issued under the foregoing provisions must, after it has been marked and folded by the elector, be placed in the same condition in a separate packet bearing the label "Challenged Ballot Papers", instead of being placed in the ballot box.<sup>51</sup>

### **6.14 Spoilt Ballot Paper**

An elector who has inadvertently so spoilt his ballot paper that it cannot be used as a valid ballot paper may, upon proving the fact of inadvertence to the satisfaction of the presiding officer and returning the ballot paper to him, obtain another ballot paper and cast his vote by such other ballot paper.

The presiding officer must forthwith cancel the ballot paper returned to him, make a note to that effect on the counterfoil over his own signature and sign the cancelled ballot paper, and place it in a separate packet bearing the label "Spoilt Ballot Papers".<sup>52</sup>

### **6.15 Voting after Close of Poll**

No person can be given any ballot paper or be permitted to vote after the hour fixed for the close of the poll, except the persons who at that hour are present within the building, room, tent or enclosure in which the polling station is situated and have not voted but are waiting to vote.<sup>53</sup>

### **6.16 Proceedings at the Close of Poll**

The presiding officer must count the votes immediately after the close of the poll in the

presence of such of the contesting candidates, election agents and polling agents as may be present.

The presiding officer must give such of the contesting candidates, election agents and polling agents as may be present, reasonable facility of observing the count and give them such information with respect thereto as can be given consistent with the orderly conduct of the count and the discharge of his duties in connection therewith.

No person other than the presiding officer, the polling officer, any other person on duty in connection with the poll, the contesting candidates, their election agents and polling agents is allowed to be present at the count.

The presiding officer must –

- (a) open the used ballot box or ballot boxes and count the entire lot of ballot papers taken out therefrom;
- (b) open the packet bearing the label “Challenged Ballot Papers” and count them;
- (c) count, in such manner as may be prescribed, the votes cast in favour of each contesting candidate excluding from the count the ballot papers which bear –
  - (i) no official mark and signature of the presiding officer;
  - (ii) any writing or any mark other than the official mark, the signature of the presiding officer and the prescribed mark or to which a piece of paper or any other object of any kind has been attached;
  - (iii) no prescribed mark to indicate the contesting candidate for whom the elector has voted; or
  - (iv) any mark from which it is not clear for whom the elector has voted,

provided that a ballot paper must be deemed to have been marked in favour of a candidate if the whole or more than half of the area of the prescribed mark appears clearly within the space containing the name and symbol of that candidate and, where the prescribed mark is divided equally between two such spaces, a ballot paper is deemed invalid.

The presiding officer may recount the votes –

- (a) of his own motion if he considers it necessary; or
- (b) upon the request of a contesting candidate or an election agent present if, in his opinion, the request is not unreasonable.

The valid ballot papers cast in favour of each contesting candidate must be put in separate packets and each such packet must be sealed and contain a certificate as to the number, both in letters and figures, of the ballot papers put in it and must also indicate the nature of the contents thereof, specifying the name and symbol of the contesting candidate to whom the packet relates.

The ballot papers excluded from the count must be put in a separate packet indicating thereon the total number both in letters and figures of the ballot papers, contained therein.

The presiding officer must, immediately after the count, prepare a statement of the count in

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such form as may be prescribed showing therein the number of valid votes polled by each contesting candidate and the ballot papers excluded from the count.

The presiding officer must also prepare in the prescribed form a ballot paper account showing separately –

- (a) the number of ballot papers entrusted to him;
- (b) the number of unissued ballot papers;
- (c) the number of ballot papers taken out of the ballot box or boxes and counted;
- (d) the number of tendered ballot papers;
- (e) the number of challenged ballot papers; and
- (f) the number of spoilt ballot papers.

The presiding officer must give a certified copy of the statement of the count and the ballot paper account to such of the candidates, their election agents or polling agents as may be present and obtain a receipt for such copy.

The presiding officer must seal in separate packets –

- (a) the unissued ballot papers;
- (b) the spoilt ballot papers;
- (c) the tendered ballot papers;
- (d) the challenged ballot papers;
- (e) the marked copies of the electoral rolls;
- (f) the counterfoils of used ballot papers;
- (g) the tendered votes list;
- (h) the challenged votes list; and
- (i) such other papers as the returning officer may direct.

The presiding officer must obtain on each statement and packet prepared pursuant to the foregoing provisions the signature of such of the contesting candidates or their election agents or polling agents as may be present and, if any such person refuses to sign, the presiding officer must record that fact.

A person required to sign a packet or statement may, if he so desires, also affix his seal to it.

After the close of the proceedings, the presiding officer must, in compliance with such instructions as may be given by the Commission in this behalf cause the packets, the statement of the count and the ballot paper account prepared by him to be sent to the returning officer together with such other records as the Commission may direct.<sup>54</sup>

### **6.17 Consolidation of Results**

The returning officer must give the contesting candidates and their election agents a notice in writing of the day, time and place fixed for the consolidation of the results, and, in the presence of such of the contesting candidates and election agents as may be present consolidate in the prescribed manner the results of the count furnished by the

presiding officers, including therein the postal ballots received by him before the time aforesaid.

The consolidation proceedings must be held without any avoidable delay as soon as possible after the polling day.

Before consolidating the results of the count, the returning officer must examine the ballot papers excluded from the count by the presiding officer and, if he finds that any such ballot paper should not have been so excluded, count it as a ballot paper cast in favour of the contesting candidate for whom the vote has been cast thereby.

The returning officer must also count the ballot papers received by him by post in such manner as may be prescribed and include the votes cast in favour of each contesting candidate in the consolidated statement except those which he may reject on any of the grounds set out in the law.

The ballot papers rejected by the returning officer must be shown separately in the consolidated statement.

The returning officer may recount the ballot papers –

- (a) upon the request of, or challenge in writing made by, a contesting candidate or his election agent, if the returning officer is satisfied that the request or the challenge is reasonable; or
- (b) if so directed by the Commission, in which case the recount must be held in such a manner and at such place as may be directed by the Commission.<sup>55</sup>

### **6.18 Equality of Votes**

Where, after consolidation of the results of the count, it appears that there is equality of votes between two or more contesting candidates and the addition of one vote for one such candidate would entitle him to be declared elected, the returning officer or the Commission, as the case may be, must forthwith draw a lot in respect of such candidates and the candidate on whom the lot falls is deemed to have received the highest number of votes entitling him to be declared elected.

The lot must be drawn in the presence of such of the contesting candidates and their election agents as may be present.

The returning officer or the Commission, as the case may be, must keep, record of the proceedings and obtain thereon the signature of such of the candidates and election agents as have been witness to the proceedings, and if any such person refuses to sign, such fact must be recorded.<sup>56</sup>

### **6.19 Declaration of Results**

The returning officer must, after obtaining the results of the count or of the draw of the lots,

intimate the results of the count to the Commission which must declare by public notice the contesting candidate who has or is deemed to have received the highest number of votes to be elected.

The public notice must contain the name of, and the total number of votes received by, each contesting candidate.

The returning officer must, immediately after the count, submit to the Commission a copy of the consolidated statement in the prescribed form.

A candidate securing the highest number of votes must, within seven days from the poll of an election or within such time as the Commission may allow, submit a statement of assets and liabilities of his own, spouse and dependants to the Commission.

The Commission must publish in the official Gazette the name of the returned candidate: provided that the result of a candidate shall not be published who fails to submit the statement of assets and liabilities.<sup>57</sup>

## **6.20 Return or Forfeiture of Deposit**

After the termination of the proceedings relating to an election and the contesting candidate does not want to utilise his security deposit for a subsequent election, or after the declaration of the result of an election, the deposit in respect of any candidate must be returned to the person making the deposit or to his legal representative, except the deposit in respect of a candidate who has received less than one-eighth of the total number of votes cast at the election.

A deposit which is not required to be returned is forfeited to the Federal Government.<sup>58</sup>

## **6.21 Election Documents**

The returning officer must forward to the Commission –

- (a) the packets containing the ballot papers each of which must be sealed with the seal of the presiding officer, or, if opened by the returning officer, with the seal of the returning officer;
- (b) the packets containing the counterfoils of issued ballot papers;
- (c) the packets containing the marked copies of the electoral rolls;
- (d) the packets containing the ballot paper account;
- (e) the packets containing the tendered ballot papers, the challenged ballot papers, the tendered votes list and the challenged votes list; and
- (f) such other papers as the Commission may direct.

The Commission must retain the documents received from the returning officer for a period of one year from the date of their receipt and thereafter, unless otherwise directed by a Tribunal, cause them to be destroyed.

The documents retained by the Commission, except the ballot papers, are open to public

inspection at such time and subject to such conditions as may be prescribed, and the Commission must, upon an application made in this behalf and on payment of such fee and subject to such conditions as may be prescribed, furnish copies of, or extracts from, those documents.

A Tribunal may order the opening of packets of counterfoils and certificates or the inspection of any counted ballot papers.

An order may be made subject to such conditions as to persons, time, place and mode of inspection, production of documents and opening of packets as the Tribunal making the order may think expedient: provided that in making and carrying into effect an order for the inspection of counted ballot papers, care must be taken that no vote is disclosed until it has been held by the Tribunal to be invalid.

Where an order is made, the production by the Commission of any document in such manner as may be directed by the order must be conclusive evidence that the document relates to the election specified in the order and any endorsement on any ballot papers or packet of ballot papers or documents so produced must be prima facie evidence that the ballot papers or documents are what the endorsement states them to be.

The production from proper custody of a ballot paper purporting to have been used at an election and of a numbered counterfoil bearing the signature or thumb impression of the elector must be prima facie evidence that the elector whose vote was given by that ballot paper was the elector who had on the electoral rolls the same number as was written on the counterfoil.<sup>59</sup>

### — Section 7 —

#### **ELECTION TO SEATS RESERVED FOR NON-MUSLIMS**

The members for seats reserved for persons belonging to the Christian, Hindu, Sikh, Buddhist and Parsi Communities and persons of the Qadiani group or the Lahori group (who call themselves "Ahmadis") and other non-Muslims and persons belonging to the scheduled castes (referred to as the non-Muslim seats) must be elected, through a direct and free vote, by electors who are enrolled on the electoral rolls for non-Muslims and who belong to the community or communities for which the said seats are reserved so that each elector has only one non-transferable vote for a constituency of the National Assembly.

For the purpose of election to non-Muslim seats in the National Assembly, the whole of Pakistan, excluding the Federally Administered Tribal Areas, shall constitute a constituency with as many seats as there are non-Muslim seats in the National Assembly.

The Commission is required to hold and conduct the election to fill the non-Muslim seats in the Assembly in such manner as may be prescribed.<sup>60</sup>

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— *Section 8* —

**ELECTION EXPENSES**

**8.01 Restriction on Election Expenses**

No person other than the candidate can incur any election expenses of such candidate: provided that any person may, if so authorised by a contesting candidate in writing specifying a maximum amount, to the extent of such amount, make payment for stationery, postage, telegram and other petty expenses.

No election expenses of a contesting candidate must exceed, in the case of an election to a seat in the National Assembly, one million rupees.

Where any authorised person incurs any expenditure on behalf of a candidate, he must send, within fourteen days of the declaration of the result of the election, to the candidate a statement of such expenditure.

A candidate must, by a bill stating the particulars and by a receipt, vouch for every payment made in respect of election expenses except where the amount is less than 500 rupees.<sup>61</sup>

**8.02 Return of Election Expenses**

Every contesting candidate must within thirty days after the publication of the name of the returned candidate, submit to the returning officer a return of election expenses in the prescribed form containing –

- (a) a statement of all payments made by the contesting candidate together with all the bills and receipts;
- (b) a statement of all disputed claims of which the contesting candidate is aware;
- (c) a statement of all unpaid claims, if any, of which the contesting candidate is aware; and
- (d) a statement of all money, securities, or equivalent of money received from any person for the purpose of election expenses specifying the name of every such person.

The return submitted must be accompanied by affidavit in the prescribed form sworn by the contesting candidate.<sup>62</sup>

**8.03 Inspection of Returns, etc**

The return and documents submitted must be kept by the returning officer in his office or at such other convenient place as he may think fit and must, during one year from the date of their receipt by him, be open to inspection by any person on payment of the prescribed fee.

The returning officer must, on an application made in this behalf and payment of the prescribed fee, give any person copies of any return or document kept under the foregoing provision or of any part thereof.<sup>63</sup>

— *Section 9* —

**ELECTION DISPUTES**

**9.01 Election Petition**

No election can be called in question except by an election petition made by a candidate for that election (referred to as the petitioner).

An election petition must be presented to the Commissioner within forty-five days of the publication in the official Gazette of the name of the returned candidate and must be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury in favour of the Commissioner, under the prescribed head of account, as security for the costs of the petition, a sum of one thousand rupees.<sup>64</sup>

**9.02 Presentation of Petition**

An election petition must be presented by a petitioner and must be deemed to have been presented –

- (a) when it is delivered in person to the Secretary to the Commission or to such other officer as may be appointed by the Commission in that behalf –
  - (i) by the petitioner; or
  - (ii) by a person authorised in writing in this behalf by the petitioner; or
- (b) when delivered by registered post to the Secretary to the Commission or to such other officer as aforesaid.

An election petition, if sent by registered post, is deemed to have been presented in time if it is posted within the period specified.<sup>65</sup>

**9.03 Parties to the Petition**

The petitioner must join as respondents to his election petition –

- (a) all contesting candidates; and
- (b) any other candidate against whom any allegation of any corrupt or illegal practice is made and must serve personally or by registered post on each such respondent a copy of the petition.<sup>66</sup>

**9.04 Contents of Petition**

Every election petition must contain –

- (a) a precise statement of the material facts on which the petitioner relies;
- (b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the

- parties alleged to have committed such corrupt or illegal practice or illegal act and the date and place of the commission of such practice or act; and
- (c) the relief claimed by the petitioner.

A petitioner may claim as relief any of the following declarations, namely –

- (a) that the election of the returned candidate is void;
- (b) that the election of the returned candidate is void and that the petitioner or some other person has been duly elected; or
- (c) that the election as a whole is void.

Every election petition and every schedule or annex to that petition must be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.<sup>67</sup>

### **9.05 Role of the Commissioner**

If the Commissioner finds that any of the relevant provisions of the Act have not been complied with, the petition must be dismissed forthwith. If the petition is not dismissed on the ground above stated, the Commissioner must refer it for trial to a Tribunal.

For the trial of election petitions, the Commissioner must appoint as many Election Tribunals as may be necessary. An Election Tribunal consists of a person who has been, or is, or, at the time of his retirement as a District and Sessions Judge, was qualified to be, a Judge of a High Court.

The Commissioner, either of his own motion or on an application made in this behalf by any of the parties, may, at any stage, transfer an election petition from one Tribunal to another Tribunal and the Tribunal to which the election petition is so transferred –

- (a) must proceed with the trial of the petition from the stage from which it is transferred; and
- (b) may, if it thinks fit, recall and examine any of the witnesses already examined.<sup>68</sup>

### **9.06 Role of the Tribunal**

The trial of an election petition is held at such place or places as the Tribunal may think fit.

The Advocate-General for a Province must, if a Tribunal so requires, assist the Tribunal at the hearing of an election petition in such manner as it may require.

Any appearance, application or act before a Tribunal may be made or done by a party in person or by an advocate or any other person entitled or allowed to plead in any civil court and duly appointed to act on his behalf: provided that the Tribunal may, where it considers it necessary, direct any party to appear in person.

Every election petition is tried in accordance with the Act and the procedure laid down

by the Election Commission. The Evidence Act 1872 applies to the trial of an election petition.

The Tribunal may, at any time, upon such terms and on the payment of such fee as it may direct, allow a petition to be amended in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial and for determining the real questions at issue, so however that no new ground of challenge to the election is permitted to be raised.

The Tribunal must dismiss an election petition, if –

- (a) the provisions of section 54 (parties to the petition) or section 55 (contents of petition) have not been complied with; or
- (b) if the petitioner fails to make any further deposit ordered by the Tribunal.

The Tribunal has all the powers of a civil court trying a suit under the Code of Civil Procedure.<sup>69</sup>

### **9.07 Evidence and Witnesses**

No document is inadmissible in evidence at the trial of an election petition only on the ground that it is not duly stamped or registered. No witness must be excused from answering any question as to any matter in issue, or relevant to a matter in issue, in the trial of an election petition upon the ground that the answer to such question may incriminate or tend to incriminate him or that it may expose or tend to expose him to any penalty or forfeiture; but no witness will be required or permitted to state for whom he has voted at an election.

A witness who answers truly all questions which he is required to answer is entitled to receive a certificate of indemnity from the Tribunal and an answer given by him to a question put by or before the Tribunal must not, except in the case of any criminal proceeding for perjury in respect of his evidence, be admissible in evidence against him in any civil or criminal proceedings.

A certificate of indemnity granted to any witness may be pleaded by him in any court and is a full and complete defence to or upon any charge arising out of the matters to which such certificate relates, but it shall not be deemed to relieve him from any disqualification in connection with an election imposed by any law for the time being in force.

The reasonable expenses incurred by any person in attending to give evidence may be allowed to him by the Tribunal and, unless the Tribunal otherwise directs, is deemed to be part of the costs.<sup>70</sup>

### **9.08 Recrimination Where Seat is Claimed**

Where in an election petition a declaration is claimed that a candidate other than the returned candidate has been duly elected, the returned candidate or any other party may produce evidence to prove that the election of such other candidate would have been

declared void had he been the returned candidate and had a petition been presented calling his election in question: provided that the returned candidate or such other party as aforesaid is not entitled to give such evidence unless he or it has, within fourteen days next following the commencement of the trial, given notice to the Tribunal of his intention so to do and has deposited the security required for the purpose.

Every notice given in pursuance of the foregoing provision must be accompanied by a statement of the case, and all the provisions relating to the contents, verification, trial and procedure of an election petition, or to the security deposit in respect of an election petition, apply to such a statement as if it were an election petition.<sup>71</sup>

### **9.09 Decision of the Tribunal**

The Tribunal may upon the conclusion of the trial of an election petition, make an order –

- (a) dismissing the petition;
- (b) declaring the election of the returned candidate to be void;
- (c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected; or
- (d) declaring the election as a whole to be void.

The trial of the election petition must proceed day to day and the decision thereof must be taken by the Tribunal within six months from the date of its receipt from the Commissioner.

Any person aggrieved by a decision of the Tribunal may, within 30 days of the announcement of the decision, appeal to the Supreme Court and the decision of the Supreme Court on such appeal is final.

The Tribunal must declare the election of the returned candidate to be void if it is satisfied that –

- (a) the nomination of the returned candidate was invalid; or
- (b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member; or
- (c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or
- (d) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his election agent.

The election of a returned candidate must not be declared void on the ground –

- (a) that any corrupt or illegal practice has been committed, if the Tribunal is satisfied that it was not committed by, or with the consent or connivance of that candidate or his election agent and that the candidate and the election agent took all reasonable precaution to prevent its commission; or
- (b) that any of the other contesting candidates was, on the nomination day, not qualified for or was disqualified from being elected as a member.

The Tribunal must declare the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected, if it is so claimed by the petitioner or any of the respondents and the Tribunal is satisfied that the petitioner or such other contesting candidate was entitled to be declared elected.

The Tribunal must declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by reason of –

- (a) the failure of any person to comply with the provisions of the Act or the rules; or
- (b) the prevalence of extensive corrupt or illegal practice at the election.<sup>72</sup>

### **9.10 Decision in Case of Equality of Votes**

Where, after the conclusion of the trial, it appears that there is an equality of votes between two or more contesting candidates and the addition of one vote for one such candidate would entitle him to be declared elected, the Tribunal must draw a lot in respect of such candidates and the candidate on whom the lot falls is deemed to have received the highest number of votes entitling him to be declared elected. Before proceeding to draw a lot, the Tribunal must give notice to the contesting candidates between whom there is an equality of votes and proceed to draw a lot on the day and at the time and place stated in the notice: provided that, if the contesting candidates are present when it appears that there is equality of votes between them, the Tribunal may proceed forthwith to draw a lot without giving notice as aforesaid.<sup>73</sup>

### **9.11 Order of Tribunal**

An order of the Tribunal takes effect on the date on which it is made and must be communicated to the Commissioner who must publish it in the official Gazette.

The record of an election petition after the petition has been disposed of must be sent to the Commissioner who is required to retain it for a period of five years from the date of its receipt.

The Tribunal must when making an order, also determine, in its discretion, the costs and specify the persons by and to whom such costs are to be paid.<sup>74</sup>

## **— Section 10 —**

### **ELECTION OFFENCES**

#### **10.01 Corrupt Practice**

A person is guilty of corrupt practice if he –

- (a) contravenes the provisions of section 49 (restriction on election expenses) of the Act;
- (b) is guilty of bribery, personation or undue influence;
- (c) makes or publishes a false statement –

- (i) concerning the personal character of a candidate or any of his relation calculated to adversely affect the election of such candidate or for the purpose of promoting or procuring the election of another candidate, unless he proves that he had reasonable grounds for believing, and did believe, the statement to be true;
- (ii) relating to the symbol of a candidate whether or not such symbol has been allocated to such candidate;
- (iii) regarding the withdrawal of a candidate; or
- (iv) of assets and liabilities or a declaration specified in sub-section (2) of section 12 (declaration respecting loans in nomination papers);
- (d) calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, *bradari*, sect or tribe;
- (e) knowingly, in order to support or oppose a candidate lets, lends, employs, hires, borrows or uses any vehicle or vessel for the purpose of conveying to or from the polling station any elector except himself and members of his immediate family; or
- (f) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.<sup>75</sup>

### 10.02 Bribery

A person is guilty of bribery, if he, directly or indirectly, by himself or by any other person on his behalf –

- (a) receives or agrees to receive or contracts for any gratification for voting or refraining from voting, or for being or refraining from being a candidate at, or for withdrawing from, an election;
- (b) gives, offers or promises any gratification to any person –
  - (i) for the purpose of inducing –
    - (aa) a person to be, or refrain from being, a candidate at an election;
    - (bb) an elector to vote, or refrain from voting, at an election; or
  - (ii) for the purpose of rewarding –
    - (aa) a person for having been, or for having refrained from being, a candidate at an election;
    - (bb) an elector for having voted or refrained from voting at an election; or
    - (cc) a candidate for having withdrawn from an election.<sup>76</sup>

### 10.03 Personation

A person is guilty of personation, if he votes, or applies for a ballot paper for voting, as some other person whether that other person is living or dead or fictitious.<sup>77</sup>

### 10.04 Undue Influence

A person is guilty of undue influence, if he –

- (a) in order to induce or compel any person to vote or refrain from voting, or to offer

himself as a candidate, or to withdraw his candidature, at an election, directly or indirectly, by himself or by any other person on his behalf –

- (i) makes or threatens to make use of force, violence or restraint;
  - (ii) inflicts or threatens to inflict any injury, damage, harm or loss;
  - (iii) calls down or threatens to call down divine displeasure or the displeasure or disapprobation of any saint or *pir*;
  - (iv) gives or threatens to give any religious sentence;
  - (v) uses any official influence or governmental patronage; or
  - (vi) maligns the Armed Forces of Pakistan; or
- (b) on account of any person having voted or refrained from voting, or having offered himself as candidate or having withdrawn his candidature, does any of the acts set out above; or
- (c) directly or indirectly, by himself or by any other person on his behalf –
- (i) uses any place of religious worship, or any place reserved for the performance of religious rites, for the purpose of canvassing for votes or for persuading electors to vote, or not to vote, at an election or for a particular candidate; or
  - (ii) for any of the purposes specified in the provisions at (i) above, by words, spoken or written, or by signs or visible representation, publishes anything or does any act prejudicial to the glory of Islam or the integrity, security or defence of Pakistan or any part thereof; or
- (d) by abduction, duress or any fraudulent device or contrivance –
- (i) impedes or prevents the free exercise of the franchise by an elector; or
  - (ii) compels, induces or prevails upon any elector to vote or refrain from voting.<sup>78</sup>

### **10.05 Penalty for Corrupt Practice**

Any person guilty of corrupt practice is liable to be punished with imprisonment for a term which may extend to five years, or with a fine not exceeding ten thousand rupees, or with both.<sup>79</sup>

### **10.06 Illegal Practice**

A person is guilty of illegal practice if he –

- (a) fails to comply with the provisions of section 50 (return of election expenses);
- (b) obtains or procures or attempts to obtain or procure, the assistance of any person in the service of Pakistan to further or hinder the election of a candidate;
- (c) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for, or is disqualified from, voting;
- (d) votes or applies for a ballot paper for voting more than once in the same polling station;
- (e) votes or applies for a ballot paper for voting in more than one polling station for the same election;
- (f) removes a ballot paper from a polling station during the poll; or
- (g) knowingly induces or procures any person to do any of the aforesaid acts.

Any person guilty of an illegal practice is liable to a fine not exceeding two thousand rupees.<sup>80</sup>

### **10.07 Prohibition of Political Meetings at Close of Campaign**

No person is to convene, hold or attend any public meeting, and no person must promote or join in any procession, within the area of any constituency during a period of forty-eight hours ending at midnight following the conclusion of the poll for any election in that constituency. Any person who is guilty of this offence is liable to a fine not exceeding one thousand rupees or imprisonment not exceeding six months, or both.<sup>81</sup>

### **10.08 Prohibitions in or Near to a Polling Station**

A person is guilty of an offence punishable with a fine not exceeding one thousand rupees if he, within a radius of four hundred yards of the polling station, on polling day –

- (a) canvasses for votes;
- (b) solicits the vote of any elector;
- (c) persuades any elector not to vote at the election or for a particular candidate; or
- (d) exhibits, except with the permission of the returning officer and at a place reserved for the candidate or his election agent beyond the radius of one hundred yards of the polling station, any notice, sign, banner or flag designed to encourage the electors to vote or discourage the electors from voting, for any contesting candidate.

A person is guilty of an offence punishable with imprisonment for a term which may not exceed three months, or with a fine not exceeding one thousand rupees, or with both, if he, on polling day –

- (a) uses, in such manner as to be audible within the polling station, any gramophone, megaphone, loudspeaker or other apparatus for reproducing or amplifying sounds;
- (b) persistently shouts in such a manner as to be audible within the polling station;
- (c) does any act which –
  - (i) disturbs or causes annoyance to any elector visiting a polling station for the purpose of voting; or
  - (ii) interferes with the performance of the duty of a presiding officer, assistant presiding officer, polling officer or any person performing any duty at a polling station; or
- (d) abets the doing of any of the aforesaid acts.<sup>82</sup>

### **10.09 Tampering with Papers**

A person is guilty of an offence punishable with a fine not exceeding one thousand rupees or imprisonment not exceeding six months, or both, if he –

- (a) intentionally defaces or destroys any nomination paper, ballot paper or official mark on a ballot paper;
- (b) intentionally takes out of the polling station any ballot paper or puts into any ballot

- box any ballot paper other than the ballot paper he is authorised by law to put in;
- (c) without due authority –
    - (i) supplies any ballot paper to any person;
    - (ii) destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers in use for the purpose of election; or
    - (iii) breaks any seal affixed;
  - (d) forges any ballot paper or official mark; or
  - (e) causes any delay or interruption in the beginning, conduct or completion of the procedure required to be immediately carried out on the close of the poll.

Where an election officer is found guilty of any of the foregoing offences he may be imprisoned for up to two years or fined one thousand rupees, or both.<sup>83</sup>

### **10.10 Offences Relating to Secrecy**

A person is guilty of an offence punishable with imprisonment not exceeding six months or a fine not exceeding five hundred rupees, or both, if he –

- (a) interferes or attempts to interfere with an elector when he records his vote;
- (b) in any manner obtains or attempts to obtain in a polling station information as to the candidate for whom an elector is about to vote or has voted; or
- (c) communicates at any time any information obtained in a polling station as to the candidate for whom an elector is about to vote or has voted.

A returning officer, assistant returning officer, presiding officer, assistant presiding officer, polling officer, or any candidate, election agent or polling agent attending a polling station or any person attending at the counting of the votes is guilty of an offence punishable with imprisonment not exceeding six months or with a fine not exceeding one thousand rupees, or both, if he –

- (a) fails to maintain or aid in maintaining the secrecy of voting;
- (b) communicates, except for any purpose authorised by any law, to any person before the poll is closed, any information as to the official marks; or
- (c) communicates any information obtained at the counting of votes as to the candidate for whom any vote is given by any particular ballot paper.<sup>84</sup>

## **— Section 11 —**

### **DISQUALIFICATIONS**

#### **11.01 Disqualification on Account of Certain Offences**

Where a person has been convicted for having exceeded the limit of election expenses laid down in the Act or having failed to file the return of election expenses or for any other offence under the Act, or has been found guilty of any corrupt or illegal practice by a Tribunal, he must, if the Commissioner makes an order to that effect, be disqualified, for

such period not exceeding five years as may be specified in the order from being or being elected as, a member of an Assembly.<sup>85</sup>

### 11.02 Disqualification for Being Election Agent

Any person who is for any period disqualified under the foregoing provisions for being, or being elected as, a member of an Assembly must also stand disqualified for that period for being appointed as an election agent.<sup>86</sup>

### 11.03 Removal and Remission of Disqualification

The Commissioner may, on an application made in this behalf –

- (a) remit any disqualification for failure to submit the return of election expenses or for any error or incorrect statement in such return; and
  - (b) condone any mistake or omission in any statement or declaration,
- if the Commissioner is satisfied that such failure, error, omission or mistake had occurred or incorrect statement made was bona fide or due to circumstances beyond the control of the applicant.<sup>87</sup>

## NOTES

1. Constitution of Pakistan, see article 51
2. Ibid., see article 59
3. Ibid., see article 62
4. Ibid., see article 213
5. Ibid., see article 218
6. Ibid., see article 225
7. Ibid., see article 226
8. See article 218 of the Constitution and sections 3-6 of the Representation of the People Act (RPA) 1976
9. Constitution of Pakistan, see articles 213-217 and 219
10. RPA 1976, see sections 7-9
11. Delimitation of Constituencies Act 1974, see section 3
12. Ibid., see section 7
13. Ibid., see sections 8 and 9
14. Ibid., see sections 10 and 10A
15. Ibid., see section 11
16. See section 3 of the Political Parties Act 1962 and rule 3 of the Political Parties Rules 1986
17. See section 3A of the Political Parties Act 1962 and rules 4-6 of the Political Parties Rules 1986
18. Political Parties Act 1962, see sections 4 and 6
19. Ibid., see section 8B
20. Ibid., see section 7
21. See section 5 of the Electoral Rolls Act 1974 and rule 4 of the Electoral Rolls Rules 1974
22. Electoral Rolls Act 1974, see section 6
23. Ibid., see section 7
24. Electoral Rolls Rules 1974, see rule 5
25. Electoral Rolls Act 1974, see section 8
26. See sections 9 and 14 of the Electoral Rolls Act 1974 and rule 10 of the Electoral Rolls Rules 1974
27. Electoral Rolls Act 1974, see section 15
28. Ibid., see section 16
29. Ibid., see section 17
30. Ibid., see section 18
31. Ibid., see section 19
32. Ibid., see section 20
33. Ibid., see section 21
34. Ibid., see section 24
35. Ibid., see section 25
36. Ibid., see section 26
37. Ibid., see section 27
38. Ibid., see section 29
39. RPA 1976, see section 11
40. Ibid., see sections 12-20
41. Ibid., see section 21

42. Ibid., see section 22
43. Ibid., see section 23
44. Ibid., see sections 25-27
45. Ibid., see section 28
46. Ibid., see section 29
47. Ibid., see section 30
48. Ibid., see section 32
49. Ibid., see section 33
50. Ibid., see section 34
51. Ibid., see section 35
52. Ibid., see section 36
53. Ibid., see section 37
54. Ibid., see section 38
55. Ibid., see section 39
56. Ibid., see section 41
57. Ibid., see section 42
58. Ibid., see section 43
59. Ibid., see sections 44-46
60. Ibid., see section 47
61. Ibid., see section 49
62. Ibid., see section 50
63. Ibid., see section 51
64. Ibid., see section 52
65. Ibid., see section 53
66. Ibid., see section 54
67. Ibid., see section 55
68. Ibid., see sections 56-58
69. Ibid., see sections 59-64
70. Ibid., see section 65
71. Ibid., see section 66
72. Ibid., see sections 67-70
73. Ibid., see section 71
74. Ibid., see sections 72 and 77
75. Ibid., see section 78
76. Ibid., see section 79
77. Ibid., see section 80
78. Ibid., see section 81
79. Ibid., see section 82
80. Ibid., see section 83
81. Ibid., see section 84
82. Ibid., see sections 85 and 86
83. Ibid., see section 87
84. Ibid., see sections 88 and 89
85. Ibid., see section 100
86. Ibid., see section 101
87. Ibid., see section 102

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## INTRODUCTION

The Constitution of Sri Lanka contains several important provisions relating to the conduct of elections. It confers on Parliament the power to make laws in respect of electoral matters. It deals with matters such as the secrecy of the ballot and the electoral system that has been established in Sri Lanka. The Constitution also provides for establishment of an election management system based on the appointment of a Commissioner of Elections and the establishment of a Delimitation Commission to deal with the delimitation of electoral districts.

The principal enactment dealing with elections is the Parliamentary Elections Act 1981, referred to herein as “the Act”. This presentation focuses on election of members of Parliament.

### — Section 1 —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 Parliament May Make Provision in Respect of Elections

The Parliament may by law make provision for:

- (a) the registration of electors;
- (b) the prescribing of a qualifying date on which a person should be resident in any electoral district to be entered in the register of electors of that electoral district;
- (c) the prescribing of a qualifying date on which a person should have attained the age of eighteen years to qualify for the purposes of registration as an elector;
- (d) the preparation and revision of registers of electors;
- (e) the procedure for the election of members of Parliament;
- (f) the creation of offences relating to such elections and punishment therefor;
- (g) the grounds for avoiding such elections, and where an election has been held void the manner of holding fresh elections;
- (h) the form and manner in which vacancies shall be filled when all the candidates whose names appearing in the nomination paper of a recognised political party or independent group have been exhausted by election or otherwise; and
- (i) the manner of determination of disputed elections and such other matters as are necessary or incidental to the election of members of Parliament.<sup>1</sup>

##### 1.02 Election by Secret Ballot

The voting for the election of the President of the Republic and of the members of Parliament and at any referendum shall be free, equal and by secret ballot.<sup>2</sup>

### **1.03 Right to be an Elector**

Every person shall, unless disqualified, be qualified to be an elector at the election of the President and of the members of Parliament and that no such person shall be entitled to vote unless his name is entered in the appropriate register of electors.<sup>3</sup>

### **1.04 Proportional Representation**

At any election of members of Parliament, the total number of members which an electoral district is entitled to return shall be the number specified by the Commissioner of Elections in the order required under the Constitution.

Every elector at an election of members of Parliament shall in addition to his vote, be entitled to indicate his preferences for not more than three candidates nominated by the same recognised political party or independent group.

Any recognised political party or any group of persons contesting as independent candidates (referred to as an “independent group”) may for the purpose of any election of members of Parliament for an electoral district, submit one nomination paper setting out the names of such number of candidates as is equivalent to the number of members to be elected for that electoral district, increased by three.

Each elector whose name appears in the register of electors shall be entitled to only one vote notwithstanding that his name appears in the electoral register in more than one electoral district.

The recognised political party or independent group which polls the highest number of votes in any electoral district shall be entitled to have the candidate nominated by it, who has secured the highest number of preferences, declared elected.

Every recognised political party and independent group polling less than one-twentieth of the total votes polled at any election in any electoral district shall be disqualified from having any candidates of such party or group being elected for that electoral district.

The votes polled by the disqualified parties and independent groups, if any, shall be deducted from the total votes polled at the election in that electoral district and the number of votes resulting from such deduction is referred to as the “relevant number of votes”.

The relevant number of votes shall be divided by the number of members to be elected for that electoral district reduced by one. If the number resulting from such division is an integer, that integer, or if that number is an integer and fraction, the integer and fraction is referred to as the “resulting number”.

The number of votes polled by each recognised political party and independent group (other than those parties or groups disqualified) beginning with the party or group which polled the highest number of votes shall then be divided by the resulting number and the returning officer shall declare elected from each such party or group, in accordance with the

preferences secured by each of the candidates nominated by such party or group (the candidate securing the highest number of preferences being declared elected first, the candidate securing the next highest number of preferences being declared elected next and so on) such number of candidates (excluding the candidate declared elected) as is equivalent to the whole number resulting from the division by the resulting number of the votes polled by such party or group. The remainder of the votes, if any, after such division, shall be dealt with, if necessary, under these provisions.

Where after the declaration of the election of members there are one or more members yet to be declared elected, such member or number of members shall be declared elected by reference to the remainder of the votes to the credit of each party or group after the declaration made and the votes polled by any party or group not having any of its candidates declared elected under the preceding paragraph, the candidate nominated by the party or group having the highest of such votes, who has secured the highest or next highest number of preferences being declared elected a member and so on until all the members to be elected are declared elected.

Where the number of votes polled by each recognised political party or independent group is less than the resulting number, the party or group which has polled the highest number of votes shall be entitled to have the candidate nominated by that party or group (excluding the candidate, already declared) who has secured the highest number of preferences declared elected and if there are one or more members yet to be declared elected, the party or group having the next highest number of votes polled shall be entitled to have the candidate nominated by that party or group who has secured the highest number of preferences declared elected and so on, until all the members to be elected for that electoral district are declared elected.

After the determination under the foregoing paragraph if there are one or more members yet to be declared elected in respect of that electoral district the provision of that paragraph shall, *mutatis mutandis*, apply to the election of such members.

Where an equality is found to exist between the votes polled by two or more recognised political parties or two or more independent groups or any combination of them and the addition of a vote would entitle the candidate of one such party or group to be elected, the determination of the party or group to which such additional vote shall be deemed to have been given shall be made by lot.

For the purposes of these provisions the number of votes polled shall be deemed to be the number of votes counted other than rejected votes.

Where a member of Parliament ceases, by resignation, expulsion or otherwise, to be a member of a recognised political party or independent group on whose nomination paper (referred to as the "relevant nomination paper") his name appeared at the time of his becoming such member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member.

Where the seat of a member of Parliament becomes vacant the candidate from the relevant

recognised political party or independent group who has secured the next highest number of preferences shall be declared elected to fill such vacancy.<sup>4</sup>

### **1.05 Election on the Basis of the Total Number of Votes Polled**

After the one hundred and ninety-six members referred to in Article 98 of the Constitution have been declared elected at a general election of members of Parliament, the Commissioner of Elections shall forthwith apportion the balance of twenty-nine seats among the recognised political parties and independent groups contesting such general election in the same proportion as the proportion which the number of votes polled by each such party or group at such general election bears to the total number of votes polled at such general election and for the purposes of apportionment the provisions of Article 98 of the Constitution shall, *mutatis mutandis*, apply.

Every recognised political party or independent group contesting a general election shall submit to the Commissioner of Elections within the nomination period specified for such election a list of persons qualified to be elected as members of Parliament, from which it may nominate persons to fill the seats, if any, which such party or group will be entitled to, on such apportionment. The Commissioner of Elections shall cause every list submitted to him to be published forthwith in the Gazette and in one Sinhala, Tamil and English newspaper upon the expiry of the nomination period.

Where a recognised political party or independent group is entitled to a seat, the Commissioner of Elections shall by a notice, require the secretary of such recognised political party or group leader of such independent group to nominate within one week of such notice, persons qualified to be elected as members of Parliament (being persons whose names are included in the list submitted to the Commissioner of Elections or in any nomination paper submitted in respect of any electoral district by such party or group at that election) to fill such seats and shall declare elected as members of Parliament, the persons so nominated.

The Commissioner of Elections shall before issuing the aforesaid notice determine whether the number of members belonging to any community, ethnic or otherwise, elected to Parliament under Article 98 is commensurate with its national population ratio and request the secretary of such recognised political party or group leader of such independent group in so nominating persons to be elected as members of Parliament to ensure as far as practicable, that the representation of all communities is commensurate with its national population ratio.

For the purposes of these provisions the number of votes polled at a general election shall be deemed to be the number of votes actually counted and shall not include any votes rejected as void.<sup>5</sup>

### **1.06 Other Constitutional Provisions**

Other constitutional provisions which merit treatment herein, namely, those dealing with the Commissioner of Elections and the delimitation of electoral districts are dealt with in Sections 2 and 3 respectively, below.

---

— *Section 2* —

**ELECTION ADMINISTRATION**

**2.01 Commissioner of Elections**

There shall be a Commissioner of Elections who shall be appointed by the President and who shall hold office during good behaviour.

The salary of the Commissioner of Elections shall be determined by Parliament, shall be charged on the Consolidated Fund and shall not be diminished during his term of office.

The office of the Commissioner of Elections shall become vacant:

- (a) upon his death;
- (b) on his resignation in writing addressed to the President;
- (c) on his attaining the age of sixty years;
- (d) on his removal by the President on account of ill health or physical or mental infirmity;
- or
- (e) on his removal by the President upon an address of Parliament.

Whenever the Commissioner of Elections is unable to discharge the functions of his office, the President may appoint a person to act in the place of the Commissioner of Elections.

The President may in exceptional circumstances permit a Commissioner of Elections who has reached the age of sixty years to continue in office for a period not exceeding twelve months.<sup>6</sup>

**2.02 Powers and Functions of Commissioner of Elections**

The Commissioner of Elections shall exercise, perform or discharge all such power, duties or functions as may be conferred or imposed on or vested in him by the law for the time being in force relating to elections to the office of President of the Republic and of members of Parliament, and to referenda, or by any other written law.<sup>7</sup>

**2.03 Returning Officers**

The Commissioner, shall, from time to time, by notice in the Gazette, appoint by name or by office a person to be the returning officer of each electoral district, and may appoint by name or by office one or more persons to assist the returning officer in the performance of his duties. A person so appointed to assist any returning officer shall have all the powers and may perform all the duties of the officer whom he is appointed to assist, and any reference in the Act to a returning officer shall, unless the context otherwise requires, be deemed to include a reference to an assistant returning officer. An appointment made by the Commissioner may be revoked by him at any time.

If the returning officer is by reason of illness or other cause prevented or disabled from

performing any of his duties and there is no time for another person to be appointed by the Commissioner, the returning officer may appoint by name or by office a deputy to act for him. Every such appointment shall as soon as possible be reported to the Commissioner and may be revoked by him, but without prejudice to the validity of anything already done by such deputy.<sup>8</sup>

#### **2.04 Presiding Officers**

Subject to the general or special directions of the Commissioner, each returning officer shall appoint, and may revoke the appointment of, one or more persons (referred to as “presiding officer”) to preside at each polling station in his electoral district. If more than one presiding officer is appointed for any polling station, the returning officer may appoint one of the presiding officers to be the senior presiding officer who shall exercise general supervision over the other presiding officers, and over all arrangements for the conduct of the poll on that station.

If any presiding officer is by reason of illness or other cause, prevented from acting at any election, and there is not time for another person to be appointed by the returning officer, the presiding officer may appoint a deputy to act for him. Every such appointment shall as soon as possible be reported to the returning officer and may be revoked by the returning officer, but without prejudice to the validity of anything already done by such deputy.

The returning officer may, if he thinks fit, preside at any polling station, and the provisions of the Act relating to a presiding officer shall apply to such returning officer.<sup>9</sup>

#### **2.05 Counting Officers**

Subject to the general or special directions of the Commissioner, each returning officer shall appoint, and may revoke the appointment of, a counting officer to be in charge of the counting of votes at each counting centre, and such number of assistants and clerks and other officers to assist such counting officer in the performance of his duties.

The returning officer may, if he thinks fit, perform the duties of a counting officer and the provisions of the Act relating to a counting officer shall apply to such returning officer.<sup>10</sup>

### **— Section 3 —**

## **DELIMITATION OF ELECTORAL DISTRICTS**

#### **3.01 Delimitation Commission**

The President shall for the delimitation of the electoral districts establish a Delimitation Commission consisting of three persons appointed by him who he is satisfied are not actively engaged in politics. The President shall appoint one of such persons to be Chairman.

If any member of the Delimitation Commission shall die or resign or if the President is satisfied that any such member has become incapable of discharging his functions as such, the President shall, in accordance with these provisions appoint another person in his place.<sup>11</sup>

### **3.02 Electoral Districts**

The Delimitation Commission shall divide Sri Lanka into not less than twenty and not more than twenty-four electoral districts, and shall assign names thereto.

Each Province of Sri Lanka may itself constitute an electoral district or may be divided into two or more electoral districts.

Where a Province is divided into a number of electoral districts the Delimitation Commission shall have regard to the existing administrative districts so as to ensure as far as is practicable that each electoral district shall be an administrative district or a combination of two or more administrative districts or two or more electoral districts together constitute an administrative district.

The electoral districts of each Province shall together be entitled to return four members, (independently of the number of members which they are entitled to return by reference to the number of electors whose names appear in the register of electors of such electoral districts), and the Delimitation Commission shall apportion such entitlement equitably among such electoral districts.

In the event of a difference of opinion among the members of the Delimitation Commission, the opinion of the majority thereof shall prevail and shall be deemed to be the decision of the Commission. Where each member of the Commission is of a different opinion, the opinion of the Chairman shall be deemed to be the decision of the Commission. Any dissentient member may state his reasons for such dissent.

The Chairman of the Delimitation Commission shall communicate the decisions of the Commission together with the reasons, if any, stated by a dissentient member to the President.<sup>12</sup>

### **3.03 Number of Members to be Returned by the Electoral Districts**

The several electoral districts shall together be entitled to return one hundred and ninety-six members.

The apportionment of the number of members that each electoral district shall be entitled to return shall, in the case of thirty-six members be determined in accordance with the provisions of paragraph (4) of Article 94 of the Constitution.

The Commissioner of Elections, as soon as possible after the certification of the registers of electors for all the electoral districts, shall, by order published in the Gazette, certify the number of members which each electoral district is entitled to return.

The total number of electors whose names appear in the registers of electors of all the electoral districts shall be divided by one hundred and sixty. The whole number resulting from such division (any fraction not being taken into account) is hereinafter referred to as the “qualifying number”.

The total number of electors whose names appear in the register of electors of each electoral district shall be divided by the qualifying number and each electoral district shall be entitled to return such number of members as is equivalent to the whole number resulting from the division of the total number of such electors in that electoral district by the qualifying number and the balance number of such electors, if any, after such division shall be dealt with, if necessary, in accordance with these provisions.

Where the total number of members to be returned by all the electoral districts ascertained by reference to the qualifying number is less than one hundred and sixty members, the apportionment of the entitlement among the electoral districts of the balance number of members shall be by reference to the balance number of such electors and in the case of any electoral district not entitled to return a single member according to the determination of the fifth paragraph of these provisions, the total number of electors whose names appear in the register of electors of such electoral district, the electoral district having the highest of such balance number of such electors or such total number of electors, being entitled to return one or more members and so on until the total number of members to be returned number one hundred and sixty.

Where in making an apportionment, an equality is found to exist between two or more balance number of such electors or two or more total number of such electors or any combination of them and the addition of one such elector would entitle one electoral district to return an additional member, the determination of the electoral district to which one such elector shall be deemed to be added shall be determined by lot.

The Commissioner of Elections, as soon as possible after certification of the registers of electors for all the electoral districts, shall by order published in the Gazette certify the number of members which each electoral district is entitled to return and the number of candidates required to be set out in the nomination paper.

For the purposes of these provisions “the register of electors” means the register of electors for the time being in operation on the basis of which an election is being held.<sup>13</sup>

### **3.04 Polling Divisions**

Each polling division and each polling district for the time being in force under the Registration of Electors Act (No. 44 of 1980), shall be deemed to be a polling division and a polling district, respectively for the purposes of the Act.<sup>14</sup>

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— *Section 4* —

**REGISTER OF ELECTORS**

The register of electors to be used in any electoral district for the purposes of the Act shall be the register of electors in operation for that electoral district on the date of the publication of the proclamation or order requiring the holding of an election, notwithstanding that a new register may have come into operation after the publication of such proclamation or order.

A register of electors shall be conclusive evidence for the purpose of determining whether a person is or is not entitled to vote at an election under the Act and the right of voting of any person whose name is for the time being contained in such register shall not be prejudiced by any appeal pending under any written law for the time being in force in respect of the entry of such person's name in the register and any vote given by any such person during the pendency of such appeal shall be as good as though no such appeal were pending and shall not be affected by the subsequent decision of the appeal: provided that if any person, who by reason of his conviction of a corrupt practice or an illegal practice or by reason of any of the provisions of the Constitution is incapable of voting at an election under the Act, votes at such election, he shall, on conviction before a magistrate, be liable to a fine not exceeding five hundred rupees or to imprisonment for a period not exceeding six months.<sup>15</sup>

— *Section 5* —

**POLITICAL PARTIES**

A political party entitled to be treated as a recognised political party on the day immediately preceding the date of coming into operation of the Act, shall be entitled to be treated as a recognised political party for the purposes of elections under the Act.

Where a political party is entitled to be treated as a recognised political party for the purpose of elections, the approved symbol allotted to such party under the Order in Council shall be deemed to be the approved symbol allotted to that party for such purposes until the date on which such party ceases to be so entitled as provided in the Act, or the date on which such party is allotted a new approved symbol by the Commissioner by order as provided in the Act, whichever date is earlier.

The secretary of any political party, other than a party which is already entitled to be treated as a recognised political party for the purpose of elections, may at any time make on behalf of that party a written application to the Commissioner, that such party be treated as a recognised political party for the purpose of elections. The application shall also specify which one of the approved symbols such party desires to be allotted to such party if so treated.

The secretary of a political party shall, at the time an application is made under the

foregoing paragraph, furnish to the Commissioner a copy of the constitution of such party and list of office-bearers of such party.

Where such an application is made in respect of a political party and is disallowed by the Commissioner, no application shall be made in respect of that political party until after the expiration of a period of six months from the date of the order disallowing the first application.

Upon a receipt of an application duly made on behalf of any political party, the Commissioner shall, after such inquiry as he may deem fit:

- (a) if in his opinion such party is a political party and is organised to contest any election under the Act, make order:
  - (i) that such party shall be entitled to be treated as a recognised political party for the purpose of elections, subject, however, to the provisions of the Act; and
  - (ii) allotting an approved symbol to such party, being the approved symbol specified in the application or any other approved symbol determined by him in his absolute discretion, but not being the approved symbol of any other political party which is entitled to be so treated; or
- (b) if in his opinion, such party is not a political party and is not organised to contest any election under the Act, make order disallowing the application.

A political party is not entitled to be treated as a recognised political party if its name is identical with the name of any party which is already entitled to be treated as a recognised political party; or in the opinion of the Commissioner so nearly resembles such name as to be calculated to mislead, confuse or deceive.

The order of the Commission on any application shall be final and shall not be called in question in any court.

A political party which is entitled to be treated as a recognised political party for the purpose of elections shall be referred to as a “recognised political party”.

It shall be the duty of the secretary of every recognised political party to submit to the Commissioner a copy of the constitution of such party together with a list of the office-bearers of such party: in the case of a recognised political party, within three months after the Act comes into operation, and in the case of a newly recognised political party, within three months from the date on which such party is entitled to be treated as a recognised political party.

Where a recognised political party amends its constitution or changes its office-bearers, the secretary of such party shall, before the expiry of a period of thirty days from the date of such amendment or change, inform the Commissioner in writing of such amendment or change.

Where any recognised political party fails to comply with the provisions of the Act, such party shall cease to be a recognised political party.

The Commissioner may, upon application made in writing in that behalf by the secretary of a recognised political party, in his absolute discretion, extend the periods referred to above by a further period not exceeding sixty days.<sup>16</sup>

## — Section 6 —

### ELECTION PREPARATION

#### 6.01 Nominations

The President shall, in every proclamation dissolving Parliament or in any order requiring the holding of an election, specify:

- (a) the period (referred to as the “nomination period”) during which nomination papers shall be received by the returning officer during normal office hours at his office; and
- (b) the date on which the poll shall be taken.

The nomination period shall commence on the tenth day after the date of publication in the Gazette of the aforementioned proclamation or order and expire at twelve noon on the seventeenth day after the date of publication of such proclamation or order.

The date fixed shall be:

- (a) a day not less than five weeks and not more than seven weeks from the closing day of the nomination period;
- (b) any day other than a Full Moon Poya day or any public holiday; and if, after the publication of the proclamation or order referred to above, the day specified in such proclamation or order is declared to be a public holiday, such declaration shall in no way affect the validity of anything done on such day for the purpose of taking the poll.

After the date of publication in the Gazette of a proclamation or order requiring the holding of an election, the secretary of a recognised political party shall, if such party intends contesting such election, give the Commissioner written notice of such intention. Such notice shall be given as to reach the Commissioner within seven days from that date.

Where the Commissioner has reasonable cause to believe that difficulties may arise at an election which is due to be held in any electoral district by reason of the fact that there are rival sections of a recognised political party all of whom claim to be that party, the Commissioner may, in order to remove such difficulties, issue in his absolute discretion a direction to the returning officer for that district that in the case of such election such recognised political party is either any one such section or none of such sections. It shall be the duty of such returning officer or any other officer, at such election, to act in accordance with that direction. No suit or other proceeding shall lie against:

- (a) the Commissioner by reason of his having issued a direction under the foregoing provisions; or

- (b) a returning officer or any other officer for any act or thing done or omitted to be done in accordance with that direction.

A direction issued to a returning officer shall be final and shall not be called in question in any court.

These provisions and any direction issued thereunder shall have effect notwithstanding anything to the contrary in any other provisions of the Act.

Any person who is qualified to be elected as a member of Parliament may be nominated as a candidate for election as hereinafter provided.

Any recognised political party or any group of persons contesting as independent candidates (referred to as an “independent group”) may, for the purpose of an election of members of Parliament for any electoral district, submit one nomination paper setting out the names of such number of candidates as is equivalent to the number of members to be elected for that electoral district, increased by three. Such nomination paper shall be in the prescribed form.

The written consent of each candidate to be nominated by a recognised political party or an independent group and an oath or affirmation, as the case may be, in the prescribed form, taken or subscribed or made or subscribed, as the case may be, by every such candidate, shall be endorsed on the nomination paper.

Each nomination paper shall be signed by the secretary of a recognised political party or in the case of any independent group by the candidate whose name appears first in the nomination paper (referred to as the “group leader”) and shall be attested by a Justice of the Peace or by a notary public.

Such nomination paper shall be delivered to the returning officer at his office during normal office hours within the nomination period by the secretary of a recognised political party or by the candidate whose name appears first in such nomination paper (referred to as the “authorised agent”) in the case of a recognised political party, or by the group leader in the case of an independent group.

Where, due to any reason whatsoever, the secretary of a recognised political party or the authorised agent or the group leader is unable to deliver a nomination paper, the candidate whose name appears second on such nomination paper shall deliver such nomination paper to the returning officer.

The returning officer shall as soon as practicable make a copy of each nomination paper received by him and display such copy on his notice board.

The returning officer shall, on application made on any date after the publication of the proclamation or order requiring the holding of an election and before the expiry of the nomination period, supply free of charge a nomination paper to any recognised political party or any independent group; but the Act does not preclude the use of any form of

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nomination paper not supplied by the returning officer, so long as such form does not differ substantially from the prescribed form.

Where it appears to the secretary of a recognised political party or an authorised agent or a group leader that there is any omission or clerical error in a nomination paper submitted by such party or independent group he may make an application to the returning officer before the expiry of the nomination period to correct such omission or error on such paper.

Where the returning officer is satisfied that such omission or error is due to inadvertence, the returning officer may allow such secretary or authorised agent or group leader to correct such omission or error in his presence.

For the purposes of these provisions, the omission of the name of a candidate, or the failure of a candidate to endorse his consent on a nomination paper, or the failure of the secretary of a recognised political party or a group leader to sign a nomination paper, or the failure of a Justice of the Peace or notary public to attest such signature shall be deemed not to be an omission or a clerical error due to inadvertence.

A group leader or any person authorised by such group leader, shall, between the date of publication of the proclamation or order requiring the holding of an election and the submission of the nomination paper of that group, deposit in legal tender with the returning officer a sum calculated at two thousand rupees in respect of each candidate nominated by such group.

No deposit made by a group leader or a person authorised by such group leader shall be accepted by the returning officer unless it is made within the time prescribed.

Where a deposit is accepted by the returning officer, such officer shall forthwith issue to the person by whom the deposit was made, a receipt in writing signed by such officer acknowledging his acceptance of such deposit, and the receipt shall state:

- (a) the name of the group leader by whom the deposit was made or of the authorised person by whom and on whose behalf the deposit was made;
- (b) the number of candidates;
- (c) the amount of the deposit; and
- (d) the time and date of the deposit.

Where the number of votes polled by any independent group does not exceed one-twentieth of the total number of votes polled at the election in any electoral district, the deposit made in respect of the candidates of such group shall be declared forfeited and shall be transferred by the returning officer from the deposit account to the Consolidated Fund, and in every other case the deposit shall be returned to the person who made the deposit as soon as may be after the result of the election is declared.

The returning officer shall immediately after the expiry of the nomination period examine the nomination papers received by him and reject any nomination paper:

- (a) that has not been delivered in accordance with the Act;
- (b) that does not contain the total number of candidates required to be nominated in terms of the Constitution; or
- (c) in respect of which the deposit required has not been made; or
- (d) where the consent of one or more candidates nominated or the oath or affirmation, in the prescribed form, of one or more candidates, has or have not been endorsed on the nomination paper; or
- (e) where the signature of the secretary in the case of a recognised political party, or of the group leader in the case of an independent group does not appear on the nomination paper or where such signature has not been attested as required.

Objections to a nomination paper may be made to the returning officer between twelve noon and one-thirty o'clock in the afternoon of the last day of the period of nomination, and no such objection shall be entertained by the returning officer after one-thirty o'clock in the afternoon of that day.

Where any nomination paper has been rejected by the returning officer, the returning officer shall inform the secretary of the recognised political party or group leader, as the case may be, who had submitted such nomination paper the fact of such rejection. The decision of the returning officer to reject such nomination paper shall be final.

Where the candidates of only one recognised political party or one independent group stand nominated for election, the returning officer shall call upon the secretary of such recognised political party or the group leader of such independent group to decide, within such period as may be specified by the returning officer, which of the candidates whose names appear in such nomination paper shall be declared elected as members. If such secretary or group leader communicates his decision to the returning officer within the period specified by the returning officer, the returning officer shall declare elected as members of Parliament the respective candidates specified in such declaration. If on the other hand, such secretary or group leader fails to communicate his decision to the returning officer within the period specified by the returning officer, then such number of candidates, in the order in which their names appear in such nomination paper, as is equal to the number of members to be elected shall be declared elected.

The returning officer shall forthwith make a return, which shall be substantially in the prescribed form, to the Commissioner who shall cause the names of the members so declared elected to be published in the Gazette.

If at the expiry of the nomination period and after the rejection of any nomination paper, candidates of more than one recognised political party or independent group stand duly nominated for election, the returning officer shall forthwith allot:

- (a) to each recognised political party for the purpose of that election, the approved symbol of that party; and
- (b) in respect of each independent group, an approved symbol and where there is more than one independent group an approved symbol and a distinguishing number determined:

- (i) in the first instance by agreement among the group leaders; or
  - (ii) in the absence of such agreement by lots cast or drawn in such a manner as the returning officer may, in his absolute discretion, determine,
- and such symbol shall be printed on the ballot paper opposite:
- (i) the name of such party; and
  - (ii) in the case of an independent group, the words “Independent Group” and the distinguishing number, if any, allotted to that group.

After the allocation of symbols, the returning officer shall forthwith:

- (a) adjourn such election to enable a poll to be taken;
- (b) report to the Commissioner the election is contested; and
- (c) send to the Commissioner copies of the nomination papers of the recognised political parties and independent groups, a statement of the symbols allotted to each party or group, and where there is more than one independent group the distinguishing numbers allotted to each such group, and a statement giving the situation of the polling station or polling stations for each of the polling districts in that electoral district and the particular polling stations, if any, reserved for female voters.

Unless the returning officer considers it necessary or expedient in the special circumstances of any case to provide a separate polling station for the female voters of any polling district, there shall be for each polling district one polling station and no more.

The location of the polling station shall be such as to cause the minimum inconvenience to the electors of the polling district.<sup>17</sup>

## **6.02 Voting by Post**

A person who is entitled to be treated as a postal voter for the purpose of an election in any electoral district may vote by post, and shall not vote in person, at such election.

Any person who votes in person at an election in contravention of the preceding provisions is guilty of an offence.

An application to be treated as a postal voter in any electoral district may be made:

- (a) by a member of the Sri Lanka Army, Sri Lanka Navy, Sri Lanka Air Force, or an officer or servant in the Department of Police, Department of Prisons, the Sri Lanka Government Railway, the Department of Posts and the Department of Telecommunications or the Sri Lanka Central Transport Board or any Regional Transport Board, on the ground that he is unable or likely to be unable to vote in person at the polling station allotted to him by reason of the particular circumstances of his employment as such member, officer or servant; and
- (b) by any other officer or servant in the public service or of the Central Bank of Ceylon, or the Local Government Service on the ground of the particular circumstances of his employment on the date of the poll for a purpose connected with the election or of his being likely to be employed for that purpose; and

- (c) by a candidate at a general election on the ground that he is unable or likely to be unable to vote in person at the polling station allotted to him by reason of his candidature in some other electoral district.

An application to be treated as a postal voter shall be made to the returning officer so as to reach him not earlier than the seventh day and not later than the fourteenth day after the date of publication of the proclamation or order requiring the holding of an election. Such application shall be in the prescribed form.

No application to be treated as a postal voter shall be allowed by a returning officer unless he is satisfied that the application is in accordance with the preceding provisions.

The returning officer may, for the purpose of the disposal of application to be treated as a postal voter, by notice require any person to give such officer any such information as may be necessary for that purpose.

The decision of a returning officer on an application to be treated as a postal voter shall be communicated in writing to the applicant. The decision of the returning officer to allow or disallow an application to be treated as a postal voter shall be final.

Where an application to be treated as a postal voter is allowed by a returning officer, the applicant shall be a person entitled to be treated as a postal voter for the purpose of an election.

The returning officer shall, as soon as practicable, send by post to each person who is entitled to be treated as a postal voter, to the address furnished by such person:

- (a) a ballot paper;
- (b) a form of declaration of identity;
- (c) an envelope which shall be smaller than the envelope referred to in sub-paragraph (d) below and which shall be marked "ballot paper envelope" and also with the number printed on the postal ballot paper issued to such person, and in which the postal ballot paper shall be enclosed when it is returned duly marked; and
- (d) an envelope for the return of the aforementioned documents.

The form of the ballot paper and the form of the declaration of identity which are to be used by persons entitled to be treated as postal voters, and the procedure to be followed at the proceedings on their issue, shall be according to the regulations contained in the Second Schedule to the Act.

A ballot paper issued to a person entitled to be treated as a postal voter is in the Act referred to as "postal ballot paper".

The returning officer of any electoral district where there is an election shall, as soon as practicable, prepare a list (referred to as the "postal voters' list") specifying the name, address and registration number on the register of electors of every person entitled to be treated as a postal voter. Such list shall be prepared in such manner as may be prescribed in that behalf by the regulations.<sup>18</sup>

### 6.03 Poll Card

The returning officer shall send to each elector whose name appears in the register a poll card (referred to as an “official poll card”) in such form as may be determined by the Commissioner, and specifying:

- (a) the name and number of the electoral district;
- (b) the name, qualifying address, and registration number of the elector as stated in the register;
- (c) the polling division;
- (d) the polling district;
- (e) the polling station allotted to the elector; and
- (f) the date and hours of the poll,

provided that no such card shall be sent to an elector who is entitled to be treated as a postal voter or to an elector in respect of whom an application made under section 127B has been allowed.

An official poll card shall be sent to an elector by ordinary post as to reach him at least seven days before the date of the poll. Where a post office fails to deliver such card to the person to whom it is addressed, it shall be retained until the date of the poll in such post office to be delivered to the addressee if he calls for it.

Every person who:

- (a) without authority supplies any official poll card to any other person; or
  - (b) sells or offers to sell any official poll card to any other person or purchases or offers to purchase any official poll card from any other person,
- shall be guilty of an offence.

Every person, other than a public officer acting in the course of his duty as such officer, who has in his possession the official poll card of any other person, shall be guilty of an offence.<sup>19</sup>

### 6.04 Facilities at Polling Stations

For the purposes of an election in any electoral district, the returning officer of that district shall:

- (a) appoint such officers and servants as may be necessary for taking the poll;
- (b) furnish each polling station in that electoral district with such number of compartments as may be necessary to accommodate a reasonable number of voters at any one time and to ensure that the voters are screened from observation when they mark their ballot papers;
- (c) furnish each presiding officer with a copy of that part of the register of electors containing the names of electors in such register assigned to his polling station and a list of such of the names of electors in that copy as appear in the postal voters' list. A distinguishing mark shall be placed against the name of every elector who is entitled to be treated as a postal voter and against the name of every elector in respect of whom an

application made under section 127B has been allowed in the part of that register supplied to each presiding officer;

- (d) furnish each presiding officer with such number of ballot boxes and ballot papers as, in the opinion of the returning officer, may be necessary for the number of voters assigned to that polling station;
- (e) provide each polling station with materials to enable voters to mark the ballot papers, with instruments for perforating or stamping thereon the official mark;
- (f) do such other act and things as may be necessary for effectually conducting the election in the manner prescribed.

An election shall not be questioned by reason of non-compliance with the foregoing provisions or any informality relative to polling stations.

During the taking of the poll, the presiding officer at every polling station shall cause to be exhibited:

- (a) outside the polling station and in every compartment thereof, a notice substantially in the prescribed form, giving directions for the guidance of voters; and
- (b) outside the polling station a notice specifying the name of each recognised political party contesting the election or in the case of independent groups contesting the election, the words "Independent Group" for each such group and the distinguishing number, if any, allotted to it together with the names of the candidates (as indicated by the candidates) in alphabetical order, according to the Sinhala alphabet of each such recognised political party or independent group, the serial number assigned to each such candidate and the approved symbol allotted to each such party or group.

Every notice under these provisions shall be in Sinhala, Tamil and English.

The votes at every election in any electoral district shall be given by ballot. The ballot of each voter shall consist of a ballot paper in the form and containing the particulars prescribed.

Every ballot paper shall be substantially in the prescribed form, and:

- (a) shall contain the names of the recognised political parties contesting the election, in Sinhala, Tamil and English, arranged alphabetically, according to the Sinhala alphabet, in order of names of such parties and with the symbol allotted to each such party, set out against the name of each such party, and immediately thereafter if there are any independent groups contesting the election, the words "Independent Group" repeated for each group and the distinguishing number, if any, in the serial order and the symbol allotted to each such group and set out against the distinguishing number of such group and immediately below this, such number or numbers placed in serial order as is equal to the number of members to be elected from the electoral district, increased by three;
- (b) shall be capable of being folded;
- (c) shall have a number printed on the reverse; and
- (d) shall have attached a counterfoil with the same number printed on the face.

Unless the Commissioner, by notification in the Gazette, appoints any other hour, the poll in any electoral district shall open at seven o'clock in the forenoon of the day specified and shall close at four o'clock in the afternoon of that day.<sup>20</sup>

### **6.05 Polling Agents**

The secretary of each recognised political party or its authorised agent or any group leader may appoint a reasonable number of polling agents for each polling station having regard to the need to revoke the appointment of any polling agent for that polling station during the poll. Notice in writing of every such appointment stating the names, the numbers of the national or other identity cards issued by a government department or public corporation and addresses of the persons so appointed shall be given by such secretary or authorised agent or group leader to the presiding officer at that station before the opening of the poll or during the poll.

The secretary of a recognised political party or its authorised agent or a group leader may delegate the powers vested in such secretary, authorised agent or group leader, to any candidate nominated by such party or independent group for such election so however, that such powers shall not be delegated to more than one candidate in respect of each polling division. Any delegation shall be notified in writing to the returning officer not later than seven days before the date of the poll.

Where such secretary, authorised agent or group leader or candidate after informing the presiding officer of the name of any polling agent appointed to act at such station, revokes the appointment of that polling agent and appoints another polling agent to such station, such secretary, authorised agent or group leader or candidate, as the case may be, shall inform such officer in writing of the revocation of such appointment and of the name, the number of the national or other identity card issued by a government department or public corporation and address of the new polling agent appointed to such station.

Not more than two polling agents of each recognised political party or independent group shall at any time be admitted to or be allowed to remain in any polling station.<sup>21</sup>

### **6.06 General Conduct of the Poll**

No person shall be admitted to vote at any polling station other than the polling station set apart for the group of voters to which he belongs.

The presiding officer shall keep order in his station, and shall regulate the number of voters to be admitted at a time and shall exclude all other persons except the candidates, the polling agents, the police officers on duty and other persons officially employed at the polling station: provided however, that only one candidate from each recognised political party or independent group shall be admitted to the polling station at any one time.

If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, the presiding officer may cause him to be removed forthwith from the

polling station by any police officer or by any other person authorised in writing by the presiding officer or by the returning officer.

Any person removed from a polling station in the above-mentioned manner:

- (a) shall not, except with the permission of the presiding officer, be allowed to enter the polling station again during the hours of the poll; and
- (b) may, if he is charged with the commission of any offence in that station, be kept in custody until he can be brought before a magistrate: provided that the powers conferred by the foregoing provisions shall not be exercised so as to prevent any voter who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Immediately before the commencement of the poll, the presiding officer at a polling station:

- (a) shall show the ballot papers, the official seal, the official mark and the copies of the parts of the register of electors, to be used at the poll to such persons, if any, as may be present in such station; and
- (b) shall also show each ballot box to be used at the commencement of the poll empty to the persons aforesaid so that they may see that it is empty, and shall then lock it up and place his seal upon it in such manner as to prevent it being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers and keep it so locked and sealed.

Each voter shall be given one ballot paper and shall have one vote.

The ballot paper shall be delivered to the voter by the presiding officer or a person acting under his authority. Immediately before the ballot paper is delivered to the voter:

- (a) the number, name and description of the voter as stated in the copy of the register of electors shall be called;
- (b) the number of the voter shall be marked on the counterfoil, and the ballot paper detached therefrom;
- (c) the ballot paper shall be either stamped, embossed or perforated with the official mark; and
- (d) a mark shall be placed in the register against the name of the voter to denote that he has received a ballot paper, but without showing the particular ballot paper he has received.

No ballot paper shall be delivered to a voter at an election:

- (a) if he refuses to allow the presiding officer or a person acting under his authority to make the appropriate inspection; or
- (b) if, having allowed such inspection, it discloses that such voter has already been marked with the appropriate mark; or
- (c) if, having allowed such inspection, it discloses that such voter has not already been

marked with the appropriate mark but such voter refuses to allow such officer or person to mark such voter with the appropriate mark, and accordingly such voter shall not be entitled to vote at such election.

The presiding officer of a polling station shall enter on a list, in the prescribed form, the following particulars relating to each voter to whom a ballot paper was not delivered at such station:

- (a) the number of such voter in the register of electors;
- (b) the name of such voter as it appears in such register; and
- (c) the ground on which a ballot paper was not delivered to such voter.

Such list is in the Act called the “list of voters to whom ballot papers are not delivered under section 38”.

The expression “appropriate mark” means a mark made with indelible ink.

The term “appropriate” with reference to any context connected with or relating to the inspection or marking of a voter, means:

- (i) the little finger of his left hand or, if such finger is missing, any other finger of his left hand; or
- (ii) if all the fingers of his left hand are missing, the little finger of his right hand or, if such finger is missing, any other finger of his right hand; or
- (iii) if all the fingers of his left and right hands are missing, such extremity of his left or right hand such voter possesses.

The voter, on receiving the ballot paper, shall forthwith proceed into the compartment to which he is directed by the presiding officer or any person acting under that officer’s authority and there secretly mark the ballot paper as near as may be in accordance with the directions given for the guidance of voters and fold the ballot paper so as to conceal his vote, and shall then show to the presiding officer the reverse of the paper, so as to disclose the official mark, and put the ballot paper, so folded, into the ballot box in the presence of the presiding officer.

The presiding officer may at any time while a poll is proceeding take such steps as may be necessary to ensure that no voter delays unduly in any place reserved for marking of ballot papers.

The presiding officer, or any person authorised by the presiding officer, may, if he thinks fit on the application of any voter, explain to the voter, within sight and hearing of the polling agents, if present, the method of voting specified in the directions given for the guidance of voters in the prescribed form, but in so doing shall be careful to abstain from any action which might be construed by the voter as advice or, a direction to vote for any particular recognised political party or independent group.

The presiding officer, on the application of any voter who is incapacitated by blindness or

other physical cause from voting in accordance with the directions given for the guidance of voters in the prescribed form shall, in the presence of another member of his polling staff, mark the ballot paper of such voter in the manner directed by the voter and shall cause such ballot paper to be placed in the ballot box.

No voter is entitled to vote by proxy at any election in any electoral district.

If any person at an election under the Act:

- (a) votes in more than one electoral district or asks for a ballot paper for the purpose of so voting; or
  - (b) votes more than once in the same electoral district or asks for a ballot paper for the purpose of so voting,
- he shall be guilty of an illegal practice.

The presiding officer at any polling station may in his discretion, and, if required so to do by a polling agent, shall, require any voter, before he is given a ballot paper, to make and subscribe all or any of the relevant declarations in the prescribed form.

If any person refuses to make any such declaration, the presiding officer may refuse to give him a ballot paper.

If any person wilfully makes a false statement in any declaration, he is guilty of an offence.

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of such inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in place of the ballot paper so delivered up (referred to as a "spoilt ballot paper"), and the spoilt ballot paper shall be immediately cancelled by the presiding officer.

If a person representing himself to be a particular elector named in the register applies for a ballot paper after another person has voted as such elector, the applicant shall on making and subscribing a declaration, which shall be in the prescribed form, be entitled to receive a ballot paper and to vote in the same manner as any other voter, but the ballot paper, in the Act referred to as a "tendered ballot paper", shall be of a colour different from the other ballot papers, and, before being placed in the ballot box, shall be endorsed by the presiding officer with the name of the voter and his number in the register, and that number shall be entered on a list, (called the "tendered votes list"), which shall be in the prescribed form.

No ballot paper shall be delivered to a voter after the hour fixed for the closing of the poll. But if at the hour aforesaid there is in any polling station any voter to whom a ballot paper has been delivered, such voter shall be allowed to record his vote.

As soon as practicable after the closure of the poll, the presiding officer of each polling station shall, in the presence of the polling agents make up into separate packets, sealed with his own seal and the seals of such polling agents as desire to affix their seals:

- 
- (a) each ballot box at that station, each such box remaining locked as it was at the time of the opening of the poll and being sealed after the closure of the poll so as to prevent the introduction of any ballot papers thereafter;
  - (b) the key of each ballot box;
  - (c) the unused and spoiled ballot papers placed together;
  - (d) the marked copies of the register of electors and the counterfoils of the ballot papers;
  - (e) the list of voters to whom ballot papers were not delivered under section 38; and
  - (f) the tendered votes list,
- and shall deliver the packets to the counting officer.

The packets shall be accompanied by a statement (referred to as “the ballot paper account”) made by the presiding officer, showing the number of ballot papers entrusted to him and accounting for them under the heads of:

- (a) ballot papers issued to voters, other than spoiled ballot papers;
- (b) spoiled ballot papers; and
- (c) unused ballot papers.<sup>22</sup>

#### **6.07 Counting of Votes and Declaration of Result**

The returning officer shall make arrangements for counting the votes as soon as possible after the close of the poll and shall give notice in writing to each secretary or the authorised agent of a recognised political party and the group leader of any independent group contesting the election, of the situation of each counting centre, the date and time of the commencement of the count, and a statement setting out the counting centres and the polling station or stations assigned to each such counting centre.

The secretary of each recognised political party or its authorised agent or a group leader may appoint:

- (a) not more than five agents (referred to as “counting agents”) to attend at the counting of votes at each counting centre where such counting centre has been assigned more than one polling station;
- (b) not more than two counting agents to attend at the counting of votes at each counting centre where such counting centre has been assigned only one polling station.

Any candidate to whom the power of appointing polling agents has been delegated may, in like manner, be delegated the power of appointing counting agents in respect of any counting centre under sub-paragraph (b).

Notice in writing stating the names, the numbers of national or other identity cards issued by a government department or public corporation and addresses of the persons appointed shall be given by the secretary of such recognised political party or its authorised representative or the group leader or the candidate to the counting officer before the counting of votes commences. The counting officer may refuse to admit to the counting centre any counting agent whose name, number of national or other identity card issued by a government department or public corporation and address has not been so given and

who does not produce a letter from the returning officer authorising him to be present at that counting centre.

The counting officer shall commence the counting of votes after he has received all the ballot boxes from every polling station assigned to his counting centre.

Before the counting officer proceeds to count the votes he or a person authorised by him shall in the presence of such of the counting agents as attend:

- (a) show such counting agents the ballot paper account and permit them to take copies thereof; and
- (b) open each ballot box, and having taken out the ballot papers therein, count and record the number of such papers in each such box and then mix together the whole of the papers contained in the ballot boxes.

The counting officer, while counting the votes, shall keep the ballot papers with their faces upwards and take all proper precautions for preventing any person from seeing the numbers printed on the reverse of such papers.

The counting officer shall as far as practicable proceed continuously with counting the votes and shall endorse "rejected" on any ballot paper which he may reject as invalid.

The counting officer shall not count the tendered ballot papers but shall place them in separate packets according to the recognised political party or independent group they support and shall mark each packet with the name of such party or the words "Independent Group" and the distinguishing number, if any, of such group as the case may be, and hand over such packets to the returning officer.

Any ballot paper:

- (a) which does not bear the official mark; or
- (b) on which votes are given for:
  - (i) more than one recognised political party; or
  - (ii) more than one independent group; or
  - (iii) a combination of one or more recognised political parties and independent groups; or
- (c) on which anything is written or marked by which the voter can be identified except the printed number on the reverse; or
- (d) which is unmarked; or
- (e) which is void for uncertainty,

shall be rejected by the counting officer. The counting officer shall endorse the word "rejected" on any such ballot paper.

Where the counting officer is satisfied that any mark made on a ballot paper clearly indicates the intention of the voter to give his vote and the recognised political party or independent group for which he gives his vote, the counting officer shall not reject the ballot paper on the ground solely that it has not been marked in all respects in accordance with the prescribed directions given for the guidance of voters.

Where the counting officer is satisfied that a ballot paper is not a forged or counterfeit ballot paper he shall not reject it solely on the ground that it is not stamped or perforated with the official mark. Before deciding not to reject a ballot paper the counting officer shall show it to each counting agent if present and hear his views thereon.

Before rejecting a ballot paper, the counting officer shall show it to each counting agent if present and hear his views thereon taking all proper precautions to prevent any person from seeing the number printed on the reverse of the paper.

The counting officer shall draw up a statement showing separately the number of ballot papers rejected, under each ground specified, and shall on request allow any counting agent to copy the statement.

The counting officer shall prepare a written statement in words as well as in figures of the number of votes given for each recognised political party and independent group and a separate statement, in words as well as in figures of the number of preferences indicated for every candidate nominated by each such party or group and each such statement shall be certified by the counting officer and witnessed by one of his assistants or clerks and the counting agents of any party or group as are present and desire to sign. The counting officer shall on request allow any counting agent to copy the statement.

The preferences indicated by a voter on his ballot paper for the candidates nominated by a recognised political party or independent group shall be disregarded if such voter has indicated preferences for more than three candidates nominated by such party or group.

Where a voter indicates in his ballot paper more than one preference for a candidate nominated by a recognised political party or independent group all the preferences so indicated shall be regarded as one preference.

Any preference indicated by a voter in his ballot paper which is void for uncertainty as to the candidate for whom it is indicated shall be rejected.

Before the counting officer makes a written statement, such number of recounts may be made as the counting officer deems necessary; and a recount or recounts shall be made upon the application of a counting agent so however that the maximum number of recounts that shall be so made, on the application of any counting agent or all the counting agents, shall not exceed two.

The decision of the counting officer as to any question arising in respect of any ballot paper shall be final and conclusive.

Upon the completion of the counting at any counting centre, the counting officer shall forthwith deliver in sealed packets to the returning officer:

- (a) the counted ballot papers;
- (b) the rejected ballot papers;
- (c) the tendered ballot papers;

- (d) the ballot paper account;
- (e) the packets containing unused and spoilt ballot papers, the marked copies of the register of electors and counterfoils of the ballot papers, the list of voters to whom ballot papers were not delivered and the tendered votes list;
- (f) the record of the count; and
- (g) the statement showing the number of rejected ballot papers and the grounds for rejection; and
- (h) the written statement of the number of votes given to each recognised political party or independent group and the number of preferences secured by each candidate nominated by each such party or group.

The postal ballot papers in respect of any electoral district shall be counted in accordance with the postal voters' regulations at a separate counting centre or such number of counting centres as may be determined by the returning officer.

The returning officer shall, before he proceeds to declare the result of an election, give notice in writing to the secretary or authorised agent of a recognised political party or the group leader of an independent group contesting that election, of the time and place at which the result will be declared.<sup>23</sup>

### **6.08 Declaration of Result**

After the receipt of the documents upon the closure of the poll and the count, the returning officer shall from the statements furnished to him by all the counting officers (including the counting officers of the counting centre or centres where postal ballot papers were counted) add up and determine the number of votes given for each recognised political party and independent group and the number of preferences indicated for each candidate nominated by each party or group. The returning officer shall, before he opens a sealed packet, upon a request made by an agent appointed for the purpose of witnessing the count permit such agent to inspect the seals of such packet.

Upon such determination, the returning officer shall forthwith declare elected, in accordance with the provisions of the Constitution, such number of members which the electoral district is entitled to return as has been specified by the Commissioner in the order published in accordance with the Constitution.

The returning officer shall forthwith after the result has been declared by him, make a return, substantially in the prescribed form, to the Commissioner, who shall cause the names of the members so elected to be published in the Gazette.

The returning officer shall retain the packets and all documents forwarded to him for a period of six months reckoned from the date of the receipt thereof and thereafter shall cause the said packets and documents to be destroyed unless otherwise directed by the Commissioner.

An Election Judge may make an order that any ballot paper or other document relating to an election which has been sealed as required by the Act be inspected, copied, or produced at

such time and place and subject to such conditions as the Judge may deem expedient, but shall not make such an order unless he is satisfied that such inspection, copying or production is required for the purpose of instituting or maintaining a prosecution or an election petition in connection with the election. Save as aforesaid, no person shall be allowed to inspect any such ballot paper or document while it is in the custody of the returning officer.<sup>24</sup>

## — Section 7 —

### OFFENCES

#### 7.01 Offences Relating to Nomination Papers, Ballot Papers, etc

Every person who:

- (a) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper knowing the same to be forged; or
- (b) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (c) without due authority supplies any ballot paper to any person; or
- (cc) wilfully displays a marked ballot paper inside a polling station; or
- (d) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person; or
- (e) not being a person entitled under the Act to be in possession of any ballot paper which has been marked with the official mark in accordance with the Act, has any such ballot paper in his possession; or
- (f) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (g) without due authority takes out of any polling station any ballot paper or is found in possession of any ballot paper outside a polling station; or
- (h) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election; or
- (i) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or
- (j) manufactures, constructs, imports into the Republic, has in his possession, supplies or uses for the purpose of an election, or causes to be manufactured, constructed, imported into the Republic, supplied or used for the purpose of an election, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at an election; or
- (k) wilfully makes a false statement on any application to be treated as a postal voter under the Act, or in any declaration of identity sent to him under the postal voters' regulations; or
- (l) without due authority destroys, takes, opens, or otherwise tampers or interferes with,

any application to be treated as a postal voter, or any declaration of identity, or any covering envelope or ballot paper envelope within the meaning of the postal voters' regulations; or

- (m) without due authority prints any official poll card or what purports to be or is capable of being used as an official poll card at an election; or
- (n) without due authority places an appropriate mark on any voter at an election or what purports to be or is capable of being mistaken for that mark; or
- (o) fraudulently defaces an appropriate mark placed on any voter at an election without due authority; or
- (p) votes at an election knowing that he is legally incapable of, or disqualified from, so voting,

is guilty of an offence and shall on conviction by the High Court, be liable to imprisonment of either description for a term not exceeding two years and shall, by conviction, become incapable, for a period of seven years from the date of his conviction, of being registered as an elector or of voting at an election under the Act, or of being elected as a member of Parliament, and if at that date he has been elected as a member of Parliament, his election shall be vacated from the date of such conviction.<sup>25</sup>

## **7.02 Maintenance of Secrecy at Elections**

Every officer, clerk, candidate and agent authorised to attend at a polling station, or at the counting of the votes, shall, before so attending make a statutory declaration of secrecy. Such declaration shall be made by the returning officer in the presence of a Justice of the Peace and by a presiding officer or a counting officer in the presence of a Justice of the Peace or of the returning officer, and when made by any other person shall be made in the presence of the returning officer or of a Justice of the Peace or of a presiding officer or of a counting officer.

Every officer, clerk, candidate, and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark.

No such officer, clerk, candidate or agent, and no person whosoever shall attempt to obtain in the polling station information as to the recognised political party or independent group for which any voter in such station is about to vote or has voted, or communicate at any time to any person any such information obtained in a polling station as to the recognised political party or independent group for which any voter in such station is about to vote or has voted, or as to the number on the reverse of the ballot paper given to any voter at such station.

Every officer, clerk, candidate and agent in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the reverse of any ballot paper or communicate any information obtained at such counting as to the recognised political

party or independent group for which any vote is given by any particular ballot paper.

No person, except a presiding officer acting for a purpose authorised under the Act, or a person authorised by the presiding officer and acting for such purpose as aforesaid, shall communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.

Every person who acts in contravention of these provisions is guilty of an offence.

Every person who is convicted under these provisions shall, by conviction, become incapable for a period of seven years from the date of his conviction, of being registered as an elector or of voting at an election under the Act.<sup>26</sup>

### **7.03 Corrupt Practices**

#### ***Personation***

Every person who at any election:

- (a) votes in person or by post as some other person, whether that other person is living or dead or is a fictitious person; or
  - (b) votes more than once in or under his own name at such election,
- is guilty of the offence of personation.

For the purposes of these provisions, a person who:

- (a) has applied for a ballot paper for the purpose of voting in person; or
  - (b) has made an application to be treated as a postal voter; or
  - (c) has marked, whether or not validly, and returned a ballot paper issued for the purpose of voting by post,
- shall be deemed to have voted.

#### ***Treating***

Every person who corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part the expense of giving or providing any meat, drink, refreshment or provision or any money or ticket or other means or device to enable the procuring of any meat, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector who corruptly accepts or takes any such meat, drink or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such meat, drink, refreshment or provision is guilty of the offence of treating.

### *Undue Influence*

Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at an election; or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector, or thereby compels, induces or prevails upon any elector either to give or refrain from giving his vote at an election shall be guilty of the offence of undue influence.

Every person who, at any time in the period commencing from the first day of the nomination period at any election and ending on the day following the date of the poll at such election:

- (a) utters at any religious assembly any words for the purpose of influencing the result of such election or inducing any elector to vote or refrain from voting for any recognised political party or independent group at such election; or
  - (b) for such purpose distributes or displays at any religious assembly, any handbill, placard, poster, drawing, notice, photograph of a candidate, symbol, sign, flag or banner; or
  - (c) holds or causes to be held a public meeting at a place of worship for the purpose of promoting the election or the election campaign of any recognised political party or independent group at such election,
- is guilty of the offence of undue influence.

Any member or official of a religious order or organisation:

- (a) who denies, or threatens to deny, to any member or adherent or the family of such member or adherent, any spiritual ministrations, service or benefit, to which such member or adherent would in the ordinary course have been entitled; or
- (b) who excludes, or threatens to exclude, such member or adherent from such order or organisation,

in order to induce or compel such member or adherent to vote or refrain from voting for any recognised political party or independent group at an election, or to support or refrain from supporting any recognised political party or independent group at such election, or on account of such member or adherent having voted or refrained from voting for any recognised political party or independent group at such election, or having supported or refrained from supporting any recognised political party or independent group at such election, is guilty of the offence of undue influence.

Any person who, being the employer of any other person:

- (a) terminates or threatens to terminate such employment; or
- (b) denies or threatens to deny to such other person any benefit or service which such other person already enjoyed, or would have enjoyed, in the ordinary course of such employment,

in order to induce or compel such other person to vote or refrain from voting for any recognised political party or independent group at an election, or to support or refrain from supporting any recognised political party or independent group at such election, or on account of such other person having voted or refrained from voting for any recognised political party or independent group at such election, or having supported or refrained from supporting any recognised political party or independent group at such election, is guilty of the offence of undue influence.

### ***Bribery***

The following persons shall be guilty of the offence of bribery:

- (a) every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector or to or for any other person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector having voted or refrained from voting at an election under the Act;
- (b) every person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure any office, place or employment to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector having voted or refrained from voting at an election under the Act;
- (c) every person who directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person as a member of Parliament, or the vote of any elector at an election under the Act;
- (d) every person who upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement procures or engages, promises or endeavours to procure, the return of any person as a member of Parliament, or the vote of any elector at an election under the Act;
- (e) every person who advances or pays or causes to be paid any money to or to the use of any other person with intent that such money or any part thereof shall be expended in bribery at an election under the Act or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at such election;
- (f) every elector who, before or during an election under the Act, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at such election;
- (g) every person who, after an election under the Act, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on

- account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at such election;
- (h) every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or agreeing or having agreed to vote for any recognised political party or independent group at an election, or on account of and as payment for his having assisted or agreed to assist any recognised political party or independent group at an election, applies to any candidate nominated by such recognised political party or independent group, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment;
  - (i) every person who directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate gives or procures any office, place or employment or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment to or for such other person, or gives or lends, or agrees to lend or give, or offers or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.<sup>27</sup>

#### **7.04 Punishment and Incapacities for Corrupt Practices**

Every person who:

- (a) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation; or
  - (b) commits the offence of treating, undue influence or bribery; or
  - (c) makes or publishes, before or during an election, for the purpose of affecting the result of that election, any false statement of fact in relation to the personal character or conduct of any candidate; or
  - (d) makes or publishes, before or during an election, for the purpose of affecting the result of that election, any false statement of the withdrawal of any candidate at such election,
- is guilty of a corrupt practice, and shall on conviction by the High Court be liable, in the case referred to in sub-paragraph (a) above, to rigorous imprisonment for a term not exceeding twelve months, and, in any other case, to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Every person who is convicted of a corrupt practice shall, by conviction, become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at any election under the Act or of being elected as a member of Parliament, and if at that date he has been elected as a member of Parliament, his election shall be vacated from the date of such conviction.

A prosecution for a corrupt practice shall not be instituted without the sanction of the Attorney-General.

Where a corrupt practice is committed in connection with an election under the Act by any candidate who was not elected as a member at the election or with his knowledge or consent or by any of his agents, such candidate shall on conviction by the High Court be liable, in the case of the offence of personation, to imprisonment for a term not exceeding twelve months, and, in any other case, to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment: provided, however, that such candidate must not be convicted of such corrupt practice under the preceding provisions consisting of the offence of treating or undue influence committed by any of his agents if he proves to the High Court:

- (a) that no corrupt or illegal practice was committed at the election by such candidate and any such offence was committed contrary to the orders and without the sanction or connivance of such candidate; and
- (b) that such candidate took all reasonable means for preventing the commission of corrupt and illegal practices at the election; and
- (c) that any such offence was of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and his agents.

Every person who is convicted under these provisions of a corrupt practice shall, by conviction, become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at an election under the Act or of being elected as a member of Parliament, and if at that date he has been so elected, his election shall be vacated from the date of such conviction.

A prosecution for a corrupt practice shall not be instituted against any candidate at an election under the Act who was not elected as a member at such election:

- (a) except within the period during which an election petition could, if such candidate had been elected as a member at such election, have been presented against him in connection with his election; and
- (b) except by a person who would have had a right to present such petition; and
- (c) except with the sanction of the Attorney-General.<sup>28</sup>

### **7.05 Illegal Practices**

Except as allowed by the Act, if any payment or contract for payment is knowingly made in contravention thereof, either before, during or after an election, the person making such payment or contract is guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of the Act, is also guilty of an illegal practice.

Where there is published in any newspaper any false statement concerning, or relating to:

- (a) the utterances, or activities at an election of any candidate, or any recognised political party or independent group which is contesting such election; or

(b) the conduct or management of such election by such candidate, or any such recognised political party, or independent group, and such statement is capable of influencing the result of such election, then, every person who at the time of such publication was the proprietor, the manager, the editor, the publisher or other similar officer of that newspaper or was purporting to act in such capacity, shall each be guilty of an illegal practice unless such person proves that such publication was made without his consent or connivance, and that he exercised all such diligence to prevent such publication as he ought to have exercised having regard to the nature of his function in such capacity and in all the circumstances.

“Newspaper” includes any journal, magazine, pamphlet or other publication.

A candidate or his agent, who prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to an election and which does not bear upon its face the names and addresses of its printer and publisher is guilty of an illegal practice.

Every person who commits an illegal practice shall on conviction by the High Court be liable to a fine not exceeding three hundred rupees and shall by conviction become incapable for a period of three years from the date of his conviction of being registered as an elector or of voting at an election under the Act or of being elected as a member of Parliament, and if at that date he has been elected as a member of Parliament, his election shall be vacated from the date of such conviction.

A prosecution for an illegal practice shall not be instituted without the sanction of the Attorney-General.<sup>29</sup>

#### **7.06 Excuse to Corrupt or Illegal Practice**

Where, upon the trial of an election petition respecting an election under the Act, the Election Judge reports that a candidate at such election has been guilty by his agents of the offence of treating or undue influence or of any illegal practice in reference to such election, and the Election Judge further reports, after giving the Attorney-General an opportunity of being heard, that the candidate has proved to the court:

- (a) that no corrupt or illegal practice was committed at such election by the candidate and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate; and
- (b) that such candidate took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and
- (c) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents,

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under the Act.<sup>30</sup>

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— *Section 8* —

**ELECTION PETITIONS**

**8.01 Avoidance of Election by Conviction of Candidate**

The election of a candidate as a member of Parliament is avoided by his conviction for any corrupt or illegal practice.<sup>31</sup>

**8.02 Avoidance of Election on Election Petition**

The election in respect of any electoral district shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely:

- (a) that by reason of general bribery, general treating or general intimidation or other misconduct or other circumstances, whether similar to those enumerated before or not, a section of electors was prevented from voting for the recognised political party or independent group which it preferred and thereby materially affected the result of the election;
- (b) non-compliance with the provisions of the Act relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in such provisions and that such non-compliance materially affected the result of the election.

The election of a candidate as a member shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge, namely:

- (a) that a corrupt or illegal practice was committed in connection with the election by the candidate or with the knowledge or consent or by any agent of the candidate;
- (b) that the candidate personally engaged a person as a canvasser or agent or to speak on his behalf knowing that such person had within seven years previous to such engagement been found guilty of a corrupt practice under the law relating to the election of the President or the law relating to referenda or under the Ceylon (Parliamentary Elections) Order in Council, 1946, or under the Act, by a court of competent jurisdiction or by the report of an Election Judge;
- (c) that the candidate personally engaged a person as a canvasser or agent or to speak on his behalf knowing that such person had been a person on whom civic disability had been imposed by a resolution passed by Parliament in terms of Article 81 of the Constitution, and the period of such civic disability specified in such resolution had not expired;
- (d) that the candidate was at the time of his election a person disqualified for election as a member.

Every election petition shall be tried by the Court of Appeal. The place of the trial of an election petition shall be in or as near as practicable to the electoral district to which that petition relates.

An election petition may be presented to the Court of Appeal by any one or more of the following persons, namely:

- (a) some person claiming to have had a right to be returned or elected at such election;
- (b) some person alleging himself to have been a candidate at such election.

All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition, namely:

- (a) a declaration that the election in respect of any electoral district is void;
- (b) a declaration that the return of any person elected was undue;
- (c) a declaration that the candidate was duly elected and ought to have been returned.

A petitioner shall join as respondents to his election petition:

- (a) where the petition, in addition to claiming that the election of all or any of the returned candidates is void or was undue, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates, other than the petitioner, and where no such declaration is claimed, all the returned candidates; and
- (b) any other candidate or person against whom allegations of any corrupt or illegal practice are made in the petition.

Any candidate not already a respondent to an election petition shall, upon application in that behalf made by him to the Election Judge, be entitled to be joined as a respondent to such petition: provided that no candidate shall be entitled to be joined of his own motion as a respondent to such petition unless he has given such security for costs as the Election Judge may determine.

An election petition:

- (a) shall state the right of the petitioner;
- (b) shall state the holding and result of the election;
- (c) shall contain a concise statement of the material facts on which the petitioner relies;
- (d) shall set forth full particulars of any corrupt or illegal practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of such practice; and shall also be accompanied by an affidavit in support of the allegation of such corrupt or illegal practice and the date and place of the commission of such practice;
- (e) shall conclude with a prayer as, for instance, that the election in respect of any electoral district should be declared void, and shall be signed by all the petitioners.

The Election Judge may, upon such terms as to costs or otherwise as he may deem fit, allow the particulars of any corrupt or illegal practice specified in an election petition to be amended or amplified in such manner as may, in his opinion, be necessary for ensuring a fair or effective trial of the petition so however, that he shall not allow such amendment or

amplification if it will result in the introduction of particulars of any corrupt or illegal practice not previously alleged in the petition.

Every petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial of such petition within a period of six months after the date of the presentation of such petition. The Election Judge shall make his order deciding such petition without undue delay after the date of the conclusion of the trial of such petition.

At the conclusion of the trial of an election petition the Election Judge shall determine whether the member whose return or election is complained of, or any other and what person was duly returned or elected, or whether the election was void, and shall certify such determination in writing.

Such certificate shall be kept in the custody of the Registrar of the Court of Appeal to be dealt with as prescribed.<sup>32</sup>

### **8.03 Report of Judges as to Corrupt or Illegal Practice**

At the conclusion of the trial of an election petition the Election Judge shall also make a report setting out:

- (a) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any; and
- (b) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice: provided, however, that before any person, not being a party to an election petition nor a candidate, is reported by an Election Judge, the Election Judge shall give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.<sup>33</sup>

### **8.04 Appeal against Decision of Election Judge**

An appeal of the Supreme Court shall lie against:

- (a) the determination of an Election Judge; or
- (b) any other decision or order of an Election Judge.

Any such appeal may be preferred, either by the petitioner or by the respondent in the election petition, before the expiry of a period of one month next succeeding the date of the determination or decision against which the appeal is preferred.

Notice of filing of a petition of appeal, accompanied by a copy of the petition, shall, within ten days of the filing thereof, be served by the appellant on the other party or each of the other parties to the election petition and on the Attorney-General. Such service on a party may be effected in any manner prescribed in the Parliamentary Election Petition Rules for the service of the notice and copy of an election petition.

Every appeal preferred, for the purpose of stamp duties, is deemed to be an appeal in a civil action of the value of ten thousand rupees.

Every appeal under these provisions shall be heard by the Supreme Court and shall, as far as practicable, be given priority over other business of that Court. The Court may give all such directions as it may consider necessary in relation to the hearing and disposal of each appeal.

The Attorney-General shall be entitled to appear or be represented in any appeal under these provisions.

At the time of filing of a petition of appeal or within three days afterwards, security for the payment of all costs, charges and expenses that may become payable by the appellant shall be given on behalf of the appellant.

The security shall be an amount of not less than ten thousand rupees. The security required by these provisions shall be given by a deposit of money.

If the security is not given by the appellant, no further proceedings shall be heard on the appeal, and the respondent may apply to the Supreme Court for an order directing the dismissal of the appeal and for the payment of the respondent's costs. The costs of hearing and deciding such application shall be paid as ordered by the Supreme Court, and in default of such order shall form part of the general costs of the appeal.

The deposit of money by way of security for the payment of the costs, charges and expenses payable by the appellant shall be made by payment to the Registrar of the Supreme Court which shall be vested in and drawn upon from time to time by the Chief Justice for the purposes for which the security is required.

The Registrar of the Supreme Court shall keep a book open to the inspection of all parties concerned in which shall be entered from time to time the amount and the appeal to which it is applicable.

The Supreme Court may, upon any appeal preferred, vary or reverse the determination or decision of the Election Judge to which the appeal relates.

Where the Supreme Court reserves on appeal the determination of the Election Judge, that Court shall decide whether the member whose return or election was complained of in the election petition, was duly returned or elected, or whether the election was void, and a certificate of such decision shall be issued by that Court.

The Supreme Court may, in the case of any appeal, order that the election petition to which the appeal relates shall be tried anew in its entirety or in regard to any matter specified by that Court and give such directions in relation thereto as that Court may think fit.

The Supreme Court may make any order which it may deem just as to the costs of the appeal and as to the costs of, and incidental to, the presentation of the election petition and of the proceedings consequent thereon, and may by such order reverse or vary any order, as to

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costs made by the Election Judge; and the provisions of the Parliamentary Election Petition Rules as to the award, taxation and recovery of costs shall, *mutatis mutandis*, apply in relation to the award of such costs by the Supreme Court and the taxation and recovery thereof.<sup>34</sup>

### **8.05 Report to President**

Where no appeal is preferred against the determination of an Election Judge within the period specified in that behalf, the Election Judge shall transmit to the President the certificate of such court together with the report of such Judge in respect of any corrupt or illegal practice.

Where an appeal is preferred to the Supreme Court, the Election Judge shall transmit to the Supreme Court the certificate of the Election Judge issued together with the report of the Election Judge in respect of any corrupt or illegal practice.

Where the determination of the Election Judge is reversed by the Supreme Court on appeal, the Supreme Court shall transmit to the President the certificate of the decision of that Court, together with:

- (a) the report of the Election Judge made in respect of any corrupt or illegal practice, if it is in the opinion of the Supreme Court not affected by the decision in the Appeal; or
- (b) if the Supreme Court considers it necessary, a report in respect of the matters relating to a corrupt or illegal practice made by the Supreme Court in accordance with the Act.<sup>35</sup>

### **8.06 Effect of Certificate and Report**

Upon the transmission to the President of the certificate of the determination of an Election Judge or of the decision of the Supreme Court, the determination or decision, as the case may be, shall take effect and accordingly:

- (a) the return or the election shall be confirmed; or
- (b) the return or the election shall be altered in accordance with such determination or decision, as the case may be; or
- (c) where the determination or the decision is to the effect that the election in respect of any electoral district is to be declared void, the President shall, within one month of the receipt of such certificate, by order published in the Gazette require the holding of an election in respect of that electoral district.

The President shall, upon receipt of the report of the Election Judge, or of the Supreme Court transmitted to him, forthwith cause a copy of the report to be published in the Gazette.

Where this report is to the effect that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice and the returning officer shall expunge the name of such person from any nomination paper in respect of the election which was the subject matter of the election petition.

Where the report is to the effect that such corrupt or illegal practice was committed with the knowledge and consent of a person who was a candidate at an election or by his agent, that person shall be subject to the same incapacities as aforesaid.

It shall be the duty of every registering officer forthwith to peruse every such report which is published in the Gazette, and forthwith to delete from the register of electors the name of every person appearing from the report to be incapable of voting at an election.<sup>36</sup>

### **8.07 Time for Presentation**

Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the Gazette: provided that an election petition questioning the return or the election upon the ground of a corrupt or illegal practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the member whose election is questioned or by an agent of the member or with the privity of the member in pursuance or in furtherance of such corrupt or illegal practice may, so far as respects such corrupt or illegal practice, be presented at any time within twenty-eight days after the date of such payment or act.

An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of the Election Judge within the time within which an election petition questioning the return or the election upon that ground may be presented.<sup>37</sup>

### **8.08 Prohibition of Disclosure of Vote**

No elector who has voted at an election shall, in any proceeding to question the election, be required to state for which recognised political party or independent group he has voted.<sup>38</sup>

### **8.09 Votes to be Struck Off at a Scrutiny**

On a scrutiny at the trial of an election petition the following votes only shall be struck off:

- (a) the vote of any person who was not on the register of electors assigned to the polling station at which the vote was recorded;
- (b) the vote of any person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of any person who committed or procured the commission of personation at the election;
- (d) where the election was a general election, the vote of any person proved to have voted at such general election in more than one electoral district;
- (e) the vote of any person who was incapable of voting at the election pursuant to Article 89 of the Constitution;
- (f) the vote of any person who was treated as a postal voter, and who voted in person at the election.

On a scrutiny, any tendered vote proved to be a valid vote shall on the application of any party to the petition, be added to the poll.<sup>39</sup>

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## NOTES

1. Constitution of Sri Lanka, see article 101
2. Ibid., see article 93
3. Ibid., see article 88
4. Ibid., see article 99
5. Ibid., see article 99A
6. Ibid., see article 103
7. Ibid., see article 104
8. Parliamentary Elections Act 1981, see section 6
9. Ibid., see section 28
10. Ibid., see section 49
11. Constitution of Sri Lanka, see article 95
12. Ibid., see article 96
13. Ibid., see article 98
14. Parliamentary Elections Act 1981, see section 3
15. Ibid., see sections 4 and 5
16. Ibid., see sections 7-9
17. Ibid., see sections 10-25
18. Ibid., see section 26
19. Ibid., see section 27
20. Ibid., see sections 29-33
21. Ibid., see section 34
22. Ibid., see sections 35-47
23. Ibid., see sections 50-58
24. Ibid., see sections 60-63
25. Ibid., see section 66
26. Ibid., see section 76
27. Ibid., see sections 77-80
28. Ibid., see sections 81-82
29. Ibid., see sections 83-88
30. Ibid., see section 89
31. Ibid., see section 91
32. Ibid., see sections 92-100
33. Ibid., see section 101
34. Ibid., see sections 102-104
35. Ibid., see section 105
36. Ibid., see sections 106-107
37. Ibid., see section 108
38. Ibid., see section 109
39. Ibid., see section 110

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## INTRODUCTION

Malaysia has a federal system of government whose legislative authority is vested in a Parliament which consists of the Yang di-Pertuan Agong (the King) and two Dewan (Houses of Parliament) known as the Dewan Negara (Senate) and the Dewan Rakyat (House of Representatives).

The Senate consists of appointed members who hold office for not more than two terms either continuously or otherwise.

The House of Representatives consists of one hundred and ninety-two elected members.

In this compilation, the undermentioned election laws and rules, including relevant constitutional provisions, relating to elections to the House of Representatives are presented in outline.

The following laws are examined: the Elections Act 1958 (herein referred to as “the Act”); Election Offences Act 1954; Elections (Conduct of Elections) Regulations 1981; Election (Postal Voting) Regulations 1959; and Elections (Registration of Electors) Regulations 1971.

### — Section 1 —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 Qualification for Membership of Parliament

Every citizen resident in the Federation is qualified to be a member –

- (a) of the Senate, if he is not less than thirty years old;
- (b) of the House of Representatives, if he is not less than twenty-one years old, unless he is disqualified for being a member by this Constitution or by any law made in pursuance of Article 48 (of the Constitution).

A person is disqualified for being a member of either House of Parliament if –

- (a) he is and has been found or declared to be of unsound mind; or
- (b) he is an undischarged bankrupt; or
- (c) he holds an office of profit; or
- (d) having been nominated for election to either House of Parliament or the Legislative Assembly of a State, or having acted as election agent to a person so nominated,

- he has failed to lodge any return of election expenses required by law within the time and in the manner so required; or
- (e) he has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand ringgit and has not received a free pardon; or
  - (f) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, any country outside the Federation or has made a declaration of allegiance of any country outside the Federation.<sup>1</sup>

### **1.02 Conduct of Elections**

The Constitution establishes an Election Commission which is responsible for the conduct of elections to the House of Representatives and the Legislative Assemblies of the States, review of the constituencies for the purpose of election of Parliament and State Legislative Assemblies and preparation and revision of electoral rolls for such elections (see Section 2 – Administration below).<sup>2</sup>

### **1.03 Assistance to Election Commission**

The Election Commission may employ such number of persons, on such terms and conditions, as the Commission may with the approval of the Yang di-Pertuan Agong determine.

All authorities must on the request of the Commission give the Commission such assistance in the discharge of its duties as may be practicable; and in exercising its function of making recommendations for the delimitation of constituencies for the elections, the Commission is required to seek the advice of two officers of the Federal Government with special knowledge of the topography of, and the distribution of the population in, the unit of review for federal elections, and those officers must be selected for that purpose by the Yang di-Pertuan Agong.<sup>3</sup>

### **1.04 Federal Constituencies**

For the election of members to the House of Representatives a unit of review must be divided into constituencies in accordance with the provisions contained in the Thirteenth Schedule.

The total number of constituencies must be equal to the number of members, so that one member is elected for each constituency, and of that total in the States of Malaysia a number determined in accordance with the provisions in Article 46 (Composition of the House of Representatives) and the Thirteenth Schedule must be allocated to each State.<sup>4</sup>

### **1.05 Method of Challenging Elections**

No election to the House of Representatives shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.<sup>5</sup>

## 1.06 Qualification of Electors

Every citizen who –

- (a) has attained the age of twenty-one years on the qualifying date; and
- (b) is resident in a constituency on such qualifying date or, if not so resident, is an absent voter,

is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified, but no person is allowed in the same election to vote in more than one constituency.

A person is disqualified for being an elector in any election to the House of Representatives if –

- (a) on the qualifying date he is detained as a person of unsound mind or is serving a sentence of imprisonment; or
- (b) having before the qualifying date been convicted in any part of the Commonwealth of an offence and sentenced to death or imprisonment for a term exceeding twelve months, he remains liable on the qualifying date to suffer any punishment for that offence.

“Qualifying date” means the date by reference to which the electoral rolls are prepared or revised.<sup>6</sup>

## — Section 2 —

### ADMINISTRATION

#### 2.01 Election Commission

The Election Commission is appointed by the Yang di-Pertuan Agong after consultation with the Conference of Rulers, and consists of a chairman, a deputy chairman and three other members.

In appointing members of the Election Commission, the Yang di-Pertuan Agong must have regard to the importance of securing an Election Commission which enjoys public confidence.

A member of the Election Commission ceases to hold office on attaining the age of sixty-five years or on becoming disqualified under clause (4) of the Constitution and may at any time resign his office by writing addressed to the Yang di-Pertuan Agong, but must not be removed from office except on the like grounds and in the like manner as a Judge of the Supreme Court.

The Yang di-Pertuan Agong must remove from office any member of the Election Commission if such member –

- (a) is an undischarged bankrupt; or
- (b) engages in any paid office or employment outside the duties of his office; or
- (c) is a member of either House of Parliament or of the Legislative Assembly of a State.

The Chairman of the Election Commission is disqualified from holding such office if after three months of his appointment to such office or at any time thereafter he is or becomes a member of any board of directors or board of management, or an officer or employee, or engages in the affairs or business, of any organisation or body, whether corporate or otherwise, or any commercial, industrial or other undertaking, whether or not he receives any remuneration, reward, profit or benefit from it: provided that such disqualification does not apply where such organisation or body carries out any welfare or voluntary work or objective beneficial to the community or any part thereof, or any other work or objective of a charitable or social nature, and the member does not receive any remuneration, reward, profit or benefit from it.

The remuneration of members of the Election Commission is charged on the Consolidated Fund. The remuneration and other terms of office of a member of the Election Commission must not be altered to his disadvantage after his appointment.

Where, during any period, the Chairman of the Election Commission has been granted leave of absence by the Yang di-Pertuan Agong or is unable, owing to his absence from the Federation, illness or any other cause, to discharge his functions, the Deputy Chairman is required to discharge the functions of the Chairman during that period, and if the Deputy Chairman is also absent or unable to discharge such functions, a member of the Election Commission may be appointed by the Yang di-Pertuan Agong to discharge the functions of the Chairman during that period.<sup>7</sup>

## **2.02 Staff of the Election Commission**

It was mentioned above (sub-section 1.03) that the Election Commission, with the approval of the Yang di-Pertuan Agong, may employ such number of persons as the Election Commission may determine. Subject to the foregoing provision (Article 115 (1) of the Constitution), the Election Commission may appoint –

- (a) a Secretary and a Deputy Secretary and as many Assistant Secretaries to the Election Commission as the Commission may consider necessary;
- (b) a State Elections Officer and so many Deputy State Elections Officers for each State as the Commission may consider necessary; and
- (c) a returning officer and so many assistant returning officers for each constituency as the Commission may consider necessary.

The Secretary is the chief administrative officer of the Election Commission, subject at all times and in all matters to the supervision, direction and control of the Commission, and must –

- (a) implement the decisions of the Commission;
- (b) carry out the day-to-day administration of offices of the Commission, and exercise

- supervision, direction and control over all other election officers, and all other officers of the Commission;
- (c) carry out such functions as may be given to him by the Commission in or for the exercise of its powers or the performance of its duties in relation to the review or delimitation of constituencies, the registration of electors, the conduct of elections and other matters;
  - (d) have power to signify on behalf of the Commission all writs, notices and other documents of the Commission, all subsidiary legislation made by the Commission, and all other acts of the Commission; and
  - (e) have such other powers and duties as may be provided under the Act.

The Deputy Secretary has, subject to the direction and control of the Secretary, all the powers and may perform all the duties of the Secretary and in the absence of the Secretary, acts as the Secretary.

The Assistant Secretary must, subject to the direction and control of the Secretary and Deputy Secretary, assist the Secretary and Deputy Secretary in the exercise of their powers and the performance of their duties.<sup>8</sup>

### **2.03 General Powers and Duties of the Election Commission**

The Election Commission shall –

- (a) exercise control and supervision over the review of constituencies, the conduct of elections and the registration of electors on the electoral rolls, and must enforce on the part of all election officers fairness, impartiality and compliance with the law;
- (b) have powers to issue to election officers such directions as may be deemed necessary by the Commission to ensure effective execution of the law;
- (c) have power to administer any oath required to be taken under the Act; and
- (d) execute and perform all other powers and duties which are conferred or imposed upon it by the Act.

The Election Commission may delegate, subject to such conditions and restrictions as the Commission may consider necessary, any of the powers and duties conferred or imposed upon the Commission by the Act, to such person or officer as it may think fit: provided that –

- (a) nothing in this sub-section applies to any power to make regulations under the Act; and
- (b) no such delegation must affect the exercise of such powers or the performance of such duties by the Commission.<sup>9</sup>

### **2.04 Powers of Officers**

A State Elections Officer has, subject to the direction and control of the Election Commission, all the powers and may perform all the duties of the Commission in relation to the conduct of elections in the State for which he is appointed.

A Deputy State Elections Officer has, subject to the direction and control of the State Elections Officer, all the powers and may perform all the duties of the State Elections Officer in the State for which he is appointed.

A returning officer is in common with other election officers, subject to the control, supervision and direction of the Election Commission.

An assistant returning officer has, subject to the direction and control of the returning officer whom he is appointed to assist, all the powers and may perform all the duties of the returning officer.

If any returning officer is by sickness or other cause prevented or disabled from performing any of his duties under the Act and there is no time for any other person to be appointed by the Election Commission, the returning officer may appoint a deputy to act for him. Every such appointment must be reported as soon as possible to the Election Commission and may be revoked by the Commission but without prejudice to the validity of anything already done by any deputy so appointed.<sup>10</sup>

### —Section 3—

## DELIMITATION OF CONSTITUENCY BOUNDARIES

### 3.01 The Role of the Election Commission

The Election Commission is required to review from time to time, the division of the Federation and the States into constituencies and recommend such changes therein as it may think necessary in order to comply with the provisions contained in the Thirteenth Schedule of the Constitution.

There must be an interval of not less than eight years between the date of completion of one review, and the date of commencement of the next review. A review must be completed within a period of not more than two years from the date of its commencement.

Where the number of elected members of the House of Representatives is altered in consequence of any amendment to Article 46 of the Constitution (Composition of the House of Representatives), or the number of elected members of the Legislative Assembly of a State is altered in consequence of a law enacted by the Legislature of a State, the Election Commission must undertake a review of the division into federal or State constituencies, as the case may be, of the area which is affected by the alteration, and such review must be completed within a period of not more than two years from the date of the coming into force of the law making the alteration.<sup>11</sup>

### 3.02 Provisions Relating to Delimitation of Constituencies – Thirteenth Schedule of the Constitution

The following principles must as far as possible be taken into account in dividing any unit

of review into constituencies pursuant to the provisions of Articles 116 and 117 of the Constitution –

- (a) while having regard to the desirability of giving all electors reasonably convenient opportunities of going to the polls, constituencies ought to be delimited so that they do not cross State boundaries and regard ought to be had to the inconveniences of State constituencies crossing the boundaries of federal constituencies;
- (b) regard ought to be had to the administrative facilities available within the constituencies for the establishment of the necessary registration and polling machinery;
- (c) the number of electors within each constituency in a State ought to be approximately equal except that, having regard to the greater difficulty of reaching electors in the country districts and the other disadvantages facing rural constituencies, a measure of weightage for area ought to be given to such constituencies;
- (d) regard ought to be had to the inconveniences attendant on alterations of constituencies, and to the maintenance of local ties.

The number of electors is to be taken to be as shown on the current electoral rolls.<sup>12</sup>

### **3.03 Procedure for Delimitation of Constituencies**

Where the Election Commission has provisionally determined to make recommendations affecting any constituency, it must inform the Speaker of the House of Representatives and the Prime Minister accordingly, and must publish in the Gazette and in at least one newspaper circulating in the constituency a notice stating –

- (a) the effect of its proposed recommendations, and (except in a case where it proposes to recommend that no alteration be made in respect of the constituency) that a copy of its recommendations is open to inspection at a specified place within the constituency; and
- (b) that representations with respect to the proposed recommendations may be made to the Commission within one month after the publication of such notice, and the Commission must take into consideration any representations duly made in accordance with any such notice.

Where, on the publication of the notice afore-mentioned of a proposed recommendation of the Election Commission for the alteration of any constituencies, the Commission receives any representation objecting to the proposed recommendation from –

- (a) the State Government or any local authority whose area is wholly or partly comprised in the constituencies affected by the recommendation; or
  - (b) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question,
- the Commission must cause a local enquiry to be held in respect of those constituencies.

The Election Commission has, in relation to any enquiry, all the powers conferred on Commissioners by the Commissions of Enquiry Act 1950.

Where the Election Commission revises any proposed recommendations after publishing a notice thereof, the Commission must comply again with that section in relation to the revised recommendations, as if no earlier notice had been published.

Provided it shall not be necessary to hold more than two local enquiries in respect of any such recommendations.

The Election Commission must, having completed the procedure prescribed, submit to the Prime Minister a report on constituencies showing –

- (a) the constituencies into which it recommends that each unit of review should be divided in order to give effect to the principles set out in sub-section 3.02 above; and
- (b) the names by which it recommends that those constituencies will be known, or stating that in its opinion no alteration is required to be made in order to give effect to the said principles.

As soon as may be after the Election Commission has submitted its report to the Prime Minister, he must lay the report before the House of Representatives, together (except in a case where the report states that no alteration is required to be made) with the draft of an Order to be made for giving effect, with or without modifications, to the recommendations contained in the report.

If any draft Order is approved by the House of Representatives by resolution supported by the votes of not less than one-half of the total number of members of that House, the Prime Minister must submit the draft Order to the Yang di-Pertuan Agong.

If a motion for the approval of any draft Order is rejected by the House of Representatives, or withdrawn by leave of the House, or is not supported by the votes of not less than one-half of the total number of members of the House, the Prime Minister may, after such consultation with the Election Commission as he may consider necessary, amend the draft and lay the amended draft before the House of Representatives; and if the draft as so amended is approved by the House by a resolution supported by the votes of not less than one-half of the total number of members of the House, the Prime Minister is required to submit the amended draft to the Yang di-Pertuan Agong.

Where the draft of an Order is submitted to the Yang di-Pertuan Agong, the Yang di-Pertuan Agong must make an Order in the terms of the draft submitted to him, and the Order shall come into force on such date as may be specified therein.

The coming into force of any such Order must not affect any election to the House of Representatives or a Legislative Assembly until the next dissolution of Parliament or the Assembly, as the case may be, occurring on or after the date.<sup>13</sup>

### **3.04 Polling Districts and Polling Stations**

As soon as may be after the delimitation of a constituency, and thereafter when any

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constituency is altered or a new constituency is created, the Election Commission must –

- (a) divide each constituency into polling districts;
- (b) assign to each polling district a distinguishing letter or letters or number or both;
- (c) appoint a place or places at which a polling station or stations for the district is or are to be established; and
- (d) publish in the Gazette a notice specifying –
  - (i) the polling districts into which the constituency has been divided;
  - (ii) the distinguishing letter or letters or number or both assigned to each polling district;
  - (iii) the place or places appointed for the establishment of a polling station or stations for each polling district.

The division of a constituency into polling districts may be altered by the Election Commission as occasion may require, and upon such alteration being made, the Commission is required to publish in the Gazette a notice specifying in relation to that constituency the particulars stipulated, and any such alteration takes effect at the next revision of the electoral roll for that constituency and not earlier.

Unless the Election Commission considers it necessary or expedient in the special circumstances of any case to provide otherwise there must be, for each polling district, one polling station.<sup>14</sup>

## — Section 4 —

### REGISTRATION OF ELECTORS

#### 4.01 Appointment of Officers

The Election Commission may appoint a Chief Registering Officer for Malaysia, a Deputy Chief Registering Officer for each State, a registering officer and a revising officer for each constituency, and in addition thereto, if necessary, a deputy registering officer for each constituency.

The Chief Registering Officer exercises, subject to the direction and control of the Election Commission, control and supervision over all matters relating to the registration of electors.

The Deputy Chief Registering Officer exercises, subject to the direction and supervision of the Chief Registering Officer, all the powers of the Chief Registering Officer in the State for which he is appointed.

A registering officer is, in common with other election officers, subject to the control, supervision and direction of the Election Commission. A deputy registering officer exercises, subject to the direction and supervision of the registering officer, all the powers of the registering officer in the constituency for which he is appointed.<sup>15</sup>

#### **4.02 Preparation of Electoral Rolls**

Each registering officer must prepare, publish and revise in the prescribed manner an electoral roll for the constituency for which he is appointed. Unless the Election Commission otherwise directs, the electoral rolls for Parliamentary electors and State electors must be combined in a single register.

Each Parliamentary constituency constitutes a registration area and each Parliamentary polling district constitutes a separate registration unit in a registration area. However, where a Parliamentary polling district lies partly in one and partly in another State constituency, each part of the Parliamentary polling district contained in a single State constituency constitutes a separate registration unit.

The electoral roll must be framed in separate parts for each registration unit in the registration area.

The names in the electoral roll for each registration unit must be arranged in order of localities and within such localities in such manner as the registering officer determines, and must be numbered in accordance with the directions of the Chief Registering Officer.

The names of such persons as are entitled under the provision of any law to vote at any election as a postal voter and are –

- (a) absent voters; or
  - (b) members of any police force established by any written law in force in Malaysia, other than members of the Police Volunteer Reserve,
- must be shown separately in a list of postal voters at the end of each part of the electoral roll in respect of the registration unit in which such persons are qualified to be registered as electors.

Where in any year prior to the certification of electoral rolls, the boundaries of any constituency are altered by the Commission, the electoral roll of the registration area comprised in such constituency last revised and certified remains valid until the next certification of the electoral roll.

The Election Commission may at such time as it determines by notice published in the Gazette call upon:

- (a) every person who is qualified and desires to be registered as a Parliamentary elector in any State; and
- (b) every person who is qualified and desires to be registered as a State elector in such State,

to forward his application to the registering officer of the registration area or to the assistant registering officer of the registration unit in which he is qualified as an elector so as to reach such registering officer or assistant registering officer on or after the first day and not later than the last day of the period prescribed by such notice. Such period must not be less than thirty days nor more than sixty days.

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As soon as possible after the expiration of the period prescribed, the registering officer in each registration area must prepare an electoral roll in accordance with the Regulations.

In preparing the electoral roll, the registering officer must include therein the name of every person from whom an application has been received and who appears to him to be qualified for registration as an elector in the category or categories of electors in which he has applied to be registered.

For the purpose of satisfying himself as to the qualification of any applicant to be registered a registering officer may require such further information from the applicant and may make such enquiry as he may deem necessary.

On the completion of the electoral roll for any registration area, the registering officer must give notice in the Gazette that such electoral roll has been completed and that such electoral roll or a copy thereof is open for inspection at such hours as may be stated in such notice at the office of such registering officer and that such part of the electoral roll or a copy thereof as relates to any registration unit in such registration area is open for inspection at such hours as may be stated in such notice at such place or places in that registration unit as may be specified in such notice.

Such notice may be given –

- (a) by the Chief Registering Officer to apply to the electoral roll of more than one registration area;
- (b) by the Chief Registering Officer or the registering officer to apply to parts of the electoral roll relating to any registration unit or units forming part of a registration area.<sup>16</sup>

#### **4.03 Claims and Objections**

Any person who has applied to be registered in the electoral roll for any constituency and is qualified to be so registered may, if his name has been omitted from such electoral roll, submit a claim to the registering officer to whom he applied to have his name entered therein.

Every claim must be made in a prescribed form and declared to the registering officer within fourteen days from the date of the publication in the Gazette of the notice specified in the Regulations. Within seven days after the expiration of the period of fourteen days, the registering officer must exhibit in a conspicuous place in his office a notice containing the names and addresses of claimants.

Any person whose name appears in the electoral roll for any registration area may object to the inclusion in such electoral roll of his own name or the name of any other person appearing therein, or may object to the insertion in the electoral roll of the name of any claimant.

Every objection is required to be made in a prescribed form and be delivered to the

registering officer of the registration area in which the name of the person in regard to whom the objection is made is registered within fourteen days from the date of publication in the Gazette of the notice of completion of the electoral roll given in accordance with the Regulations, or, in the case of an objection to the insertion in the electoral roll of the name of a claimant, within seven days from the date on which the notice containing the names of claimants is first exhibited.

The registering officer must, as soon as practicable after receiving an objection to the inclusion or insertion of any name in the electoral roll, send notice of the objection to the person in regard to whom objection has been made.

The registering officer must, as soon as practicable after the last date for delivering of objections, hold a public inquiry into all claims and objections which have been duly made, giving not less than ten clear days' notice to each claimant, objector, and person in regard to whom objection has been made. At such public inquiry the claimant, the objector, the person in regard to whom objection has been made and any persons appearing to the registering officer to be interested in or affected by the inquiry may appear and be heard either in person or by any other person duly authorised by him or them in writing in that behalf.

If the registering officer is of opinion –

- (a) that the particulars given in a claim or objection are insufficient, he may ask for further information and take no further action unless such information is supplied within such days of giving or despatch of the request therefor;
- (b) that a claim may be allowed without a hearing, he may allow the claim, provided that no objection is made thereto, and shall so inform the person making the claim;
- (c) that the objector is not entitled to object, he may disallow the objection and must so inform the objector;
- (d) that a claim or objection cannot be allowed because –
  - (i) the matter has been concluded by the decision of a court; or
  - (ii) the particulars given in a claim or objection do not entitle the claimant or objector to succeed,

he may send to the person making the claim or objection a notice stating his opinion and the grounds thereof and that he intends to disallow the claim or objection unless the person gives the registering officer notice within seven days from the date of the first mentioned notice that he requires the claim or objection to be heard, and, if he receives no such notice within the said time, he may disallow the claim or objection.

Where an objection is made to the inclusion or insertion of any name in the electoral roll the registering officer must at such public inquiry call upon the objector, or a person authorised in writing in that behalf by the objector, to give prima facie proof of the ground of the objection.

If such prima facie proof as aforesaid is given, the registering officer must require proof of the qualification of the person in regard to whom objection has been made, and –

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- (a) if such person's qualification is not proved to such registering officer's satisfaction, must expunge such person's name from, or, as the case may be, refuse to insert such person's name in the electoral roll;
  - (b) if such person's qualification is so proved, must retain such person's name, or, as the case be, insert such person's name in the electoral roll.

If at such public inquiry into any objection, the objector or a person authorised in writing in that behalf by the objector fails to appear or appears but fails to give such prima facie proof, then –

- (a) if the objection is to the inclusion in the electoral roll of the name of a person appearing therein the registering officer must retain such person's name in the electoral roll without calling upon such person to prove his qualification;
- (b) if the objection is to the insertion in the electoral roll of the name of any claimant, the registering officer must require proof of the qualification of the claimant and –
  - (i) if the claimant's qualification is not proved to the registering officer's satisfaction, must refuse to insert the claimant's name in the electoral roll;
  - (ii) if the claimant's qualification is so proved, must insert the claimant's name in the electoral roll.

If an objection is made and is disallowed by the registering officer and, in his opinion, the objection was made without reasonable cause, the registering officer may order in writing the objector to pay to the person in regard to whom objection has been made such sum (not exceeding fifty dollars) as compensation for any loss of time or inconvenience incurred by such person in consequence of the objection.

Any sum awarded as compensation is recoverable as though the order of the registering officer or revising officer, as the case may be, were an order of a Sessions Court for the recovery of money by the person to whom such compensation is payable duly made in civil proceedings before such court.<sup>17</sup>

#### **4.04 Appeals**

Any claimant, objector, or person in regard to whom objection has been made may, if he is aggrieved by a decision of the registering officer, appeal to the revising officer. Every such appeal is required to be in writing signed by the appellant and must state concisely the grounds of appeal. It must be delivered to the revising officer together with a fee of five dollars within ten days from the date of the decision in respect of which the appeal is made.

The revising officer must hear such appeals in public after giving not less than four clear days' written notice of the date, time and place of the hearing of the appeal to the parties concerned and may at his discretion hear any further evidence. His determination of the appeal is final.

If, upon an objection being disallowed by the registering officer, the objector appeals to the revising officer, and in the opinion of the revising officer the appeal was made without reasonable cause, the revising officer may order the objector in writing to pay to the person

in regard to whom the objection was made such sum (not exceeding fifty dollars) as compensation for any loss of time or inconvenience incurred by such person in consequence of the appeal. If any such appeal is allowed by the revising officer, he shall have power to revise or cancel any order made by the registering officer for the payment of compensation by the objector.

When the revising officer has determined the appeals which have been lodged with respect to claims or objections, he must forward to the registering officer a statement containing the names which he has decided must be entered or retained in the electoral roll and those which he has decided must be omitted or expunged from the electoral roll and the registering officer must amend the electoral roll accordingly.<sup>18</sup>

#### **4.05 Certification of Electoral Roll**

The registering officer of each registration area must, as soon as possible after claims and objections have been determined, certify the electoral roll for that registration area and must, as soon as possible thereafter, give notice in the Gazette that the electoral roll has been certified and that such electoral roll, or a copy thereof, is open for inspection at such reasonable hours as may be stated in such notice at the office of the registering officer or at such place or places in the registration area as may be specified in the notice. Such notice may be given by the Chief Registering Officer in respect of the electoral roll of more than one registration area.

Where the registering officer certifies the electoral roll in accordance with the regulation during the period when an appeal is pending, he is required to insert in or expunge from the certified electoral roll the name of any person in accordance with the decision of the revising officer on the determination of such appeal.

The certified electoral roll comes into force upon the date of the publication in the Gazette of the notice and, subject to such alterations, if any, as may subsequently be made therein, such electoral roll shall continue in force until the next certification of the same.<sup>19</sup>

#### **4.06 Revision of Electoral Roll**

In each year, other than the year in which an electoral roll was prepared, the Election Commission is required by notice published in the Gazette to call upon –

- (a) every person who is qualified and desires to be registered as a Parliamentary elector in any State; and
- (b) every person who is qualified and desires to be registered as a State elector, in such State,

and who is not already so registered or being already so registered desires to transfer his registration to a different locality in which he is qualified to be registered, to forward his application to the registering officer of the registration area or the assistant registering officer of the registration unit in which he is qualified as an elector so as to reach such registering officer or assistant registering officer on or after the first day and not later than

the last day of the period prescribed by such notice. This period must not be less than twenty-one nor more than forty-two days.

The registering officer must forthwith cause an acknowledgement, by using the tear-off slip on the prescribed form, duly stamped by his official stamp, of every such application received by him during the period specified to be delivered or sent by ordinary letter post to the applicant at the address given by him.

No more than one application for registration on any revision of an electoral roll may be submitted in respect of the same person.

As soon as possible after the expiration of the period prescribed by notice, it shall be the duty of each registering officer to revise the electoral roll of the registration area for which he is appointed.

For the purpose of revising the electoral roll the registering officer of each registration area must prepare two lists, namely: List C containing the names of the persons in the electoral roll in force at the qualifying date who are dead or appear to the registering officer to be or to have become disqualified for registration; and List B containing the names of persons whose names do not appear in List A (i.e., the roll in force) who have applied for registration and who appear to the registering officer to be qualified for registration as electors in the category or categories of electors in which they have applied to be registered.

For the purpose of revising the electoral roll and of satisfying himself as to the qualification of any person for registration or determining whether the name of any person should be entered or retained in the electoral roll or expunged therefrom the registering officer may either make such house-to-house or other inquiry as he may deem necessary by himself or through any person appointed by him in writing in that behalf or send a notice requiring information to the person from whom the information is required by ordinary letter post addressed to such person or by delivering such notice to him personally or to an adult member of his household.

If any person whose name is on the electoral roll fails to give such information to the registering officer with regard to his own qualifications for registration within fourteen days after service upon him by the registering officer of a notice under the Regulations, he is, in addition to any penalty prescribed in any written law, liable to have his name expunged from the electoral roll and is not entitled to have his name included in the electoral roll for the ensuing year.

Every person appointed by a registering officer to whom any information relating to the qualification of any person for registration or relevant for determining whether the name of any person should or should not be entered or retained in the electoral roll has been furnished or by whom such information has been collected must forthwith furnish such information to such registering officer.

On the completion of the revision of the electoral roll for any registration area, the registering officer must give notice in the Gazette that the revision has been completed and

that the revised electoral roll, or a copy thereof, is open for inspection at such reasonable hours as may be stated in such notice at the office of such registering officer and that such part of the electoral roll or a copy thereof as relates to any registration unit in such registration area is open for inspection at such hours as may be stated in such notice at such place or places in that registration unit or such other place, as may be specified in such notice: provided that such notice may be given –

- (a) by the Chief Registering Officer to apply to the electoral roll of more than one registration area;
- (b) by the Chief Registering Officer or the registering officer to apply to parts of the electoral roll relating to any registration unit or units forming part of a registration area.

Any person qualified to have his name entered in the electoral roll of any constituency whose name appeared in such electoral roll before revision or who has applied to have his name entered in the electoral roll may, if his name has been omitted from List A or List B as the case may be, or appears in List C of the revised electoral roll, submit a claim to the registering officer of such registration area to have his name entered in List B or expunged from List C of the revised electoral roll, as the case may be. A person submitting such a claim is referred to as a “claimant”.

Any person whose name appears in Lists A and B of the revised electoral roll for any registration area may object to the inclusion in such List A or B of his own name or the name of any other person and may object to the insertion in List B of the name of any claimant; such person so objecting is referred to as an “objector”.

The procedures which apply to the claims and objections with respect to the completion of the electoral roll (see sub-section 4.03 above) generally apply to the completion of the revised electoral roll.

The registering officer of each registration area must, as soon as possible after the determination of any claims and objections, certify the electoral roll for such registration area in the prescribed form and as soon as possible thereafter give notice in the Gazette that the electoral roll has been certified and that such electoral roll, or a copy thereof, is open for inspection at such reasonable hours as may be stated in such notice at the office of the registering officer or at such place or places in the registration area as may be specified in the notice: provided that such notice may be given by the Chief Registering Officer to apply to the electoral roll of more than one registration area.

The registering officer may certify the electoral roll during the period when any appeal is pending and thereafter must adjust, insert in or expunge from such certified electoral roll the name of any person in accordance with the decision of the revising officer on the determination of such appeal.

The certified electoral roll comes into force upon the date of the publication in the Gazette of the notice and, subject to such alterations, if any, as may subsequently be made therein as a result of the determination of appeals, such electoral roll continues in force until the next certification of the same.

As soon as practicable after the certification of the revised electoral roll, the registering officer or the Supervisor of Elections must prepare a new list by deleting from List A the names of persons appearing in List C and by adding to List A the names of persons appearing in List B and the new list so prepared becomes the List A for the purpose of the next subsequent revision of the electoral roll.

Any alteration to the electoral roll which is required –

- (a) to carry out the decision of any registering officer or revising officer with respect to any claim or objection;
- (b) to correct any clerical error;
- (c) to correct any misnomer or inaccurate description;
- (d) to delete the name of any person who the registering officer is satisfied is dead;
- (e) to strike off the name of any person who has been lawfully deprived of citizenship or who for any other reason is in the opinion of the registering officer not entitled to be on the roll,

may be made by the Chief Registering Officer at any time.<sup>20</sup>

#### **4.07 General Provisions Regarding Registration**

A registering officer or revising officer may, for the purpose of considering or determining any application, claim, objection or appeal which he is required to consider or determine, summon any person to appear before him to give evidence on oath or affirmation and may administer any such oath or affirmation for such purpose and may order the production of any document relevant to any issue which such officer is required to consider and determine.

The Deputy Chief Registering Officer in any State may appoint such number of assistant registering officers for any registration unit in such State as he may consider necessary. An assistant registering officer is required to receive applications made for registration in such registration unit, and shall forward such applications to the registering officer.

The registering officer of any registration area may on request supply without fee –

- (a) one copy of the electoral roll to each candidate at a Parliamentary election or his election agent;
- (b) one copy of any part or parts of the electoral roll relating to any State constituency or part of such constituency included in the registration area to each candidate at a State election for such constituency or his election agent.

The registering officer is required to supply to any person copies of any part or parts of the electoral roll from time to time in force so long as there are sufficient copies available after allowing for the number which may be required for the purposes of any election on payment of a fee of one dollar for each such copy together with an additional fee of ten cents for each hundred (or part of a hundred) names in such copy.

No misnomer or inaccurate description of any person or place named or described in any

electoral roll or other document whatsoever prepared or issued under or for the purposes of the Regulations in any way affects the operation of the Regulations as respects that person or place if that person or place is so designated in such electoral roll or document as to be identifiable.<sup>21</sup>

## — Section 5 —

### POSTAL VOTING

#### 5.01 Persons Entitled to Vote as Postal Voters

Any person who has registered himself as a Parliamentary or State elector, and is –

- (a) an absent voter; or
  - (b) a person certified by the Election Commission to be an election officer and to be liable for duties on polling day; or
  - (c) a member of any police force established by any written law in force in Malaysia, other than a member of the Police Volunteer Reserve; or
  - (d) a member of any of the public services who on polling day is employed whole time in a post outside West Malaysia; or
  - (e) a member of the Election Commission; or
  - (f) a member of any such category of persons as the Election Commission may from time to time by notification in the Gazette designate as postal voters,
- must, on receipt of a postal ballot paper, be entitled to vote at any election.

Persons desiring to vote by post must apply by using the prescribed form. Applications are directed to the returning officer of the constituency wherein they were registered as soon as it is known that an election is contested in that constituency. If an application is approved, the returning officer must issue a postal ballot paper to the applicant. If it is not approved, the returning officer must so inform the applicant and state his reasons therefor, in the prescribed form.

Persons in the category of member of the public services in (d) above who desire to vote by post are required to apply in the prescribed form. Applications must be made to the returning officer of the constituency wherein they were registered through the State Elections Officer of the State wherein the constituency is situated as soon as it is known that an election is contested in that constituency. If the application is approved, the returning officer is required to issue a postal ballot paper to the applicant. If it is not approved, the returning officer must so inform the applicant and state his reasons therefor, in a letter in the prescribed form.<sup>22</sup>

#### 5.02 Form of Postal Ballot Papers

The ballot papers to be sent to postal voters must be in the same form as, and indistinguishable from, the ballot papers delivered to other voters.<sup>23</sup>

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### **5.03 Persons Entitled to be Present at Issue of Postal Ballot Papers and Opening of Postal Voters' Ballot Boxes**

No person other than –

- (a) the returning officer and his clerks;
  - (b) the candidates;
  - (c) an election agent or any one person appointed by a candidate to attend in his election agent's place;
  - (d) a member or officer of the Election Commission,
- may be present at the proceedings on the issue of postal ballot papers or the opening of postal voters' ballot boxes.

If a candidate appoints a person, he must give notice of the appointment to the returning officer, stating the name and address of the person so appointed before the time fixed for the issue of the postal ballot papers or the opening of the said postal voters' ballot boxes, as the case may be.

If an agent dies or becomes incapable of acting, the candidate may appoint another agent in his place and must forthwith give to the returning officer notice in writing of the name and address of the agent appointed.

The agents may be appointed and notice of appointment given to the returning officer by the candidate's election agent instead of the candidate.

A candidate may himself do any act or thing which any agent of his, if appointed, would have been authorised to do, or may assist his agent in doing any such act or thing.

Where in the Regulations any act or thing is required or authorised to be done in the presence of the candidates or their agents, the non-attendance of any such person or persons at the time and place appointed for the purpose must not, if the act or thing is otherwise duly done, invalidate the act or thing done.<sup>24</sup>

### **5.04 Notice of Issue of Postal Ballot Papers**

The returning officer must give each candidate or his election agent not less than two days' notice in writing of the time and place at which he will issue postal ballot papers.

Where a subsequent issue of postal ballot papers is made, the returning officer must notify each candidate or his election agent as soon as practicable of the time and place at which he will make such subsequent issue.<sup>25</sup>

### **5.05 Marking Postal Ballot Papers**

Each postal ballot paper issued must be perforated or its reverse stamped with the official mark or initialled by the returning officer and the name and number of the elector must be called out and such number must be marked on the counterfoil, and a list must be made of

the persons to whom postal ballot papers have been sent (referred to as “the list of postal voters”) but without showing the particular ballot paper issued.

The number of a postal ballot paper must be marked on the declaration of identity in the prescribed form and on the envelope bearing the words “Ballot paper envelope”.<sup>26</sup>

### **5.06 Documents to be Sent to Postal Voters**

The returning officer is required to send to every postal voter the following documents –

- (a) a ballot paper;
- (b) a declaration of identity bearing the number of the ballot paper;
- (c) a ballot paper envelope bearing the number of the ballot paper;
- (d) an envelope for the return of the aforesaid documents (referred to as a “covering envelope”); and
- (e) instructions to the voter.

All envelopes addressed to the postal voters must be counted and forthwith despatched under arrangements previously approved by the Election Commission.<sup>27</sup>

### **5.07 Provisions and Procedures in Respect of Postal Voters’ Ballot Box**

The returning officer must, at the proceedings on the original issue of postal ballot papers, provide a ballot box or ballot boxes for the reception of the covering envelopes when returned by the postal voters.

Every such ballot box must be shown open and empty to the agents present and must then be locked by the returning officer and sealed with the seal of the returning officer and the seals of such of the agents as desire to affix their seals in such manner as to prevent it being opened without breaking the seal.

Every such ballot box must be marked “postal voters’ ballot box” and with the name of the constituency for which the election is held. The returning officer must make provision for the safe custody of every such ballot box.

The returning officer is required to, as soon as practicable after the completion of the issue of the postal ballot papers, and in the presence of the agents, make up in separate packets –

- (a) the list of postal voters; and
- (b) the counterfoils of those ballot papers which were issued, and seal such packets.

The sealed packet containing the list of postal voters may be opened by the returning officer for the purposes of a subsequent issue, and on completion of that issue the list and the counterfoil of ballot papers which were issued must again be made up and sealed.<sup>28</sup>

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### **5.08 Procedure during and after Postal Voting**

A postal voter who wishes to exercise his postal vote must exercise it by completing and despatching the ballot paper and the declaration of identity in accordance with the instructions to the voter.

The returning officer must, immediately on receipt of a covering envelope before five o'clock in the afternoon of polling day, place it unopened in a postal voters' ballot box locked and sealed in accordance with the Regulations.

Each postal voters' ballot box must be opened by the returning officer in the presence of the agents.

So long as the returning officer ensures that there is at least one postal voters' ballot box for the reception of covering envelopes up to five o'clock in the afternoon of polling day the other postal voters' ballot boxes may previously be opened by him.

The returning officer must give each candidate or his election agent at least twenty-four hours' notice in writing of the time and place of his opening of each postal voters' ballot box and the envelopes contained therein.

When a postal voters' ballot box has been opened, the returning officer must count and note the number of covering envelopes, and must then open each covering envelope separately.

A covering envelope must be marked "rejected" –

- (a) if it does not contain both a declaration of identity and a ballot paper envelope;
- (b) if it does not contain both a declaration and a ballot paper.

If the covering envelope contains only a ballot paper envelope, the returning officer must open the ballot paper envelope to ascertain if the declaration of identity is inside that envelope and if it is found not to contain a declaration of identity, the covering envelope must be marked "rejected".

The covering envelope marked "rejected" to which must be attached the contents (if any) of that envelope must be placed in a separate receptacle (referred to as "the receptacle for votes rejected").

On opening a covering envelope (other than one which contains only a ballot paper envelope) the returning officer must first satisfy himself that the declaration of identity has been duly signed and authenticated and, if he is not so satisfied, he must mark the declaration "declaration rejected", attach thereto the ballot paper envelope or, if there is no such envelope, the ballot paper, and place it in the receptacle for votes rejected: provided that before so doing he must show the declaration to the agents and, if any objection is made by any agent to his decision, he must add the words "rejection objected to".

Where the number on the declaration of identity duly signed and authenticated agrees with

the number on the ballot paper envelope, the returning officer must place the declaration in a separate receptacle (referred to as “the receptacle for declarations of identity”) and the ballot paper envelope in another separate receptacle (referred to as “the receptacle for ballot paper envelopes”).

Where there is no ballot paper envelope or the ballot paper envelope has been opened, the returning officer must –

- (a) where the number on the declaration of identity duly signed and authenticated agrees with the number on the ballot paper, place the declaration in the receptacle for declarations of identity and the ballot paper in a ballot box previously shown open and empty to the agents present and locked by the returning officer and sealed with the seal of the returning officer and the seals of such of the agents as desire to affix their seals in such manner as to prevent it being opened without breaking the seal which must be subsequently treated as a ballot box; and
- (b) where the number on the said declaration does not agree with the number on the ballot paper, mark the declaration “vote rejected”, attach thereto the ballot paper and place it in the receptacle for votes rejected.

Where the number on the declaration of identity duly signed and authenticated does not agree with the number on the ballot paper envelope or that envelope has no number on it, the returning officer must open the envelope and must –

- (a) where the number on the declaration agrees with the number on the ballot paper, place the declaration in the receptacle for declarations of identity and the ballot paper in the ballot box provided for the purpose; and
- (b) where the number on the declaration does not agree with the number on the ballot paper or there is no ballot paper, mark the declaration “vote rejected”, attach thereto the ballot paper (if any) and place it in the receptacle for votes rejected.

Except for the purposes of ascertaining whether a ballot paper envelope contains a declaration of identity or whether the number on the declaration agrees with the number on the ballot paper, the returning officer must not open the ballot paper envelope before it is otherwise required to be opened.

After the conclusion of the proceedings to ascertain contents of a ballot paper envelope in respect of the declaration of identity and whether the number on the declaration corresponds with that on the ballot paper, the returning officer must put the contents of the receptacle for votes rejected and the contents of the receptacle for declarations of identity into two separate packets and seal up such packets.

After sealing up the packets, the returning officer is required to open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

Where a ballot paper envelope does not contain a ballot paper, the returning officer is required to mark the envelope “empty”.

Where the number on a ballot paper envelope agrees with the number on the ballot paper contained therein, the returning officer must place the ballot paper in the ballot box provided for the purpose and must put aside the envelope for immediate destruction.

Where the number on the ballot paper envelope does not agree with the number on the ballot paper contained therein, the returning officer must mark the ballot paper "rejected" and attach the ballot paper envelope thereto.

The returning officer is required to put into a separate packet the envelopes marked "empty" and the ballot papers marked "rejected" and seal up such packet.

If at any stage when envelopes are opened it is discovered that there is more than one ballot paper, the returning officer must, after checking the number on the declaration of identity or ballot paper envelope, as the case may be, place the correct ballot paper in the ballot box provided for the purpose and retain the other ballot paper or papers together with all other documents. The returning officer will then make a statement of facts as discovered, witnessed by the candidates or agents present, and report the facts to the police for investigation.

A postal voter is not entitled to vote in person on polling day.<sup>29</sup>

## — Section 6 —

### WRITS OF ELECTION

#### 6.01 Role of Election Commission

For the purpose of every general election and of any by-election, the Election Commission is required to issue writs addressed to the returning officer of each constituency for which a member is to be elected.

Every writ issued must be in the prescribed form and must be returned to the Election Commission in the prescribed manner.

In relation to a vacancy which is to be filled at a by-election, a writ must be issued no earlier than ten days and not later than thirty days from the date on which it is established by the Election Commission that there is a vacancy.<sup>30</sup>

#### 6.02 Notice of Election

On the issue of a writ, the Election Commission must publish a notice thereof in the Gazette and such notice must specify the date on which candidates for election are to be nominated, not being less than four days after the date of the publication of such notice, and the date or dates on which the poll will be taken in the event of a contest, not being less than seven days after the day of nomination.

The returning officer must give further notice of the issue of such writ and of the time and place of the nomination of candidates in the constituency by causing notices in the prescribed form to be published in any such places in the constituency as he may deem necessary.

If at any time after the Election Commission has issued a writ for the holding of a general election or a by-election, owing to any cause whatsoever no nomination of candidates for the election can take place or has taken place on the day of nomination in pursuance of such writ, the returning officer must forthwith inform the Secretary to the Election Commission of such fact by endorsing the reverse of the writ and returning it to the Secretary to the Election Commission.

The Election Commission on being satisfied of such fact is required to return the writ to the returning officer specifying a fresh day of nomination and a fresh polling day, and must, consequently, publish a fresh notice of the election stating therein that the previous notice of the election has been countermanded.

If at any time after an election is commenced it is shown to the satisfaction of the Election Commission that in any polling station, owing to any cause whatsoever the poll cannot be taken or has been taken but cannot be completed on the date determined, the Election Commission must, by notice published in the local area for which the polling station is designated, suspend the poll and appoint a fresh date for the poll to be taken or to be completed in such manner as may be directed by the Election Commission.<sup>31</sup>

## — Section 7 —

### NOMINATION

#### **7.01 Nomination Papers**

Any person eligible for election as a member of the Dewan Rakyat, or of the Legislative Assembly of a State, may be nominated as a candidate for election.

Candidates are nominated by means of nomination papers which must be set out in the prescribed form. Such papers are required to be in triplicate.

Each nomination paper must be completely and correctly filled and must state –

- (a) the name of the constituency in which the candidate seeks election;
- (b) in the case of election to a State Legislative Assembly, the name of the State concerned;
- (c) the full name, other names, if any, identity card number, occupation, if any, and residential address of the candidate, and the candidate's address within the constituency for which the candidate seeks election to which documents relating to the election may be sent;
- (d) the name, the polling district code number, the number in the electoral roll and

identity card number of the proposer and seconder, whose names must appear in the electoral rolls for the time being in force for the constituency for which the candidate seeks election; and

- (e) the name, identity card number and address of the witness in the presence of whom the candidate affixes his signature.

Each nomination paper must also bear the signature of the candidate and of the proposer, seconder and the witness in front of whom the candidate affixes his signature.

Failure to comply with the foregoing relevant requirements may render the nomination paper liable to be rejected by the returning officer.

No nomination paper must be rejected on account of –

- (a) any error or omission in the nomination paper in relation to the description of, or any particulars in respect of, the candidate, or his proposer, or his seconder, if the particulars contained in the nomination paper are sufficient to identify the candidate, or his proposer, or his seconder, as the case may be;
- (b) any error or omission with regard to any place specified in the nomination paper, if such place is otherwise sufficiently identifiable from the particulars given in the nomination paper; or
- (c) any error or omission which is capable of being corrected and is corrected upon being brought to the attention of the person presenting the nomination paper.

The returning officer may direct that any clerical or printing error in the entries in the nomination paper be overlooked if the error is not of any material significance and does not affect the identification of the candidate, his proposer, or his seconder, or the identification of the constituency in respect of which the nomination paper is delivered.

Every candidate must at the time of his nomination and in the manner prescribed deliver to the returning officer a statutory declaration of his qualifications made and subscribed by him and a deposit or deposit receipt.

The returning officer is required to supply, at any reasonable time between the date of the notice of election and eleven o'clock in the forenoon on the day of nomination, free of charge forms of nomination papers and statutory declarations to any person requiring the same.<sup>32</sup>

## **7.02 Deposit by Candidate**

A candidate, or some person on his behalf, must deposit or cause to be deposited with the returning officer, the State Elections Officer or with any other Government department authorised by the returning officer in that behalf, between the date of the notice of election and eleven o'clock in the forenoon on the day of nomination, the sum of five thousand ringgit in legal tender in the case of an election to the Dewan Rakyat.

On receipt of legal tender from a candidate the returning officer must proceed to deal with the sum paid in accordance with the financial regulations in force for the time being.

If a candidate is not nominated as a candidate for election or if, after the deposit is made, the candidate withdraws his candidature, the deposit must be returned to the person by whom the deposit was made, and, if the candidate dies after the deposit is made and before the poll is commenced, the deposit, if made by him, must be returned to his legal personal representative, or if not made by him, must be returned to the person by whom the deposit was made.

If the candidate is not shown as standing nominated in the notice of contested election or if the poll is countermanded by reason of his death, the deposit must be returned as soon as practicable after the publication of the said notice or after his death, as the case may be.

The deposit is forfeited if a poll is taken and, after the official addition of the votes by the returning officer, the candidate is found not to have polled more than one-eighth of the total number of votes polled other than rejected votes by all the candidates in the constituency.<sup>33</sup>

### **7.03 Proceedings on Nomination Day**

The returning officer, on nomination day, is required to attend at the place of nomination from nine o'clock in the forenoon until the completion of the proceedings.

The nomination papers in triplicate must be delivered in person to the returning officer between the hours of nine o'clock and eleven o'clock in the forenoon by the candidate, his proposer and seconder or by any two or any one of them and if such nomination papers are not delivered by any of those persons or are not accompanied by the statutory declaration and deposit or deposit receipt, the nomination papers must not be accepted by the returning officer.

After the nomination papers have been delivered, the candidate may be allowed to make corrections on the nomination papers in the presence of the returning officer before eleven o'clock in the forenoon.

The returning officer must permit the candidates and their proposers and seconders and one other person, if any, appointed by each candidate in writing to be present on the day and at the place of nomination between eleven o'clock in the forenoon and twelve-thirty in the afternoon and there and then to examine the nomination papers of candidates which have been received for that constituency.<sup>34</sup>

### **7.04 Objection to Nomination Papers**

Objection may be made to a nomination paper by any person whose name appears in the electoral rolls for the constituency and by any candidate for the constituency on all or any of the following grounds but on no other ground, namely –

- (a) that the particulars of the candidate are insufficient to identify the candidate;
- (b) that the nomination paper does not comply with or was not delivered in accordance with the regulations: provided that no objection can be made under this sub-

- paragraph in respect of any matter which does not render a nomination paper liable to be rejected;
- (c) that it is apparent from the contents of the nomination paper that the candidate is not capable of being elected as a member of the Dewan Rakyat;
  - (d) that the candidate is disqualified from being a member under the provisions of the Constitution of Malaysia.

No objection to a nomination paper can be allowed unless it is made to the returning officer between eleven o'clock in the forenoon and twelve-thirty in the afternoon on the day of nomination.

Every objection must be in writing, signed by the objector and specify the grounds of objection. The returning officer may himself lodge an objection on any of the grounds set out in the Regulations.

The returning officer must with the least possible delay after twelve-thirty in the afternoon on the day of nomination decide on the validity of every objection and inform the candidate concerned or his proposer or seconder named in the nomination paper or the objector of his decision and the grounds thereof. Such decision and the grounds thereof must be kept on record.

The decision of the returning officer is final and conclusive for the purpose of the election in respect of which the proceedings are being held, and cannot be called in question in any court: provided that any person aggrieved by the decision of the returning officer may present an election petition in respect thereof on the grounds set out in the election petition procedure (section 32 of the Election Offences Act 1954).<sup>35</sup>

### **7.05 Persons Entitled to be Present at Nomination**

No person other than the returning officer, a member or officer of the Election Commission, and the candidates, their proposers and seconders and one other person (if any) appointed by each candidate is, except at the request of and for the purpose of assisting the returning officer, entitled to be present at the nomination proceedings: provided that the one other person who may be appointed by each candidate is not to be permitted to attend when the candidate is delivering the nomination papers to the returning officer.<sup>36</sup>

### **7.06 Withdrawal of Candidature**

A candidate may, before eleven o'clock in the forenoon on the day of nomination, but not afterwards, withdraw his candidature by giving notice to that effect in the prescribed form to the returning officer. The form must be signed by the candidate and attested by a witness.<sup>37</sup>

### **7.07 Uncontested Elections**

If on the day of nomination in any constituency, after the determination by the returning officer of any objections which may have been lodged, only one candidate stands nominated for that constituency, the returning officer must forthwith declare the nominated candidate

to be elected, and must forthwith return the writ issued to him, duly completed, to the Secretary to the Election Commission through the State Elections Officer. The Secretary to the Election Commission is required to cause the name of the member so elected to be published in the Gazette.<sup>38</sup>

— *Section 8* —

**PREPARATIONS FOR POLLING**

**8.01 Contested Elections**

If on the day of nomination in any constituency, after the determination by the returning officer of any objections which may have been lodged, more than one candidate stands nominated for that constituency, the returning officer must forthwith declare that a poll will be taken.

The returning officer must draw lots to determine the order in which the names of the candidates appear on the ballot papers.

There must be assigned to each independent candidate by lot conducted by the returning officer a symbol approved by the Election Commission, provided that it is not necessary to draw lots if there is only one candidate to whom a party symbol has not been assigned.

A political party may submit to the Election Commission for its approval and for registration, if so approved, a symbol, which is referred to as a “party symbol”, for the use of its candidates at any election.

At the request of a candidate, a returning officer is required to assign to him a party symbol: provided that no party symbol is so assigned except on production by the candidate of a written authority signed by a responsible official of the party authorising the candidate to use such party symbol for the purpose of the election.

The candidate must inform the returning officer how he desires his name or names to be printed on the ballot paper and for this purpose he may omit or specify by initials only any of or part of his name or names.

The returning officer must forward to the State Elections Officer a report that the election is contested together with a copy of the nomination paper of each candidate, a copy of the notification in the prescribed form in respect of each candidate, a statement showing the order in which the names of the candidates will be printed on the ballot paper and the symbol assigned to each candidate.

The returning officer must also as soon as practicable forward a certified true copy of each rejected nomination paper and the grounds on which the rejection was made to the Secretary to the Election Commission.

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Upon the receipt of the report forwarded to him, the State Elections Officer must cause to be published in the Gazette and also in such manner as he thinks fit a notice in the prescribed form specifying –

- (a) the constituency in which the election is contested;
- (b) the date on which the poll will be taken;
- (c) the names of the candidates in the order in which they will be printed on the ballot papers, the symbol allotted to each candidate and the names of their proposers and seconders; and
- (d) the situation of the polling station or polling stations for each of the polling districts for that constituency and the hours between which each polling station will be open.

If, after an election has been reported as contested one of the candidates nominated dies or becomes disqualified from being a member of the Dewan Rakyat before the poll has commenced, or if owing to any cause whatsoever the poll cannot be taken or has not been taken on the polling day specified in the writ issued to the returning officer, the returning officer must, upon being satisfied of such fact, or such cause, as the case may be, inform the Secretary to the Election Commission by endorsing the fact or the cause as the case may be, on the reverse of the writ issued to him and returning it to him without delay. The Election Commission must countermand the notice for the poll, and must appoint by notice published in the Gazette a fresh date for the election and in such case all proceedings with reference to the election must be commenced afresh, provided that no fresh nomination is necessary in the case of a qualified candidate who stood nominated at the time of the countermand of the poll.<sup>39</sup>

## **8.02 Appointment of Presiding Officers, etc**

Each returning officer must, subject to the general or special directions of the Election Commission, appoint, and may revoke the appointment of, a presiding officer to preside at each polling station for his constituency.

Where two or more polling stations are established at an appointed place, the returning officer may appoint, and may revoke the appointment of, a senior presiding officer who must exercise general supervision over the presiding officers of the polling stations, and over all arrangements for the conduct of the poll and the counting of votes in the polling stations, at that place.

If any presiding officer is by sickness or other cause, prevented from acting at any election, and there is no time for another person to be appointed by the returning officer, the presiding officer may appoint any clerk under him to act for him and every such appointment must as soon as possible be reported to the returning officer and may be revoked by the returning officer, but without prejudice to the validity of anything already done by such deputy.

The returning officer may, if he thinks fit, preside at any polling station.

Subject to the general or special directions of the Election Commission, each returning officer must appoint, and may revoke the appointment of, such other officers or staff to assist the presiding officer or officers at each polling station for his constituency. These officers and staff are under the general supervision or direction of the presiding officer or officers of the polling station of the constituency.<sup>40</sup>

### **8.03 Facilities to be Provided at Polling Station**

Outside each polling station there must be affixed in a conspicuous place by the presiding officer before the commencement of the poll a notice as set out in the prescribed form.

During the taking of the poll the presiding officer must cause to be exhibited outside his polling station a notice substantially in the form prescribed giving directions for the guidance of voters in voting, which shall be in the national language and in such other language or languages and in such script or characters as the Election Commission may direct.

The returning officer must provide at each polling station reasonable facilities for the electors allotted to such station to enable them to mark their votes screened from observation and to vote in accordance with the Regulations.<sup>41</sup>

### **8.04 Right of Registered Elector to Vote**

The electoral rolls for the time being in force are prima facie evidence for the purpose of determining whether a person is or is not entitled to vote at an election in any constituency.<sup>42</sup>

### **8.05 Admittance to Polling Station**

No person must be admitted to vote at any polling station except the polling station to which that part of the electoral roll which contains his name has been assigned: provided that where an elector for any constituency is employed as a presiding officer or in any other official capacity at a polling station within that constituency and it is inconvenient for him to vote at the polling station to which that part of the electoral roll which contains his name has been assigned, the returning officer may authorise such elector to vote at any other polling station in the constituency. Such authorisation must be given under the hand of the returning officer and must state the name of the elector and his number in the electoral roll, and the fact that he is so employed as aforesaid and must specify the polling station at which he is authorised to vote.

Unless the Election Commission, by notification in the Gazette, appoints any other hours in respect of any constituency or part thereof, the poll in any constituency must be open for twelve hours as specified by the Election Commission.

The presiding officer is required to regulate the number of voters to be admitted at a time whilst the poll is open and must exclude all other persons except the candidate, his election agent and polling agent, the returning officer, the police officers on duty, members or officers of the Election Commission, persons officially employed at the

polling station, a relative of an incapacitated voter or other persons authorised in writing by the Election Commission.

Not more than one polling agent of each candidate is permitted to be admitted at a time to any polling station whilst the poll is open.

No polling agent whose name and address has not been notified to the presiding officer can be admitted to a polling station whilst the poll is open.

It shall be the duty of the presiding officer to keep order at his polling station.

If a person misconducts himself in a polling station or fails to obey the lawful order of the presiding officer, he may immediately by order of the presiding officer be removed from the polling station by a police officer in or near that station or by any other person authorised in writing by the returning officer or the presiding officer to remove him, and the person so removed must not, without permission of the presiding officer, again enter the polling station during the day.

The foregoing powers must not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Failure to obey the lawful orders of the presiding officer is an offence punishable by a fine not exceeding one thousand ringgit.<sup>43</sup>

#### **8.06 Marking of Polling Station Limits**

It shall be the duty of each presiding officer, subject to the general directions of the Election Commission, to mark the limits of the polling station at which he is appointed to preside.<sup>44</sup>

#### **8.07 Poll by Ballot and Ballot Papers**

The votes must be given by ballot and the ballot of each voter must consist of a paper, which is referred to as a “ballot paper”.

Every ballot paper must consist of a list of candidates in Roman letters and arranged in such order as determined by the returning officer, together with the symbol assigned to each candidate.

Each ballot paper must be in the prescribed form and have a number printed at the top left hand corner and be attached to a counterfoil with the same number printed on it.<sup>45</sup>

#### **8.08 Ballot Boxes**

Every ballot box must be so constructed that the ballot paper can be put in but cannot be taken out otherwise than by unlocking the box.

The presiding officer at a polling station must immediately before the commencement of a

poll, show each ballot box to be used to such persons as may lawfully be present at such polling station so that they may see that it is empty.

The presiding officer is then required to lock the ballot box and affix his seal upon it and those of such of the candidates or their agents as attend and desire to affix their seals in such a manner as to prevent it being opened without breaking such seals; and the ballot box must not again be opened until after the close of the poll. He must keep the ballot box in his custody until it is despatched or delivered to the returning officer.<sup>46</sup>

### **8.09 Manner of Voting**

Each voter shall be given one ballot paper and is entitled to one vote.

As each voter applies for a ballot paper, the number and name of the voter as in the electoral roll must be called out and a mark, without indicating in any way the particular ballot paper to be issued to him, must be placed in the roll against the number of the voter to denote that he has been issued with a ballot paper.

The number of the voter must be written on the counterfoil of the ballot paper and the paper must be perforated or stamped with the official mark or initialled by the presiding officer on the margin of the ballot paper and the ballot paper must be issued to the voter by the presiding officer or a person acting under his authority.

The voter, on receiving the ballot paper, is required forthwith to proceed to such place in the polling station as may be indicated by the presiding officer or by any person acting under his authority and must secretly mark such ballot paper in accordance with the directions given for guidance of voters.

The voter must then fold the ballot paper so as to conceal his mark and put it into the ballot box and without undue delay must then leave the polling station limits.

The presiding officer or any person authorised by him may ask any voter whether such voter understands the method of voting and if he thinks fit, at the request of any voter, may explain to such voter in the hearing of any polling agent present in the polling station the method of voting, and in doing so he must carefully refrain from any action which might be construed as advice or direction to vote for any particular candidate.

At the request of a voter who is incapacitated by blindness or other physical cause from voting in the manner prescribed, a relative nominated by the voter, being a relative who is an elector whose name appears in the electoral rolls for the time being in force for any constituency, or if no relation is so nominated, the presiding officer, must mark the ballot paper of such voter in the manner dictated by the voter and cause the ballot paper to be placed in the ballot box. The relative so nominated is required to make a declaration in the prescribed form as to his identity and every such declaration is exempt from stamp duty.

The term "relative" means father, mother, brother, sister, wife, husband, son or daughter of the voter.<sup>47</sup>

### **8.10 Declarations by Voters**

The presiding officer at any polling station may, in his discretion, require any voter, before he is given a ballot paper, to furnish such evidence of his identity as the presiding officer may deem necessary and to make and subscribe to the prescribed declaration and every such declaration is exempt from stamp duty.

If any person fails to furnish such evidence or refuses to make such declaration, the presiding officer must refuse to give him a ballot paper.<sup>48</sup>

### **8.11 Spoilt Ballot Papers**

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be used as a ballot paper may return it to the presiding officer and if the presiding officer is satisfied that the condition of the ballot paper is due to inadvertence, he must issue another ballot paper in place of the ballot paper returned, and the ballot paper so returned (referred to as a “spoilt ballot paper”) must be cancelled by the presiding officer.<sup>49</sup>

### **8.12 Tendered Votes**

If a person representing to be a particular elector named in the electoral roll applies for a ballot paper after another person has been recorded as having voted as such elector, the applicant is after making a declaration, entitled to receive a ballot paper (referred to as a “tendered ballot paper”) and to vote, but a tendered ballot paper must be of a colour different from the ordinary ballot papers and, before being issued to the voter, must be endorsed by the presiding officer with the name of the voter and his number in the electoral roll, and that number must be entered in a list (referred to as the “tendered votes list”).<sup>50</sup>

### **8.13 Closing of Poll**

No ballot paper must be issued to a voter after the hour fixed for the closing of the poll but if at that hour there is in the polling station any voter to whom a ballot paper has been issued, such voter must be allowed to vote.<sup>51</sup>

### **8.14 Place of Counting the Votes**

Votes cast by electors at any polling station must be counted at the polling station at which such votes were cast.

The Election Commission may, if it considers it necessary or expedient in the circumstance of any case, by notice direct that the votes cast by electors at any or all the polling stations in a constituency be counted by the presiding officer of the polling station, under the supervision of the returning officer, at such counting place or places as the Election Commission may specify.

This notice must be given at least three days before the commencement of the poll

specifying the situation of the counting place and the date and time of the commencement of the count, and the Election Commission must –

- (a) forward a copy of such notice to the State Elections Officer and the returning officer responsible for the polling station or polling stations to which it relates;
- (b) cause a copy of such notice to be given to each of the candidates or his election agent; and
- (c) cause such notice to be posted in some conspicuous place outside the polling station or polling stations to which it relates.<sup>52</sup>

### **8.15 Procedure on Close of Poll**

As soon as practicable after the close of the poll the presiding officer must, in the presence of such of the candidates or their election agents or polling agents as attend –

- (a) secure the ballot box at such polling station, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals so as to prevent the introduction of any ballot paper thereafter;
- (b) determine the number of ballot papers issued to voters at the polling station, and the number of unused and spoilt ballot papers;
- (c) prepare the ballot paper statement which must be certified by the presiding officer and signed by such of the candidates or their election agents or polling agents as attend and desire to sign the same; and
- (d) make up into separate packets, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals –
  - (i) the unused and spoilt ballot papers placed together;
  - (ii) the marked copies of the electoral rolls;
  - (iii) the counterfoils of the ballot papers; and
  - (iv) the tendered votes list.

As soon as practicable after the conclusion of these proceedings, the presiding officer must make preparation to count the votes cast at the polling station at which he presides in the presence of such of the candidates, their election agents or counting agents as attend and must inform the candidates, their election agents or counting agents of the time when he will begin to count the votes.

Where the Election Commission directs that the votes cast at the polling station be counted at a specified counting place, the presiding officer must take the ballot box, the sealed packets and the ballot paper statement to such counting place.

Where the same person is appointed to preside at more than one polling station within the same polling district and the Election Commission directs that the same ballot box be used at all the polling stations at which he presides, the presiding officer –

- (a) may, in the presence of such candidates or their election agents or polling agents as attend –
  - (i) open the sealed ballot box in such a manner that the ballot papers issued at

- 
- any subsequent polling stations at which he presides can be inserted but nothing can be removed from it;
  - (ii) reopen the packets sealed for use at each subsequent polling station at which he presides;
  - (b) must only perform the proceedings of determining the number of ballot papers issued, the number of unused and spoiled ballot papers and prepare the ballot paper statement, and proceed to count the votes on the last day of the poll for the constituency and after the completion of the poll at the last polling station at which he presides.

If at an election –

- (a) any ballot box used at a polling station –
  - (i) is unlawfully removed from lawful custody, or is lost; or
  - (ii) is destroyed, damaged, or tampered with, to such an extent, so that the result of the poll at that polling station cannot be ascertained; or
- (b) any such error, irregularity or defect in procedure as is likely to affect the validity of the poll occurs at a polling station, the returning officer must, upon being satisfied thereof, forthwith report the matter to the Secretary to the Election Commission.

Upon receiving such a report, the Election Commission must, after taking all material circumstances into account, either –

- (a) declare the poll at that polling station to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station and –
  - (i) cause a notice of such declaration and the day and hours so appointed and fixed to be published in the Gazette; and
  - (ii) send a copy of such notice to the returning officer who must cause the same to be further published in the constituency in such places and in such manner as he may deem necessary; or
- (b) if satisfied that the result of a fresh poll at that polling station will not, in any way, affect the result of the election, issue such directions to the returning officer as the Election Commission deems proper for the further conduct and completion of the election.<sup>53</sup>

### **8.16 Counting of Votes by Presiding Officer**

No counting agent whose name and address has not been notified to the returning officer may be present at the counting of votes.

No person other than –

- (a) the members and officers of the Election Commission;
- (b) the returning officer, the presiding officer and such other officers and staff appointed for the purpose;
- (c) the candidates and their election agents and counting agents;
- (d) persons authorised in writing by the Election Commission, may be present at the counting of votes.

Before the presiding officer proceeds to count the votes he or the persons authorised by him must, in the presence of such of the candidates or their election agents or counting agents as attend –

- (a) open the ballot box and extract the tendered ballot papers found therein; and
- (b) compare the number of ballot papers in the ballot box with the ballot paper statement in order to ascertain that all ballot papers are accounted for.

If, in comparing the number of ballot papers with the statement, it appears that the number of ballot papers in the ballot box exceeds the number stated therein according to such statement, the procedure described below must be followed.

The presiding officer must in the presence of the candidates or their agents cause the sealed packet containing the unused and spoiled ballot papers from the polling station but no other packet to be opened, and must, by comparison of the number of unused and spoiled ballot papers with the number of ballot papers originally issued to such polling station, confirm the ballot paper statement. If it appears that an error has been made in the compilation of the ballot paper statement, and if the presiding officer is satisfied that the number of ballot papers in the ballot box does not exceed the number of ballot papers duly issued at the polling station he must order the counting of votes to proceed and must reseal the packet containing the unused and spoiled ballot papers.

If after completing the process described above, it appears to the presiding officer that there are more ballot papers in the ballot box than there were ballot papers issued at the polling station, the presiding officer or the persons authorised by him must, in the presence of the candidates or their agents inspect the perforation, the initial or the official mark of the presiding officer concerned on the ballot paper one by one and extract any ballot paper which is not perforated, initialled or does not bear the official mark of the presiding officer concerned or which is perforated, initialled or marked otherwise.

When the presiding officer has extracted the ballot papers, he must order the counting to proceed.

(The ballot papers extracted by the presiding officer must be sealed in a packet and forwarded to the Election Commission and the Election Commission may open the packet and may cause such enquiry to be made as it deems fit. The Election Commission must retain the extracted ballot papers for a period of six months and must then cause them to be destroyed unless otherwise directed by a Judge of the High Court.)

The presiding officer or the persons authorised by him must then proceed to count the ballot papers according to the votes cast for each candidate and must endorse the word “rejected” on any ballot paper which he may reject as invalid.

The presiding officer must reject as invalid the following ballot papers only, namely, any ballot paper –

- (a) which is not stamped or perforated with the official mark, or initialled by the presiding officer;

- 
- (b) on which votes are given for more than one candidate;
  - (c) on which anything is written or marked by which the voter can be identified;
  - (d) which is unmarked or marked other than in the place or manner provided; or
  - (e) which does not clearly indicate the intention of the voter,
- provided that if a presiding officer is satisfied that such ballot paper was issued in a state which would render it invalid owing to some act or omission by him or a person acting under his authority, and if the ballot paper is otherwise valid, the presiding officer must not reject such ballot paper.

Where the presiding officer is satisfied that any mark made on a ballot paper clearly indicates the intention of the voter and the candidate for whom he has given his vote, the presiding officer must not reject the ballot paper on the ground solely that it has not been marked in all respects in accordance with the directions given for guidance of voters.

Before rejecting a ballot paper the presiding officer must show it to each candidate, his election agent or counting agent, if present, and consider his views thereon.

The decision of the presiding officer, whether or not any ballot paper shall be rejected, shall be final.

The presiding officer shall not count the votes in tendered ballot papers but shall deal with such votes in the prescribed manner.

Subject to the circumstances giving rise to a recount set out in the next paragraph, the presiding officer must, immediately after the completion of the counting of the votes –

- (a) announce to the candidates or their election agents or counting agents as attend the number of votes given to each candidate;
- (b) prepare a sufficient number of copies of the statement of the poll which must be certified by the presiding officer and signed by such of the candidates or their election agents or counting agents as attend and desire to sign the same, as follows –
  - (i) one copy, for the returning officer, must be enclosed in a special envelope supplied for the purpose, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals; and
  - (ii) one copy must be delivered to each of the candidates or his election agent or counting agent as attend;
- (c) inform the returning officer, by any means available to him, of the result of the counting of votes at his polling station.

Where –

- (a) the number of votes for all the candidates together with the rejected votes varies from the number of ballot papers found in the ballot box by one per centum or more; or
- (b) the difference between the number of votes cast for the leading candidate and the number of votes cast for the next leading candidate is two per centum or less of the total number of votes cast,

then upon the application of either any candidate or of his election agent or counting agent,

a recount must be made once only before the presiding officer announces the results of the count.

The presiding officer may in his discretion order a recount or recounts to satisfy himself as to the correct result of the voting.<sup>54</sup>

### **8.17 Safe Custody of Election Documents**

On the completion of the counting of votes, the presiding officer must, in the presence of such of the candidates, their election agents or counting agents as attend, make up into separate packets, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals –

- (a) the tendered ballot papers;
- (b) the counted ballot papers; and
- (c) the rejected ballot papers.

The ballot paper statement and the packets containing –

- (a) the unused and spoiled ballot papers;
- (b) the marked copies of the electoral rolls and the counterfoils of the ballot papers;
- (c) the tendered votes list;
- (d) the tendered ballot papers;
- (e) the counted ballot papers; and
- (f) the rejected ballot papers,

must be placed in the ballot box, which must then be sealed with the seal of the presiding officer and the seals of such of the candidates or their agents as desire to affix their seals in such a manner that nothing can be inserted or removed from it without breaking such seals.

The presiding officer must despatch or deliver the ballot box, together with the special envelope containing the ballot paper statement in safe custody to the returning officer.<sup>55</sup>

### **8.18 Postponement or Adjournment of Counting of Votes**

Where at any time after the close of the poll, owing to any cause whatsoever, the counting of the votes at the polling station cannot be started or has started but cannot be completed, the presiding officer must postpone or adjourn such counting, as the case may be, and forthwith inform the returning officer of the constituency, and the candidates or their election agents or counting agents of such fact.

Where the ballot box has not been opened, the presiding officer must forthwith despatch or deliver the ballot box together with the ballot statement and the sealed packets in safe custody to the returning officer.

Where the ballot box has been opened, the presiding officer must, in the presence of such of the candidates or their election agents or counting agents as attend –

- 
- (a) put back all the ballot papers into the ballot box, sealed with his own seal and the seals of such of the candidates or their agents as desire to affix their seals; and
  - (b) forthwith despatch or deliver the ballot box together with the ballot paper statement and the sealed packets in safe custody to the returning officer.

Where the counting of votes has been postponed or adjourned, the returning officer must, after consultation with the State Elections Officer, appoint a new time and place at which the presiding officer will count the votes, and inform the candidates or their election agents of such place and time.<sup>56</sup>

### **8.19 Counting of Postal Votes**

The returning officer must, as soon as practicable after the conclusion of the proceedings pursuant to the Postal Voting Regulations, make arrangements for counting the votes of postal voters in the presence of such of the candidates, their election agents or counting agents as attend, and inform the candidates, their election agents or counting agents of the time and place at which he will count such votes.

On the completion of the counting of the votes of postal voters, the returning officer must put the counted ballot papers and the rejected ballot papers into separate packets, sealed with his own seal and the seals of such candidates or their agents as desire to affix their seals.

The sealed packets containing the counted ballot papers, the rejected ballot papers and the sealed packets of declarations of identity must be placed in the ballot box, sealed with the seal of the returning officer and the seals of such candidates or their agents as desire to affix their seals.

Each returning officer is required to appoint, and may revoke the appointment of, such officers or staff as are necessary to assist him in the counting of the votes of postal voters and the official addition of votes.

After the returning officer has completed the counting of the votes of postal voters for his constituency, the returning officer must make arrangements for the official addition of the votes, and must inform the candidates or their election agents of the time and place at which he will commence to add up the number of votes given to each candidate.

No person other than –

- (a) the members and officers of the Election Commission;
  - (b) the returning officer and such other officers and staff appointed by the returning officer; and
  - (c) the candidates and their election agents and counting agents,
- may be present at the official addition of the votes, unless permitted by the returning officer to attend.

At the place appointed for the official addition of the votes, the returning officer, in the presence of such candidates, their election agents and counting agents as attend, must –

- (a) open the special envelope containing the official statement of the postal voting; and
- (b) upon receipt of the special envelope containing the official statement of the poll despatched or delivered to him by each presiding officer, open the said envelope, and announce the number of votes recorded for each candidate in the statement of the poll contained in such envelope.

After the returning officer has received the official statements of the poll from the presiding officers of all the polling stations in his constituency, the returning officer must, in the presence of such of the persons as attend, ascertain the total number of votes given to each candidate by officially adding up the number of votes recorded for each candidate in the aforementioned statement and in the official statement of the postal voting.

Where, on the official addition of the votes, there is an equality of votes between any candidates and the addition of a vote would entitle any of the candidates to be declared elected, the determination of the candidate to whom such one additional vote must be deemed to have been given must be made by lot in the presence of the returning officer, the candidates and their agents as attend, in such manner as the returning officer determines.

Forthwith after the official addition of the votes, the returning officer must declare as having been elected the candidate to whom the greatest number of votes is given.<sup>57</sup>

### **8.20 Disposal of Ballot Papers**

Upon the completion of the official addition and after declaring the results of the count, the returning officer must open all the sealed ballot boxes and transfer all the sealed packets, other than the packets containing the unused and spoilt ballot papers, the marked copies of the electoral rolls and the counterfoils of the ballot papers, and the tendered votes list contained therein into a special box or boxes, and must seal every such box with his own seal and retain the same for a period of six months in safe custody from the date of the poll and thereafter must cause them to be destroyed unless otherwise directed by the Election Commission.

The returning officer must then forward the sealed packets containing the unused and spoilt ballot papers, marked copies of the electoral rolls and counterfoils of the ballot papers, and the tendered votes list to the State Elections Officer who must retain the same for a period of six months in safe custody from the date of the poll and thereafter must cause them to be destroyed unless otherwise directed by the Election Commission.<sup>58</sup>

### **8.21 Court Order to Copy or Inspect Election Documents**

A Judge of the High Court may make an order that any ballot paper or other document relating to an election which has been kept in safe custody be inspected, copied or produced at such time and place and subject to such conditions as he may deem expedient but no such order can be made unless the Judge is satisfied that such inspection, copy or production is required for the purpose of instituting or maintaining a prosecution or an election petition in connection with the election.<sup>59</sup>

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— *Section 9* —

**ELECTION PETITIONS**

**9.01 Avoidance of Election on Election Petition**

The election of a candidate at any election shall be declared void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge:

- (a) that general bribery, general treating or general intimidation or other misconduct or other circumstances whether similar to those before enumerated or not have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
- (b) non-compliance with the provisions of any written law relating to any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election;
- (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate;
- (d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been convicted or found guilty of a corrupt practice by a Sessions Court, or by the report of an Election Judge; or
- (e) that the candidate was at the time of his election a person disqualified for election.<sup>60</sup>

**9.02 Appointment and Powers of Election Judge**

Every election petition must be tried by the Chief Judge or by a Judge of any High Court nominated by the Chief Judge for the purpose: provided that the Chief Judge must not nominate a Judge of a High Court of which he is not Chief Judge without consulting the Chief Judge of that High Court.

Witnesses are required to be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and are subject to the same penalties for the giving of false evidence.

On the trial of an election petition, the Election Judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition relates, and any person refusing to obey such order is guilty of contempt of court. The Election Judge may examine any witness so compelled to attend or any person in Court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by the Election Judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Unless otherwise ordered by the Chief Judge all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the High Court whose decision is final.<sup>61</sup>

### **9.03 Who May Present Petition**

An election petition may be presented to the High Court by any one or more of the following persons:

- (a) *some* person who voted or had a right to vote at the election to which the petition relates;
- (b) *some* person claiming to have had a right to be returned or elected at such election; or
- (c) *some* person alleging himself to have been a candidate at such election.<sup>62</sup>

### **9.04 Relief Which May be Claimed**

All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition:

- (a) a declaration that the election is void;
- (b) a declaration that the person was not duly elected or ought not to have been returned;
- (c) a declaration that any candidate was duly elected and ought to have been returned; and
- (d) where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.<sup>63</sup>

### **9.05 Certificate of Judge as to Validity of Election**

At the conclusion of the trial of an election petition the Election Judge must determine whether the candidate whose return or election is complained of, or any other and what person, was duly returned or elected, or whether the election was void, and shall certify such determination –

- (a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly or of any other election the Election Commission may be authorised to conduct; or
- (b) in the case of any other election, to the State Authority, upon such certificate being given, the determination is final; and the return must be confirmed or altered, or the Election Commission or the State Authority (as the case may be) must within one month of such determination give notice of election in the constituency or electoral ward concerned, as the case may require, in accordance with such certificate.<sup>64</sup>

### **9.06 Report of Judge as to Corrupt or Illegal Practice**

At the conclusion of the trial of an election petition the Election Judge must also report in writing –

- (a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, or a Legislative Assembly; or
- (b) in the case of any other election, to the State Authority,

- 
- (i) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any; and
  - (ii) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice.

Before any person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Judge, the Election Judge must give such person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

When an Election Judge reports that a corrupt or illegal practice has been committed by any person, that person must be subject to the same incapacities as if at the date of the said report he had been convicted of that practice and a person must be subject to the same incapacities if he was a candidate at the election and the Election Judge reports that such corrupt or illegal practice was committed with his knowledge and consent or by his agent.

The Election Commission or the State Authority must cause a copy of such report to be published in the Gazette, and it is the duty of every registering officer forthwith to peruse the report and forthwith to delete from the register or list of electors assigned to him the name of every person appearing from the report to be incapable of voting at an election.<sup>65</sup>

### **9.07 Time for Presentation**

Every election petition must be presented within twenty-one days of the date of publication of the result of the election in the Gazette: provided that –

- (a) an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act;
- (b) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects such illegal practice, be presented within the time following:
  - (i) at any time before the expiration of fourteen days immediately after the date of the publication in the Gazette of the notice as to the election expenses of the person whose election is questioned;
  - (ii) if the election petition specifically alleges a payment of money or other act to have been made or done since the said date by the person whose election is questioned or by an agent of the person or with the privity of the person or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days immediately after the date of such payment or other act.

An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the High Court within the time within which an election petition questioning the return or the election upon that ground may be presented.

Where there is an authorised excuse for failing to make and transmit the return and statements respecting election expenses, the date of the allowance of the excuse or, if there was a failure in two or more particulars and the excuse was allowed at different times, the date of the allowance of the last excuse must be substituted for the date of the publication of the notice in the Gazette.<sup>66</sup>

### **9.08 Prohibition of Disclosure of Vote**

No elector who has voted at any election must, in any proceeding to question the election, be required to state for whom he has voted.<sup>67</sup>

### **9.09 Votes to be Struck Off at Scrutiny**

On a scrutiny at the trial of an election petition the following votes only must be struck off –

- (a) the vote of any person whose name was not on the register or list of electors assigned to the polling station at which the vote was recorded or who has not been authorised to vote at such station;
- (b) the vote of any person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of any person who committed or procured the commission of personation at the election;
- (d) where the election was an ordinary election, the vote of any person proved to have voted at such ordinary election in more than one constituency or electoral ward;
- (e) the vote of any person, who, by reason of a conviction of a corrupt or illegal practice or by reason of the report of an Election Judge, or by reason of his conviction of an electoral offence was incapable of voting at the election; and
- (f) votes given for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification, or when the disqualification or the facts causing it were notorious.

The vote of a registered elector must not be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register or list of electors.

On a scrutiny, any tendered vote proved to be a valid vote must, on the application of any party to the petition, be added to the poll.<sup>68</sup>

### **9.10 Rejection of Ballot Paper by Returning Officer or Presiding Officer**

On an election petition the decision of a returning officer or presiding officer, whether or not a ballot paper must be rejected, under any written law relating to the election, must not be questioned.<sup>69</sup>

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## 9.11 Procedure and Practice on Election Petitions

The procedure and practice on election petitions are regulated by rules of court.<sup>70</sup>

### — Section 10 —

#### ELECTION OFFENCES

##### 10.01 Offences by any Person

Any person who –

- (a) knowingly makes any false statement on or in connection with any application to be placed on any register of electors;
- (b) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing the same to be forged;
- (c) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (d) without due authority supplies any ballot paper to any person;
- (e) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
- (f) not being a person entitled to be in possession of any ballot paper which has been marked with any authorised mark has any such ballot paper in his possession;
- (g) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in;
- (h) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (i) without due authority destroys, takes, opens or otherwise interferes with any ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election;
- (j) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
- (k) for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election;
- (l) votes at any election when he is not entitled to vote thereat; or
- (m) prints any advertisement, hand-bill, placard or poster which refers to an election and contains a reproduction of a ballot paper, or of what purports to be a ballot paper, to be used or likely to be used at such election,

is liable to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand ringgit or to both such imprisonment and fine and, subject to any provision to the contrary in any written law relating to any election, shall until the expiration of five years from conviction or release from such imprisonment, whichever is later, be incapable of being registered or listed as an elector or of voting at any election or of being elected at any

election, and if at that date he has been elected at any election, his seat becomes vacant from the date of such conviction: provided that nothing in sub-paragraph (m) must be deemed to prohibit the printing in any such advertisement, hand-bill, placard or poster of the name or symbol of one candidate only, together with a reproduction of a cross or other mark indicating approval of any such name or symbol.

Any person who has been convicted of an offence under sub-section (1) of section 4 of the Sedition Act 1948 shall, until the expiration of five years from such conviction, be incapable of being elected at any election, and if at that date of such conviction he has been elected at any election, his seat must be vacated from that date.<sup>71</sup>

### **10.02 Offences by Election Officers**

Any officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election who –

- (a) makes, in any record, return or other document which he is required to keep or make under such written law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true;
- (b) permits any person whom he knows or has reasonable cause to believe not to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be;
- (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons, as the case may be;
- (d) wilfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote;
- (e) wilfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe was validly cast for any candidate in accordance with the provisions of such written law;
- (f) wilfully counts any ballot paper as being cast for any candidate, which he knows or has reasonable cause to believe was not validly cast for such candidate; or
- (g) is without reasonable cause guilty of any act or omission in breach of his official duty, is liable to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand ringgit or to both such imprisonment and fine and, subject to any specific provision to the contrary in any written law relating to any election, shall until the expiration of five years from conviction or release from such imprisonment, whichever is the later, be incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat must be vacated from the date of such conviction.<sup>72</sup>

### **10.03 Maintenance of Secrecy at Elections**

Every officer, clerk, interpreter, candidate, agent and any other person (referred to as an “authorised person”) authorised to attend any proceedings connected with the issue or receipt of postal ballot papers, or at a polling station, or at the counting of the votes, must, before so attending make an oath of secrecy in the prescribed form.

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Every officer, clerk, interpreter, candidate, agent and authorised person in attendance at a polling station is required to maintain, and aid in maintaining, the secrecy of the voting in such station, and must not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark but the total number of voters who have voted at any station at any time before the poll is closed may in the discretion of the presiding officer be divulged to a candidate or his agent or a police officer authorised to attend or on duty at the polling station.

No such officer, clerk, interpreter, candidate, agent, police officer or authorised person and no person whosoever shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number of the ballot paper given to any voter at such station.

Every officer, clerk, interpreter, candidate, agent, police officer and authorised person, in attendance at the counting of the votes must maintain, and aid in maintaining, the secrecy of the voting, and must not attempt to communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.

No person except a presiding officer acting for a purpose authorised by any written law relating to any election or a person authorised by the presiding officer and acting for such purpose as aforesaid, must communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.

Every person attending any proceedings in connection with the issue or the receipt of ballot papers for persons voting by post must maintain and aid in maintaining the secrecy of the voting and must not without lawful excuse –

- (a) communicate, before the poll is closed, to any person any information obtained at those proceedings as to any official perforation, stamp or mark to be used in connection with any ballot paper;
- (b) communicate to any person at any time any information obtained at those proceedings as to the number of the ballot paper sent to any person;
- (c) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on any ballot paper; or
- (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

Every person who acts in contravention of these provisions is liable to imprisonment for six months or to a fine of five hundred ringgit or to both such imprisonment and fine.<sup>73</sup>

## 10.04 Corrupt Practices

### (a) Personation

Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, is guilty of the offence of personation.

### (b) Treating

Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision is guilty of the offence of treating.

### (c) Undue Influence

Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right is guilty of the offence of undue influence.

A person is deemed to interfere with the free exercise of the electoral right of a person within the meaning of the law who induces or attempts to induce such person to believe that he, or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure.

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(d) **Bribery**

The following persons are deemed guilty of the offence of bribery –

- (i) every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;
- (ii) every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election;
- (iii) every person who, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election;
- (iv) every person who upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the election of any person, or the vote of any elector or voter at an election;
- (v) every person who advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof must be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;
- (vi) every elector or voter who, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;
- (vii) every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;
- (viii) every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or

- loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; and
- (ix) every person who directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

Every person who –

- (a) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation;
- (b) commits the offence of treating, undue influence or bribery;
- (c) prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, hand-bill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher;
- (d) makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate;
- (e) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election; or
- (f) being a candidate or election agent knowingly makes the declaration as to election expenses falsely,

is guilty of a corrupt practice, and must, on conviction by a Sessions Court, be liable, in the case of the offence of personation, treating, undue influence or bribery, to imprisonment for twelve months and to a fine of not less than two hundred and fifty ringgit and not exceeding one thousand ringgit, and, in any other case, to imprisonment for six months and to a fine of five hundred ringgit.

Every person who is convicted of a corrupt practice must, subject to any specific provision to the contrary in any written law relating to any election, by conviction become incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat must be vacated from the date of such conviction: provided that such disability ceases on the expiry of five years from conviction or release from imprisonment, whichever is the later.<sup>74</sup>

### **10.05 Election Agent, Election Expenses and Illegal Practices**

Except as permitted by or in pursuance of the Act, no payment and no advance or deposit must be made by a candidate at an election, or by any agent on behalf of the candidate, or

by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent of the candidate; and any money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, must be paid to the candidate or his election agent: provided that these provisions do not apply to any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

A person who makes any payment, advance, or deposit in contravention of these provisions is guilty of an illegal practice.

No expenses can, with a view to promoting or procuring the election of a candidate, be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account –

- (a) of holding any public meeting or public entertainment, or organising any public display;
- (b) of printing or issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing, or disparaging another candidate,

provided this provision does not –

- (i) restrict publication in a newspaper or other periodical of any matter relating to the election;
- (ii) apply to expenses incurred by any person in travelling or in living away from home, or to similar personal expenses.

Where a person incurs any expenses required to be authorised by an election agent, he must within fourteen days after the date of publication of the result of the election in the Gazette send to the election agent a return, accompanied by a declaration made by him (or in the case of an association or body of persons, a director, general manager, secretary or other similar officer thereof) verifying the return and giving particulars of the matters for which the expenses were incurred: provided that this provision does not apply to any person engaged or employed for payment or promise of payment by the candidate or his election agent.

The expenses shown in the return must be included in the return made by the election agent and the authority received from the election agent must be annexed to and deemed to form part of such return.

Any person who incurs any expenses in contravention of the foregoing provisions, or who makes any declaration which is false and which he either knows or believes to be false or does not believe to be true, is guilty of an illegal practice.

Every payment made by an election agent in respect of any expenses incurred on account of or in respect of the conduct and management of an election must, except where less than ten

ringgit or where, from the nature of the case, such as travel by rail or postage, a receipt is not obtainable, be vouched for by a bill stating the particulars and by a receipt.

Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election, which is not sent in to the election agent within the time stipulated, is barred and must not be paid, and an election agent who pays such a claim is guilty of an illegal practice.

Subject to exceptions permitted under the Act, the time allowed for sending in claims is fourteen days after the date of publication of the result of the election in the Gazette.

All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, must be paid within the time prescribed, and an election agent who makes a payment in contravention of this provision is guilty of an illegal practice.

Subject to any exception permitted under the Act, the time allowed for the payment of such expenses as aforesaid is twenty-eight days after the date of publication of the result of the election in the Gazette.

Where it has been proved to the satisfaction of the Election Judge by a candidate that any payment made by an election agent in contravention of the foregoing provisions was made without the sanction or connivance of such candidate, the election of such candidate is not void, and he shall not be subject to any incapacity by reason only of such payment having been made in contravention of these provisions.

If the election agent in the case of any claim sent in to him within the time prescribed disputes it, or refuses or fails to pay it within the period of twenty-eight days, such claim is deemed to be a disputed claim.

The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court, and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court is deemed to be paid within the time prescribed.

On cause shown to the satisfaction of a Judge of the High Court, such Judge on application by the claimant or by the candidate or his election agent may by order give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any such expenses as aforesaid, although sent in after the time prescribed, or although the same was sent in to the candidate and not to the election agent.

Any sum specified in the order of leave may be paid by the candidate or his election agent, and is deemed to be paid within the prescribed time.

A claim for his remuneration by an election agent is treated in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim, the claim is treated as a disputed claim and dealt with accordingly.

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Subject to any exception allowed by the Act, no sum must be paid and no expenses must be incurred by a candidate at an election or by his election agent, after the date of publication of the notice of the election in the Gazette, during or after an election, on account of or in respect of the conduct or management of such election, in excess of –

- (a) fifty thousand ringgit in the case of an election to the Dewan Rakyat;
- (b) thirty thousand ringgit in the case of an election to the State Legislative Assembly;
- (c) etc.

Any candidate or election agent who knowingly acts in contravention of this provision is guilty of an illegal practice.

No payment or contract for payment must, for the purpose of promoting or procuring the election of a candidate at any election, be made –

- (a) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles, vessels or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or
- (b) to or with an elector or voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill or notice, or on account of the exhibition of any address, bill or notice.

Subject to any exception allowed by the Act, if any payment or contract for payment is knowingly made in contravention of the foregoing provisions either before, during, or after an election, the person making such payment or contract is guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of the said provisions, is also guilty of an illegal practice.

A person must not let, lend, or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he keeps or uses for the purpose of letting out for hire, and if he lets, lends or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of electors or voters to and from the poll, he is guilty of an illegal practice.

A person must not hire, borrow, or use for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he knows the owner thereof is prohibited to let, lend, or employ for that purpose, and if he does so he is guilty of an illegal practice.

The foregoing provisions do not prevent a vehicle, vessel or animal of transport of any kind being let to, or hired, employed, or used by an elector or voter or several electors or voters at their joint cost for the purpose of being conveyed to or from the poll.

Notwithstanding anything in the preceding provisions –

- (a) where it is the ordinary business of an elector or voter as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such

elector or voter, if made in the ordinary course of business, must not be deemed to be an illegal practice;

- (b) where electors or voters are unable at an election to reach their polling stations from their place or residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying such electors or voters to their polling stations, or to enable them to cross the river in order to reach their polling stations, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed: provided that such means of conveyance is made available equally to all such electors or voters who wish to avail themselves thereof.

No person is, for the purpose of promoting or procuring the election of a candidate at any election, to be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for the purpose or in the capacities following –

- (a) one election agent and no more;
- (b) not more than one polling agent at any one time for each polling area or polling district: provided that where more than one polling station is provided in any polling area or polling district an additional polling agent may be employed in respect of each polling station; and
- (c) a reasonable number of clerks and messengers having regard to the area of the constituency or electoral ward and the number of electors on the register or list of electors for such constituency or electoral ward.

If any person is engaged or employed in contravention of these provisions, either before, during, or after an election, the person engaging or employing him is guilty of an illegal practice.

Within thirty-one days after the date of publication of the result of an election in the Gazette the election agent of every candidate at that election must deposit with the State Elections Officer a true return, referred to as the “return respecting election expenses”, containing detailed statements as respects that candidate of –

- (a) the disputed claims so far as the election agent is aware;
- (b) all unpaid claims, if any, of which the election agent is aware in respect of which application has been made or is about to be made to an Election Judge or Judge of the High Court;
- (c) all money, securities and other valuable consideration received by or promised to the election agent from or by any candidate or any other person for the purpose of expenses incurred or to be incurred on account or in respect of the management of the election, naming every person from whom the sum may have been received or by whom such sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise;
- (d) the amount of expenses, if any, incurred by any person authorised by the election agent.

The return respecting election expenses must be signed by the election agent and be

accompanied by a statement made by the candidate and his election agent and must be on oath before the Chairman or a member of the Election Commission, a Magistrate, a Justice of the Peace, a Commissioner for Oaths, or the State Elections Officer.

If the said return and statements are not transmitted before the expiration of the time prescribed, the candidate must not after the expiration of such time sit or vote until either such return and statements have been transmitted or until the date of the allowance of such authorised excuse for failure to transmit the same and if he sits or votes in contravention of the Act, he is liable on conviction, to a penalty of five hundred ringgit for every day on which he so sits or votes.

If any candidate or election agent fails to comply with the foregoing requirements, he is guilty of an illegal practice and this provision is in addition to and not in derogation of the provisions dealing with the punishment and incapacities imposed in respect of a conviction for a corrupt practice.

When any return respecting election expenses and the statements made in respect thereof have been received by the State Elections Officer, he must, as soon as may be, cause a notice of the date on which the return and statements in question were received by him and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and published in the Gazette.

The State Elections Officer must preserve all such returns and statements with the bills and vouchers relating thereto and at all reasonable times during six months next after the publication in the Gazette of the notice mentioned above permit any person to inspect them and to make extracts therefrom on payment of a fee of two ringgit and must, on payment of fifty sen for each folio of one hundred words, supply a copy or copies of any part thereof; and after the expiration of the said period of six months the said documents may be destroyed or returned to the candidate if application for their return is made by the candidate before they are destroyed.<sup>75</sup>

#### **10.06 Employers to Allow Employees Time to Vote**

Every employer is required, on polling day, to allow every elector in his employ a reasonable period for voting, and no employer can make any deduction from the pay or other remuneration of any such elector or impose upon or exact from him any penalty by reason of his absence during such period.

Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ, of a reasonable period for voting, on summary conviction is liable to a fine of five hundred ringgit or to imprisonment for six months.

These provisions do not apply to such categories of employees as the Election Commission may from time to time by notification in the Gazette designate.

The Government of Malaysia and each State are bound by the foregoing provisions.<sup>76</sup>

### **10.07 Limitation of Political Propaganda**

No person is to furnish or supply any musical instrument or loudspeaker to any person with intent that it be used by any person in any way or used in or upon vessels, animals, motor cars, trucks, or other vehicles as or for the purpose of political propaganda on polling day and no person must for such purpose use himself or use in or upon any vessel, animal, motor car, truck, or other vehicle any such musical instrument or loudspeaker on polling day.

No person on polling day, within a distance of fifty yards from the limits of any polling station, is to –

- (a) endeavour to establish the identity of any person entering a polling station;
- (b) check on any list the name of any person entering or leaving a polling station;
- (c) place any desk or table or establish any office or booth for any purpose connected with an election;
- (d) solicit or persuade or attempt to persuade any person to abstain from voting at the election, or to vote or to abstain from voting for any candidate at the election; or
- (e) wait or loiter except for the purpose of gaining entry to the polling station to cast his vote,

provided that nothing in the foregoing is interpreted as preventing the proper officer or any person authorised by the proper officer from carrying out his duties in relation to the conduct of any election.

Subject to the provisions of the next paragraph, no flag, ensign, banner, standard, poster or label must at any time be publicly displayed as or for the purpose of political propaganda within a distance of fifty yards from the limits of any polling station, and the presiding officer must remove or cause to be removed any such flag, ensign, banner, standard, poster or label displayed in contravention of this provision.

Nothing contained in the provisions of the above paragraph prevents the furnishing or supplying of any rosette or favour not exceeding seven square inches in superficial area bearing the symbol allotted to any candidate or of any label not exceeding fifty square inches in superficial area bearing such symbol or to the wearing upon the person of one such rosette or favour or to the display of one such label on any vehicle or vessel. Any person who contravenes the foregoing provision, is guilty of an offence.<sup>77</sup>

### **10.08 Punishment for Conviction for Illegal Practice**

Every person who commits an illegal practice is, on conviction by a Sessions Court, liable to a fine of five hundred ringgit and must by conviction until the expiration of five years from such conviction become incapable of being registered or listed as an elector or of voting at any election under the Act or of being elected at any election, and if at that date he has been elected at any election, his seat must be vacated from the date of such conviction.

A prosecution for an illegal practice or a corrupt practice must not be instituted without the sanction of the Public Prosecutor.<sup>78</sup>

### **10.09 Excuse for Corrupt or Illegal Practice**

Where, upon the trial of an election petition respecting an election, the Election Judge reports that a candidate of such election has been guilty by his agents of the offence of treating or undue influence or of any other corrupt or illegal practice in reference to such election, and the Election Judge further reports, after giving the Attorney-General an opportunity of being heard, that the candidate has proved to the Court –

- (a) that no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent;
- (b) that such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election;
- (c) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents,

then the election of such candidate must not, by reason of the offences mentioned in such report, be void and the candidate must not be subject to any incapacity under the Act.

Where, on application made, it is shown to an Election Judge or to a Judge of the High Court by such evidence as seems to the Judge sufficient –

- (a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by the Act, or of being payment, engagement, employment, or contract in contravention of the Act, or of otherwise being in contravention of any of the provisions of the Act, be but for these provisions an illegal practice; and
- (b) that any such act or omission arose from inadvertence or from accidental miscalculations or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith,

and in the circumstances it seems to the Judge, after giving the candidates, the returning officer, and any elector within the constituency or electoral ward an opportunity of being heard, to be just that the candidate in question and the said election and other agent and person, or any of them, should not be subject to any of the consequences under the Act of the said act or omission, the Judge may make an order allowing such act or omission to be an exception from the provisions of the Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent or person must not be subject to any of the consequences under the Act of the said act or omission.

Where the return and statements respecting election expenses of a candidate at an election have not been transmitted as required by the Act, or being transmitted contain some error or false statement, then –

- (a) if the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, negligence or misconduct of his election agent or of any clerk or officer of such agent, or by reason of inadvertence or any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or
- (b) if the election agent of the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit the return and statements which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness, or of the death, illness, negligence or misconduct of any prior election agent of the candidate, or of the absence, death, illness or misconduct of any clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

the Judge may, after such notice of the application, and on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as to the Judge seems fit, and after giving the other candidates, the State Elections Officer and any elector within the constituency or electoral ward an opportunity of being heard, make such order for allowing an authorised excuse for the failure to transmit such return and statements, or for an error or false statement in such return and statements, as to the Judge seems just.

Where it appears to the Judge that any person being or having been election agent has refused or failed to make such return or supply such particulars as will enable the candidate and his election agent, respectively, to comply with the provisions of the Act as to the return and statements respecting election expenses, the Judge before making an order allowing the excuse mentioned must order such person to attend before the Judge, and must, unless he attends and shows cause to the contrary, order him to make the return and statements, or to deliver a statement of the particulars required to be contained in the return, as to the Judge seems just, and to make or deliver the same within such time and to such person and in such manner as the Judge may direct, or may order him to be examined with respect to such particulars, and, in default of compliance with any such order, such person is guilty of an illegal practice.

The order may make the allowance conditional upon the making of the return and statements in a modified form or within an extended time, and upon the compliance with such other terms as to the Judge seems best calculated for carrying into effect the objects of the Act, and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under the Act in respect of the matter excused by the order; and where it is proved by the candidate to the Judge that any act or omission of the election agent in relation to the return and statements respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the Judge must relieve the candidate from the consequences of such act or omission on the part of his election agent.<sup>79</sup>

## NOTES

1. Constitution of Malaysia, see articles 47 and 48
2. *Ibid.*, see articles 113 and 114
3. *Ibid.*, see article 115
4. *Ibid.*, see article 116 (also article 46 and Thirteenth Schedule)
5. *Ibid.*, see article 118
6. *Ibid.*, see article 119
7. *Ibid.*, see article 114
8. See article 115 of the Constitution and sections 3 and 3A of the Elections Act 1958
9. Elections Act 1958, see section 5
10. *Ibid.*, see section 4
11. Constitution of Malaysia, see article 113
12. Thirteenth Schedule of the Constitution
13. *Ibid.*
14. Elections Act 1958, see section 7
15. *Ibid.*, see section 8
16. See section 9 of the Elections Act 1958 and regulations 3-10 of the Elections (Registration of Electors) Regulations 1971
17. Elections (Registration of Electors) Regulations 1971, see rule 10
18. *Ibid.*, see rule 11
19. *Ibid.*, see rule 12
20. *Ibid.*, see rules 13-19
21. *Ibid.*, see rules 20-24
22. Elections (Postal Voting) Regulations 1959, see regulation 3
23. *Ibid.*, see regulation 4
24. *Ibid.*, see regulation 5
25. *Ibid.*, see regulation 6
26. *Ibid.*, see regulation 7
27. *Ibid.*, see regulations 8 and 9
28. *Ibid.*, see regulations 10 and 11
29. *Ibid.*, see regulations 12-19
30. Elections Act 1958, see section 12
31. Elections (Conduct of Elections) Regulations 1981, see regulation 3
32. *Ibid.*, see regulation 4
33. *Ibid.*, see regulation 5
34. *Ibid.*, see regulation 6
35. *Ibid.*, see regulation 7
36. *Ibid.*, see regulation 8
37. *Ibid.*, see regulation 9
38. *Ibid.*, see regulation 10
39. *Ibid.*, see regulation 11
40. *Ibid.*, see regulations 12 and 12A
41. *Ibid.*, see regulation 13
42. *Ibid.*, see regulation 14
43. *Ibid.*, see regulation 15
44. *Ibid.*, see regulation 16
45. *Ibid.*, see regulation 17
46. *Ibid.*, see regulation 18
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51. *Ibid.*, see regulation 23
52. *Ibid.*, see regulation 23A
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54. *Ibid.*, see regulation 25
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58. *Ibid.*, see regulation 25E
59. *Ibid.*, see regulation 26
60. Election Offences Act 1954, see section 32
61. *Ibid.*, see section 33
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63. *Ibid.*, see section 35
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66. *Ibid.*, see section 38
67. *Ibid.*, see section 39
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## INTRODUCTION

The legislative scheme for election organisation in Singapore has certain features which are of interest to election specialists. Its compulsory system of registration and voting is well known. It also has the feature of multi-representative constituencies designed to cater for minorities in such constituencies. The existence of committees, for example, the Malay Community Committee and the Indian and Other Minority Communities Committee, helps to give greater genuine minority representation in the electoral process.

There are two principal enactments, namely, the Presidential Elections Act 1991 and the Parliamentary Elections Act 1954, revised edition 1989. The latter (referred to herein as “the Act”) is the one presented within.

### — *Section 1* —

#### ADMINISTRATION

The Minister may appoint a registration officer and a returning officer and such assistant registration officers as he may think fit from time to time.

An assistant registration officer has all the powers and may perform all the duties of the registration officer.

An appointment made by the Minister under the Parliamentary Elections Act (“the Act”) may be revoked by him at any time.

The registration officer and the returning officer may, from time to time, appoint such numbers of clerks and interpreters as may be necessary for the purposes of the Act and those appointments may be revoked at any time.<sup>1</sup>

### — *Section 2* —

#### ELECTORAL DIVISIONS

##### **2.01 Boundaries of Electoral Divisions**

The Minister may, from time to time, by notification in the Gazette, specify the names and boundaries of the electoral divisions of Singapore for the purposes of parliamentary elections.<sup>1A</sup>

## 2.02 Group Representation Constituencies

For the purposes of electing members of Parliament on a group basis to ensure the representation in Parliament of members from the Malay, Indian and other minority communities under the Act, the President must, by order published in the Gazette –

- (a) declare any electoral division, having regard to the number of electors in that division, to be a group representation constituency; and designate that constituency as a constituency in which any election is to be held on the basis of a group of three candidates, or on the basis of a group of four candidates; and
- (b) designate every group representation constituency as –
  - (i) a constituency where at least one of the candidates in every group must be a person belonging to the Malay community; or
  - (ii) a constituency where at least one of the candidates in every group must be a person belonging to the Indian or other minority communities.

The number of members to be returned by all group representation constituencies must not be less than one-quarter or more than three-quarters of the total number of members to be returned at a general election.

The number of members to be returned by all group representation constituencies to be designated under paragraph (b) (i) above must be three-fifths of the total number of group representation constituencies; and where that number is not a whole number, it must be rounded to the next higher whole number.<sup>1B</sup>

## 2.03 Polling Districts and Polling Stations

Whenever any electoral division of Singapore is altered or a new division is created the registration officer must –

- (a) subdivide that division into polling districts;
- (b) assign to each such polling district a distinguishing letter or letters; and
- (c) publish in the Gazette a notice in the prescribed form specifying –
  - (i) the polling districts into which the electoral division has been subdivided; and
  - (ii) the distinguishing letter or letters assigned to each such polling district.

The subdivision of an electoral division into polling districts may be altered by the registration officer as occasion may require; and upon any such alteration being made he must publish in the Gazette a notice specifying in relation to that electoral division the particulars mentioned in the foregoing provisions at (c). Any such alteration must come into effect on the date of the publication of the stipulated notice relating to the next certification of the register of electors for that electoral division, but the revision of the register before such certification must be made on the basis of that alteration.

The returning officer must provide as many polling stations for a polling district as are in his opinion sufficient for that polling district and may in his discretion provide as many polling places within each polling station as he considers necessary.<sup>2</sup>

— *Section 3* —

**REGISTRATION OF ELECTORS**

**3.01 Qualification of Electors**

Any person who on 1 July in any year –

- (a) is a citizen of Singapore;
- (b) is ordinarily resident in Singapore; and
- (c) is not less than 21 years of age,

is entitled to have his name entered or retained in a register of electors in that year.

For the purposes of the preparation or revision of any register of electors after 12 November 1954, a person who is a citizen of Singapore and to whom an identity card has been issued or deemed to have been issued on or before 1 July in any year under the provisions of the National Registration Act and has not been withdrawn must, until the contrary is shown, be presumed –

- (a) to be ordinarily resident in Singapore on 1 July in that year;
- (b) to be not less than 21 years of age on 1 July in that year, if from the particulars recorded in the register maintained by the Commissioner of National Registration he appears to be not less than that age on that date; and
- (c) to reside in the electoral division in which is situated the latest address shown in the register maintained by the Commissioner of National Registration.

The registration officer may, in preparing or revising any register of electors, omit therefrom the name of any person where he has reason to believe that the latest address of the person shown in the register maintained by the Commissioner of National Registration has ceased to exist or to be used as a place of residence.<sup>3</sup>

**3.02 Disqualification of Electors**

No person is entitled to have his name entered or retained in any register of electors if he –

- (a) has taken any oath or made any declaration or acknowledgement of allegiance, obedience or adherence to any foreign power or state or does, engages in or adopts any act done with the intention that he shall become a subject or citizen of any foreign power or state or is the holder of a passport issued by any foreign power or state;
- (b) is serving a sentence of imprisonment (by whatever name called) imposed by any court in Singapore or in Malaysia or any other part of the Commonwealth, for an offence punishable with imprisonment for a term exceeding 12 months, or is under sentence of death imposed by any such court or is serving a sentence of imprisonment awarded in lieu of execution of any such sentence: provided that where the conviction is by a court of law in Malaysia or any other part of the Commonwealth, the person must not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court of law in Singapore;

- 
- (c) is under any written law found or declared to be of unsound mind;
  - (d) is incapable of being registered by reason of his conviction of a corrupt or illegal practice under the Act or by reason of the report of an Election Judge in accordance with the provisions of the Act;
  - (e) is a serving member on full pay of any naval, military or air force not maintained out of monies provided by Parliament unless he possesses a domicile in Singapore;
  - (f) is a person whose name is entered on a register of electors in any other country or territory; or
  - (g) is a person whose name has been expunged from the register and whose name has not been restored to the register.<sup>4</sup>

### **3.03 Registration Process**

The registration officer, with such assistance as he may require from the Commissioner of National Registration, must prepare for that year a separate register of electors for each electoral division and must enter in the register the names of all persons who are qualified as electors and are not disqualified by any of the provisions of the Act: provided that the Minister may, before a general election require the registration officer to bring up to date any register prepared in such a manner and by reference to such year as the Minister may direct.

For the purpose of satisfying himself as to the qualification of any elector, the registration officer may make such enquiry as he may consider necessary.

On completion of the register for any electoral division, the registration officer must give notice in the Gazette that the register is completed and that the register or a copy thereof is open for inspection at all reasonable hours in the office of the registration officer and at such other place or places in the division as may be specified in the notice.<sup>5</sup>

### **3.04 Claims and Objections**

Any person who considers that he is entitled to have his name entered in a register of electors and whose name has been omitted from the register (referred to as the claimant) may apply to the registration officer to have his name entered therein.

Every claim must be in writing and must be in the prescribed form and must reach the registration officer within two weeks from the date of publication in the Gazette of the notice of completion of the register.

Within 21 days from the expiry of the period of two weeks the registration officer must exhibit notices containing the names and addresses of the claimants (if any) at the place or places within the electoral division in which those claimants reside specified in the stipulated notice.

Any person whose name appears in the register for any electoral division may object to the inclusion in the register of his own name or the name of any other person appearing therein or may object to the insertion in the register of the name of any claimant.

Every objection to the inclusion of any name in the register must be made in writing in duplicate and must be in the prescribed form and must reach the registration officer within two weeks from the date of publication in the Gazette of the notice of completion of the register.

Every objection to the insertion of the name of any claimant in the register must be made in writing in duplicate in the prescribed form and must reach the registration officer within six days from the date on which the notice containing the names of claimants is exhibited.

One copy of each objection must bear a stamp of one dollar.

The registration officer must, as soon as practicable after receiving an objection to the inclusion or insertion of any name in any register, send a notice of the objection to the person in regard to whom objection has been made.

The registration officer must as soon as practicable hold a public enquiry into all claims and objections which have been duly made, giving, not less than six clear days' written notice of the date on which and the time and place at which the inquiry will commence to each claimant, objector and person in regard to whom objection has been made. At any such public enquiry, any person appearing to the registration officer to be interested in or affected by the subject matter of the inquiry may appear and be heard either by himself or by any other person duly authorised by him in writing in that behalf: provided that the registration officer may without any public inquiry, allow any claim in respect of which no objection has been made if he is otherwise satisfied that the claim should be allowed and must insert the claimant's name in the register.

Where an objection is made to the inclusion or insertion of any name in the register, the registration officer must call upon the objector, or some other person authorised in writing in that behalf by the objector, to give prima facie proof of the ground of the objection.

If such prima facie proof is given the registration officer must require proof of the entitlement of the person in regard to whom objection has been made and:

- (i) if the person's entitlement is not proved to the registration officer's satisfaction, he must refuse to insert the claimant's name in the register;
- (ii) if the claimant's entitlement is so proved, he must insert the claimant's name in the register.

If an objection is made and is overruled by the registration officer and, in his opinion, the objection was made without reasonable cause, the registration officer may if he thinks fit order in writing the objector to pay to the person in regard to whom objection has been made such sum not exceeding \$50 as the registration officer considers reasonable compensation for any loss of time incurred by the person in consequence of the objection.

If upon an objection being overruled, the objector appeals to the revising officer and the appeal is dismissed, and in the opinion of the revising officer the appeal was made without reasonable cause, the revising officer may, if he thinks fit, order in writing the objector to

pay to the person in regard to whom objection has been made such sum not exceeding \$50 as the revising officer considers reasonable compensation for any loss of time incurred by the person in consequence of the appeal. If any such appeal is allowed by the revising officer, he must have power to revise or cancel any order made by the registration officer for the payment of compensation by the objector.

Any sum awarded as compensation is recoverable as though the order of the registration officer or revising officer were an order of a District Court for the recovery of money by that officer.

If an objection is made and is upheld by the registration officer and no appeal is made, or in the event of an appeal, if the appeal is dismissed by the revising officer, the sum of one dollar paid must be refunded to the objector.<sup>6</sup>

### **3.05 Appeals to Revising Officer**

For the purpose of having appeals against any decision of the registration officer, the Minister may appoint such revising officers as he may from time to time think fit.

If any claimant, objector or person in regard to whom objection has been made is dissatisfied with the decision of the registration officer, he may, within ten days from the date of the decision, appeal to the revising officer.

Every appeal must be in writing, and state shortly the ground of appeal and bear a stamp of \$5.

The revising officer must hear such appeals in public giving notice of the dates of the hearing of the appeal to the parties concerned. He may hear any evidence. His determination of the appeal is final and conclusive and cannot be called in question in any court.

When the revising officer has determined the appeals which have been lodged with respect to any register, he must forward to the registration officer a statement under his hand containing the names which he has decided are to be included or inserted in the register and those which he has decided must be expunged from the register, and the registration officer must amend the register accordingly.

If an appeal is allowed, the sum of \$5 paid must be refunded to the appellant.<sup>7</sup>

### **3.06 Certification of Registers**

The registration officer must, as soon as convenient may be after the claims and objections have been adjudicated upon, certify the register of electors for each electoral division: provided that the registration officer may certify any register during the pendency of appeal and must thereafter insert in or expunge from the certified register the name of any person in accordance with the decision of the revising officer on the determination of the appeal.

Nothing in the Act is to be construed as prohibiting the registration officer, within seven days after certifying any register, from correcting any clerical or other error therein: provided

that the correction does not affect the entitlement of any person to have his name included or retained therein.

The registration officer must, from time to time, on being informed by the Registrar of Citizens that any person has ceased to be a citizen of Singapore under the provisions of the Constitution, expunge the name of the person from any register of electors.

The registration officer may –

- (a) before certifying any register of electors, transfer the name of any person who is no longer resident at the address shown in the register to the appropriate register, where that person has notified the Commissioner of National Registration in writing of his change of address on or before the last day for inspection of the register of electors specified in the notice given by the registration officer; and
- (b) at any time after certifying any register of electors for any electoral division, except between the issue of a writ of election and polling day appointed for election in that division, remove from the register the name of any person where the registration officer has reason to believe that the address of that person as shown in the register has ceased to exist or to be used as a place of residence: provided that where the person whose name has been removed has notified the Commissioner of National Registration in writing of his change of address at the time of the removal of his name the registration officer must transfer the name of that person to the appropriate register.

The registration officer must not remove or transfer any name under (b) above unless at least two weeks before making the removal or transfer a notice has been given in the Gazette that he proposes to make the removal or transfer and that a list of the names of persons affected is available for inspection at such time and place or places as may be specified in the notice; and a notice for the purpose of this provision may contain such particulars as the registration officer thinks sufficient and appropriate without specifying the names of persons who will be affected by the proposed removal or transfer.

The registration officer must have power where any name from any register has been removed by him at any time after certifying any register –

- (a) to restore the name to the register if the removal has been made by mistake or through inadvertence; or
- (b) to enter the name in the appropriate register on the application of the person whose name has been removed and has not been transferred to the appropriate register at the time of the removal,

provided that where a writ of election has been issued for an election in any electoral division the registration officer must not enter any name in the register of that division until after nomination day or, if a poll is to be taken, until after polling day.<sup>8</sup>

### **3.07 Revision of Registers**

The Minister may from time to time, but in any case not later than three years after the last general election, require the registration officer to revise the registers of electors

and complete the revision before such date as the Minister may, by notification in the Gazette, appoint.

For the purpose of revising a register and of satisfying himself as to the entitlement of any person to registration or determining whether the name of any person should be inserted or retained in the register or expunged therefrom, the registration officer may make such inquiry as he may consider necessary either by himself or through a person appointed by him. Any notice requiring information under this provision may be sent by ordinary letter post to the person from whom the information is required or may be delivered to him or to an adult member of his household.

All officers in the service of the Government (other than officers of any government department who are prohibited by law from furnishing information) and all local authorities are hereby authorised and required to furnish to the registration officer or any person appointed by the registration officer for the purpose all such information as he may require to enable him to revise the register.

Every person who, being in possession of any information required, fails to give such information to the registration officer or any person appointed by the registration officer for the purpose, or wilfully gives any false information, is guilty of an offence and is liable on conviction to a fine not exceeding \$100.

If any person being a registered elector fails to give such information with regard to his entitlement to registration to the registration officer or to any person appointed by the registration officer for the purpose within 14 days after the service upon him by the registration officer of a notice, his name must forthwith be expunged from the register by the registration officer and he is not entitled to have his name retained or inserted in the register for the ensuing year.

Every person who is appointed by the registration officer and who wilfully suppresses any information relating to the entitlement of any person for registration or relevant for determining whether the name of any person should or should not be retained or inserted in a register, after such information has been furnished to or collected by him, is guilty of an offence and is liable on conviction to a fine not exceeding \$200.

In revising a register of electors, the registration officer must enter the names of all persons who are qualified as electors and are not disqualified by any provisions of the Act.

Upon the completion of the revised register of electors, the registration officer must give notice in the Gazette that the register of electors has been completed and that the register, or copy thereof, is open for inspection at all reasonable hours of the day at the office of the registration officer and at such place or places as may be specified in the notice.

Claims and objections are allowed in a similar manner as with respect to the preparation of the register.

The certification of a revised register of electors applies in a similar manner as it does to the certification of a register of electors.

In preparing or revising a register of electors, the registration officer may in his discretion enter the name of any person in the register of electors for such division as he considers appropriate if that person is residing in a building which is located on a common boundary between two or more electoral divisions.

This decision of the registration officer is final and conclusive and must not be called in question in any court.

On the certification of a register under the Act, the registration officer must give notice in the Gazette that the register has been certified and that the register, or a copy thereof, is open for inspection at all reasonable hours of the day at the office of the registration officer and at such place or places in the division to which the register relates as may be specified in the notice.

The certified register must –

- (a) in the case of a register, come into operation at the next general election and not earlier; and
  - (b) in the case of a revised register, come into operation on the date of publication of the notice of the certification of the register in the Gazette,
- and subject to such alterations as may subsequently be made therein, the register must continue in operation until superseded by the coming into operation of the next certified register.<sup>9</sup>

## — Section 4 —

### WRIT OF ELECTION

#### 4.01 Issue of the Writ

For the purposes of every general election of Members of Parliament and for the purposes of the election of Members to supply vacancies caused by death, resignation or otherwise, the President is required to issue writs under the public seal, addressed to the returning officer.

Every such writ must be in the prescribed form and must specify the date or dates (referred to as the day of nomination) not being less than five days nor more than one month after the date of the writ and the place or places of nomination.

In respect of any group representation constituency, no writ must be issued for an election to fill any vacancy unless all the members for that constituency have vacated their seats in Parliament.

Upon receipt of the writ, the returning officer must proceed to hold the election.<sup>10</sup>

#### **4.02 Notice of Time and Place of Election**

On the President issuing a writ, the returning officer must give notice of the issue of the writ and of the day, time and place of the nomination of candidates by causing a notice in the prescribed form to be published in the Gazette at least four clear days before the day fixed for nomination.<sup>11</sup>

#### **4.03 Power to Issue Second Writ**

If at any time after the President has issued a writ for the holding of a general election or an election to fill a vacancy in the seat of a member, it is shown to his satisfaction that in any electoral division owing to any cause whatsoever no election has been held in pursuance of the writ he may at any time issue another writ for the holding of an election in that division.<sup>12</sup>

### **— Section 5 —**

## **NOMINATION OF CANDIDATES**

#### **5.01 Nomination Papers**

Any person eligible for election as a Member of Parliament in accordance with the provisions of the Constitution may be nominated as a candidate for election.

Each candidate is nominated by means of a nomination paper. The nomination paper must be signed by two persons as proposer and seconder respectively and by not less than four other persons all of whose names must appear in the register of electors for the electoral division for which the candidate seeks election. The written consent of the candidate must be endorsed on the nomination paper which must be in the prescribed form.

Every candidate must at the time of his nomination deliver to the returning officer a statutory declaration of his qualifications made and subscribed by the candidate in the prescribed form. If the statutory declaration is not so delivered, the nomination of the candidate is deemed to be void.

The returning officer may, at any time between the date of the notice of the writ and 12 noon of the day of nomination, supply a form of nomination paper and statutory declaration to any registered elector requiring them.<sup>13</sup>

#### **5.02 Election of Members on a Group Basis**

In every general election of Members of Parliament and the election of Members to supply vacancies caused by death, resignation or otherwise, the Members for any group representation constituency must be elected in accordance with the Act.

All elections in any group representation constituency must be held on a basis of a group of three or four candidates as designated for that constituency by the President.

Any group that desires to contest in any election in any group representation constituency must consist of three or four candidates as designated for that constituency by the President, all of whom must either be members of the same political party standing for such election for that political party or be independent candidates standing as a group.

Where any group representation constituency is –

- (a) a constituency designated to ensure the representation in Parliament of Members from the Malay, Indian and other minority communities –
  - (i) at least one of the three candidates in every group must be a person belonging to the Malay community; or
  - (ii) at least one of the three candidates in every group shall be a person belonging to the Indian or other minority communities;
- (b) a constituency designated where at least one of the candidates in every group must be a person belonging to the Indian or to the other minority communities, at least one of the candidates in every group must be a person belonging to the Indian or other minority communities.

At any time after the date of the notice of the writ and at least two clear days before the day of nomination, any person –

- (a) belonging to the Malay community who desires to contest as such a person in any election in any constituency designated a constituency where at least one of the candidates in every group must be a person belonging to the Malay community; or
- (b) belonging to the Indian or other minority communities who desires to contest as such a person in any election in any constituency designated a constituency where at least one of the candidates in every group must be a person belonging to the Indian or other minority communities,

must apply in the prescribed manner to the appropriate Committee for a certificate in the prescribed form which must certify whether the applicant is a person belonging to the Malay community or a person belonging to the Indian or other minority communities and must, if the appropriate Committee considers that he is a person belonging to the Malay community or a person belonging to the Indian or other minority communities, issue to him not later than the day before the day of nomination a certificate certifying that to be the fact, and any such certificate must, for the purposes of that Act, be conclusive as to the fact which it certifies.

The term “Committee” means the Malay Community Committee or Indian and Other Minority Communities Committee established under the Act.<sup>14</sup>

### **5.03 Nomination Papers for Elections in Group Representation Constituencies**

Any person eligible for election as a Member of Parliament in accordance with the Constitution may be nominated as a candidate with two other candidates in a group for any election in any group representation constituency.

Each group must be nominated by means of a nomination paper. The nomination paper must be signed by two persons as proposer and seconder respectively and by not less than four

other persons all of whose names must appear in the register of electors for the group representation constituency in which the group seeks election. The written consent of every candidate in a group must be endorsed on the nomination paper which must be in the prescribed form.

Every candidate in a group must at the time of the nomination of the group deliver to the returning officer –

- (a) a statutory declaration of his qualifications and political party for which he stands (if any) made and subscribed by the candidate in the prescribed form; and
- (b) if he is a person belonging to –
  - (i) the Malay community and is nominated as such a person for election in any constituency; or
  - (ii) the Indian or other minority communities and is nominated as such a person for election in any constituency,a certificate issued to him, certifying that he is a person belonging to the Malay community or to the Indian or other minority communities, as the case may be.

If any statutory declaration or certificate which is required to be delivered by any candidate in a group is not so delivered, the nomination of that group is deemed to be void.

The returning officer may, at any time between the date of the notice of the writ and 12 noon of the day of nomination, supply a form of nomination paper and statutory declaration to any registered elector requiring the same.

Where the nomination paper of any group does not comply with the requirements, or where any candidate in a group withdraws his candidature, the nomination of that group is deemed to be void.<sup>15</sup>

#### **5.04 Committee to Determine whether Respective Candidate is Malay or Other Racial Minority**

The Act established –

- (a) a Malay Community Committee whose function is to determine whether a person desiring to be a candidate for any election in any designated constituency belongs to the Malay community; and
- (b) an Indian and Other Minority Communities Committee whose function is to determine whether a person desiring to be a candidate for any designated constituency belongs to the Indian or other minority communities.

The Malay Community Committee consists of a chairman and four other members, all of whom must be persons belonging to the Malay community and be appointed by the President on the nomination of the Presidential Council for Minority Rights established under the Constitution after consulting such organisations of the Malay community as the Council thinks fit.

The Indian and Other Minority Communities Committee consists of a chairman and four other members, who must be persons belonging to the Indian or other minority communities and must be appointed by the President on the nomination of the Presidential Council for Minority Rights established under the Constitution after consulting such organisations of the Indian and other minority communities as the Council thinks fit.

A decision of any such Committee requires a simple majority of the members present and voting, and the Committee may act notwithstanding the absence of any member, except that in the case of an equality of votes the chairman or member presiding has a casting vote in addition to his original vote.

Subject to these provisions, any such Committee may regulate its own procedure.

Any Committee established under these provisions must be guided by the merits of each case without regard to legal forms and technicalities, or to whether the evidence before it is in accordance with the law of evidence or not.

Any decision of any such Committee is final and conclusive and cannot be appealed against or called in question in any court.<sup>16</sup>

### **5.05 Deposits by Candidates**

A candidate, or some person on his behalf, must deposit or cause to be deposited with the returning officer, or with some person authorised by the returning officer in that behalf, between the date of the issue of the writ and 12 noon of the day of nomination, a sum equal to eight per cent of the total allowances payable to a Member of Parliament in the preceding calendar year, rounded to the nearest \$500 and, in default of that deposit being so made, the candidate must be deemed to have withdrawn his candidature. The returning officer must forthwith give a receipt for that sum and must pay that sum into the Treasury and that sum must be dealt with in accordance with the provisions of the Act.

Any sum required to be deposited must be paid in legal tender or by a bank draft or a certified cheque.

If a candidate is not nominated as a candidate for election or if, after the deposit is made, the candidate withdraws his candidature, the deposit must be returned to the person by whom the deposit was made; and if the candidate dies after the deposit is made and before the poll is commenced, the deposit, if made by him, must be returned to his legal representative or, if not made by him, must be returned to the person by whom the deposit was made.

If a candidate who has made the required deposit is not elected and –

- (a) the number of votes polled by him does not exceed one-eighth of the total number of votes polled in the electoral division for which he contested; or
- (b) where he is a candidate for a group representation constituency, the number of votes polled in that constituency by the group to which he belongs does not exceed one-eighth of the total number of votes polled in that constituency,

the amount deposited must be forfeited and paid into the Consolidated Fund; but in any other case that amount must be returned to the candidate, where the candidate is elected, as soon as he has taken the oath or made affirmation as a Member, and where the candidate is not elected, as soon as practicable after the result of the election is declared.

Where a candidate is nominated at a general election in more than one electoral division, he must in no case recover his deposit more than once, and in that case the deposits must be forfeited and paid into the Consolidated Fund except, if the candidate or the group to which he belongs has for any electoral division obtained the required number of votes, such one deposit as the returning officer thinks fit, and the deposit must be returned to the candidate.

For the purposes of this section –

- (a) the number of votes polled is deemed to be the number of votes counted other than rejected votes;
- (b) “certified cheque” means a cheque which is certified by the drawee bank as good for payment of the sum stated in the cheque.

The returning officer must, on giving notice of the issue of the writ, specify in the notice the amount to be deposited.<sup>17</sup>

### **5.06 Proceedings on Nomination Day**

The returning officer must, on the day of nomination, attend at the place of nomination from 11 a.m. until 12 noon to receive nomination papers, statutory declarations and certificates (if any).

Every nomination paper, certificate and statutory declaration must be delivered to the returning officer together with a true copy of each on the day and the place and between the hours aforesaid by the candidate, and if not so delivered, must be rejected.

The returning officer must forthwith cause a copy of the nomination paper to be posted in a conspicuous position outside the place of nomination.

The returning officer must permit the candidates and their proposers and seconders and one other person (if any) appointed by each candidate in writing to be present on the day and at the place of nomination between 11 a.m. and 12.30 p.m. and there and then to examine the nomination papers of candidates which have been received for that electoral division.<sup>18</sup>

### **5.07 Objections to Nomination Papers**

Objection may be made to a nomination paper on all or any of the following grounds but on no other ground:

- (a) that the description of the candidate is insufficient to identify the candidate;
- (b) that the nomination paper does not comply with or was not delivered in accordance with the provisions of the Act;

- (c) that it is apparent from the contents of the nomination paper that the candidate is not capable of being elected a Member of Parliament;
- (d) that the relevant provisions (section 27A or 28) have not been observed.

No objection to a nomination paper can be allowed –

- (a) unless it is made to the returning officer between 11 a.m. and 12.30 p.m. on the day of nomination; or
- (b) on the ground that a group seeking election in any designated constituency does not consist of at least a person belonging to the Malay community or a person belonging to the Indian or other minority communities, if any candidate in that group has delivered to the returning officer a certificate issued to the candidate.

Every objection must be in writing signed by the objector and specify the ground of objection. The returning officer may himself lodge an objection on any of the grounds set out above.

The returning officer must with the least possible delay decide on the validity of every objection and inform the candidate concerned of his decision, and, if the objection is allowed, of the grounds of his decision. His decision, if disallowing the objection, is final and conclusive and must not be called in question in any court, but if allowing the objection, is subject to reversal on an election petition.<sup>19</sup>

#### **5.08 Person Entitled to be Present at Nomination**

No person other than the returning officer, the candidates and their respective proposers and seconders and one other person (if any) appointed in writing by each candidate is, except with the consent of and for the purpose of assisting the returning officer, entitled to be present at the proceedings.<sup>20</sup>

#### **5.09 Withdrawal of Candidature**

A candidate may before 12 noon on the day of nomination, but not afterwards, withdraw his candidature by giving a notice to that effect signed by him to the returning officer.

The returning officer must forthwith cause notice of the withdrawal to be posted in a conspicuous position outside the place of nomination.<sup>21</sup>

#### **5.10 Uncontested Elections**

If, on the day of nomination, in any electoral division, after the decision by the returning officer on any objection which may have been lodged, only one candidate or a group of candidates stands nominated for that division, the returning officer must forthwith declare the nominated candidate or the group of candidates to be elected and must forthwith cause the name or names of the member or members so elected to be published in the Gazette.<sup>22</sup>

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— *Section 6* —

**CONTESTED ELECTIONS**

**6.01 Candidate's Symbol**

If, on the day of nomination in any electoral division, after the decision by the returning officer of any objections which may have been lodged, more candidates stand nominated for that division than one, the returning officer must forthwith adjourn the election to enable a poll to be taken in accordance with the provisions of the Act, and must allot to each candidate an approved symbol which must be printed on the ballot paper opposite that candidate's name: provided that the returning officer may in his discretion allot to any candidate some other symbol selected by the candidate or by the political association to which he belongs.

Subject to the foregoing provisions, the determination of the approved symbol to be allotted to each candidate must be made by lot by the returning officer: provided that no candidate must be allotted any symbol which is of any racial or religious significance.

In the event of any dispute arising regarding the allocation of any symbol under these provisions, the decision of the returning officer is final and must not be questioned.

The returning officer must cause to be published in the Gazette a notice in the prescribed form specifying –

- (a) the electoral division in which the election is contested;
- (b) the date on which the poll will be taken, the date being not less than nine days or more than eight weeks after the date of publication of the notice in the Gazette;
- (c) the names of the candidates in the order in which they will be printed on the ballot paper, the symbol allotted to each candidate, and the names of their proposers and seconders; and
- (d) the situation of the polling stations for that electoral division and the particular polling stations (if any) reserved for female voters.

In computing time for the purposes of (b) above, the last day of the period must not be excluded only by reason of the fact that it is a Sunday or that it is a public holiday under the provisions of the Act or any other written law.

If, after an election has been reported as contested, one of the candidates nominated dies before the poll has commenced, the returning officer must, upon being satisfied of the fact of the death, countermand the notice of the poll, and must appoint by notice published in the Gazette a fresh date for the election. In such case all proceedings with reference to the election must be commenced afresh: provided that no fresh nomination is necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.<sup>23</sup>

**6.02 Contested Elections in Group Representation Constituencies**

If, on the day of nomination, in any group representation constituency, after the decision by the returning officer on any objection which may have been lodged, more groups than one

stand nominated for that constituency, the returning officer must forthwith adjourn the election to enable a poll to be taken in accordance with the provisions of the Act, and must allot to each group of candidates an approved symbol which must be printed on the ballot paper opposite the names of each group: provided that the returning officer may in his discretion allot to any group of candidates some other symbol selected by the group or the political party to which it belongs.

Subject to these provisions, the determination of the approved symbol to be allotted to each group of candidates must be made by lot by the returning officer: provided that no group of candidates must be allotted any symbol which is of any racial or religious significance.

In the event of any dispute arising regarding the allocation of any symbol, the decision of the returning officer is final and cannot be questioned.

The returning officer must cause to be published in the Gazette a notice in the prescribed form specifying –

- (a) the group representation constituency in which the election is contested;
- (b) the date on which the poll will be taken, the date being not less than nine days or more than eight weeks after the date of publication of the notice in the Gazette;
- (c) the names of the candidates in each group in the order in which they will be printed on the ballot paper, the symbol allotted to each group of candidates, and the names of their proposers and seconders; and
- (d) the situation of the polling stations for that group representation constituency and the particular polling stations, if any, reserved for female voters.

In computing time for the purposes of (b) above, the last day of the period must not be excluded only by reason of the fact that it is a Sunday or that it is a public holiday under the provisions of the Act or of any other written law.

If, after the election in a group representation constituency has been reported as contested, one of the candidates nominated for that constituency dies before the poll has commenced, the returning officer must, upon being satisfied of the fact of the death, countermand the notice for the poll, and must appoint, by notice published in the Gazette, a fresh date for the election in that constituency. In such case all proceedings with reference to the election must be commenced afresh: provided that no fresh nomination must be necessary in the case of any group which stood nominated at the time of the countermand of the poll.<sup>24</sup>

### **6.03 Polling Day at General Election to be Public Holiday**

Polling day at any general election must be a public holiday as though it had been so expressly appointed in addition to the days mentioned in any written law for the time being in force relating to holidays.<sup>25</sup>

### **6.04 Presiding Officers**

The returning officer must appoint, and may revoke the appointment of, one or more persons

(referred to as presiding officers) to preside at each polling station. If more than one presiding officer is appointed for any polling station, the returning officer may appoint one of the presiding officers to be the senior presiding officer who must exercise general supervision over the other presiding officers, and over all arrangements for the conduct of the poll in that station. Each presiding officer must be supplied with a copy of that part of the register of electors containing the names of electors in the register assigned to his polling place.

If any presiding officer is, by sickness or other cause, prevented from acting at any election and there is not time for another person to be appointed by the returning officer, the presiding officer may appoint a deputy to act for him. Every such appointment must as soon as possible be reported to the returning officer and may be revoked by the returning officer, but without prejudice to the validity of anything already done by the deputy.

The returning officer may, if he thinks fit, preside at any polling station, and the provisions of the Act relating to a presiding officer apply to the returning officer.<sup>26</sup>

### **6.05 Facilities to be Provided at Polling Stations**

Outside each polling station there must be affixed in a conspicuous place by the presiding officer before the commencement of the poll a notice showing the name of each candidate in English, Malay, Chinese and Tamil, and the symbol allotted to him. The names must be arranged alphabetically in English in the order of their surnames, and if there are two or more candidates with the same surname, of their other names.

Outside each polling station in any group representation constituency, there must be affixed in a conspicuous place by the presiding officer before the commencement of the poll a notice showing the names of the candidates in each group in English, Malay, Chinese and Tamil, and the symbol allotted to each group. The names of the candidates in each group must be arranged alphabetically in English in the order of their surnames, and if there are two or more candidates with the same surname, of their other names. The groups of candidates must be arranged alphabetically in English in the order of surnames of the first candidates in each group and if there are two or more such candidates with the same surname, of their other names.

The returning officer must provide at each polling station reasonable facilities for the electors allotted to that station to enable them to mark their votes screened from observation and to vote in accordance with the provisions of the Act, and he must determine, or may authorise the presiding officer or senior presiding officer to determine, in what manner those facilities must be distributed among all electors entitled to vote at that station.<sup>27</sup>

### **6.06 Registers of Electors to be Conclusive Evidence of Right to Vote**

The register of electors in operation in accordance with the Act at the time of any election of a Member to represent the electoral division to which the register relates must be conclusive evidence for the purposes of determining whether a person is or is not entitled to vote at the election, and the right and duty of voting of any person whose name is for the time being

contained in the register must not be prejudiced by any appeal pending before a revising officer in respect of the inclusion of that person's name in the register, and any vote given by that person during the pendency of that appeal must be as good as though no such appeal were pending and must not be affected by the subsequent decision of the appeal.

No person who, by reason of circumstances existing on the day of the election, is not entitled to have his name entered or retained in any register of electors shall be entitled to vote at the election and if that person votes at the election he is guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months.<sup>28</sup>

### **6.07 Admittance to Polling Station**

No person must be admitted to vote at any polling station except the one allotted to him: provided that where an elector for any electoral division is employed as a presiding officer, police officer, or in any other official capacity at a polling station within that division, and it is inconvenient for him to vote at the polling station in the division which has been allotted to him, the returning officer may authorise the elector, by a certificate under his hand, to vote at any other polling station in the division, and that polling station must, for the purposes of these provisions, be deemed to be the polling station allotted to that elector.

Such certificate must be given under the hand of the returning officer and must state the name of the elector, his number, and description in the register of electors, and the fact that he is so employed as aforesaid.

Unless the returning officer, by notification in the Gazette, appoints any other hour, the poll in any electoral division opens at 8 a.m. on the day appointed and closes at 8 p.m. on that day.

The presiding officer must keep order in his station, and must regulate the number of voters to be admitted at a time, and must exclude all other persons except the candidates, the polling agent or agents of each candidate, the returning officer and persons authorised in writing by the returning officer, the police officers on duty and other persons officially employed at the polling station.

Not more than one polling agent of each candidate must be admitted to any polling station: provided that where, at any polling station, more polling places than one have been established, not more than one polling agent of each candidate must be admitted to each such polling place.

No polling agent whose name has not been notified to the presiding officer can be admitted to a polling station.

If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any police officer in or near that station or by any other person

authorised in writing by the presiding officer or by the returning officer to remove him; and the person so removed must not, unless with the permission of the presiding officer, again be allowed to enter the polling station. Any person so removed, if charged with the commission in that station of any offence, may be kept in custody until he can be brought before a magistrate.

The powers conferred by these provisions must not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at that station.<sup>29</sup>

### **6.08 Poll by Ballot and Ballot Papers**

In the case of a poll at an election, the votes must be given by ballot, and the ballot of each voter must consist of a paper (referred to as a ballot paper).

Every ballot paper must contain a list of the candidates in English, described as in their respective nomination papers, and arranged alphabetically in English in order of their surnames, and, if there are two or more candidates with the same surname, of their other names and the symbol allotted to each candidate.

Every ballot paper is required to be in the prescribed form and must be capable of being folded.

In respect of any group representation constituency, every ballot paper must contain a list of the candidates in each group in English, described as in their respective nomination papers and the symbol allotted to each group, and arranged alphabetically in English in the order specified. Every ballot paper must be in the prescribed form and must be capable of being folded.

Each ballot paper must have a number printed on the back and must have attached a counterfoil with the same number printed on the face.<sup>30</sup>

### **6.09 Ballot Boxes**

Every ballot box must be so constructed that the ballot papers can be introduced therein but cannot be withdrawn therefrom unless the box is unlocked.

The presiding officer at a polling station immediately before the commencement of the poll must show each ballot box to be used at the commencement of the poll empty to such persons (if any) as may be present in the station so that they may see that it is empty, and must lock it up and place his seal upon it in such manner as to prevent it being opened without breaking the seal, and must place it in his view for the receipt of ballot papers and keep it so locked and sealed.

This provision applies to every ballot box used during a poll and it is a sufficient compliance with the provision if a ballot box, other than a ballot box used at the commencement of a poll, is shown, locked and sealed as aforesaid, before it is used.<sup>31</sup>

## **6.10 Manner of Voting**

Each voter entitled to vote must be given one ballot paper and has one vote.

Each voter entitled to vote in any group representation constituency must have one vote and may vote for any one group of candidates in the manner prescribed by the Act.

The ballot paper must be delivered to the voter by the presiding officer or a person acting under his authority. Immediately before the ballot paper is delivered to the voter, the paper must be stamped on the back or perforated with the official mark or initialled by the presiding officer; and the number, name and description of the voter, as stated in the copy of the register of electors, must be called out, and the number of the elector must be marked on the counterfoil, and a mark must be placed in the register against the number of the elector to denote that he has received a ballot paper but without showing the particular ballot paper which he has received.

The voter, on receiving the ballot paper must forthwith proceed to such place in the station as may be indicated by the presiding officer or by any person acting under that officer's authority, and must there secretly mark the paper as near as may be in accordance with the directions given for the guidance of voters under the Act. The voter must then fold the paper so as to conceal his vote, and must put the paper so folded up into the ballot box. He must vote without undue delay and must leave the polling station as soon as he has put his ballot paper into the ballot box.

The presiding officer or any person authorised by him may ask any voter if the voter understands the method of voting in accordance with the Act and may, if he thinks fit, on the application of any voter, explain to the voter, in the presence of the polling agents of the candidates if present, the method of voting in accordance with the Act; but in so doing he must carefully abstain from any action which might be construed by the voter as advice or a direction to vote for any particular candidate or group of candidates.

The presiding officer, on the application of a voter who is incapacitated by blindness or other physical cause from voting in the manner prescribed by the Act, must mark the ballot paper of the voter in the manner directed by the voter, and must cause the ballot paper to be placed in the ballot box.

The presiding officer may at any time while a poll is proceeding take such steps as may be necessary to ensure that no voter delays unduly in any place reserved for marking of ballot papers.

During the taking of the poll, the presiding officer is required to exhibit outside his polling station a notice in English, Malay, Chinese and Tamil, substantially in the form prescribed, giving directions for the guidance of voters in voting.<sup>32</sup>

## **6.11 Compulsory Voting**

Every elector must record his vote at each election in the division for which he is registered.

The returning officer must, at the close of each election, prepare a list of the numbers, names and description as stated in the register of electors of such electors as have failed to vote at the election and certify the list under his hand.

Notwithstanding any other provisions of the Act, it is lawful for the returning officer to break the seals of packets containing the marked copies of the registers of electors and to inspect and retain those copies for the purpose of preparing the list referred to above and of any inquiries connected therewith.

The list prepared by the returning officer must be forwarded by the returning officer to the registration officer.

Notwithstanding any other provisions of the Act, the registration officer must on receipt of such list cause the names of all persons appearing in the list to be expunged from the register.

The registration officer must give notice in the Gazette that such list has been received by him from the returning officer and that that list or copies thereof are open for inspection at all reasonable hours of the day at the office of the registration officer and at such other place or places on each electoral division as may be specified in the notice.

Every person whose name appears on the list of which notice has been given by the registration officer may make a written application for the restoration of his name to the register of electors.

If any applicant satisfies the registration officer that he has a good and sufficient reason for not having recorded his vote, his name must be restored to the register without penalty. Where the application does not so satisfy the registration officer his name must be restored to the register on payment to the registration officer of the sum of \$5.

Any name to be restored to the register must, except where a writ of election has been issued, be restored the day after the registration officer has satisfied himself that the applicant has a good and sufficient reason for not recording his vote or the day after the payment of the sum of \$5 to the registration officer, as the case may be.

Where any person whose name is to be restored to the register has notified the Commissioner of National Registration of any change in his address and it appears from such change of address that he is no longer residing in the same electoral division, his name must be restored to the appropriate register of the electoral division in which he is residing.

Where a writ of election has been issued for an election in any electoral division, no name must be restored to the register of that division until after nomination day or, if a poll is to be taken, until after polling day.<sup>33</sup>

## **6.12 Declarations by Voters**

The presiding officer at any polling station may in his discretion require any voter, before he is given a ballot paper, to furnish such evidence of his identity as the presiding officer

may consider necessary and to make and subscribe all or any of the declarations prescribed for the purpose in the First Schedule. Every such declaration must be exempt from stamp duty.

If any person fails to furnish such evidence of his identity or refuses to make any such declaration, the presiding officer may refuse to give him a ballot paper.

If any person wilfully makes a false statement in any such declaration, he is guilty of an offence and is liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months.<sup>34</sup>

### **6.13 Spoilt Ballot Papers**

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in place of the ballot paper so delivered up (referred to as a spoilt ballot paper) and the spoilt ballot paper must be immediately cancelled by the presiding officer.<sup>35</sup>

### **6.14 Tendered Votes**

If a person representing himself to be a particular elector named in the register applies for a ballot paper after another person has voted as such elector, the applicant must on taking an oath of identity, which may be administered by the presiding officer and which must be in the prescribed form, be entitled to receive a ballot paper and to vote in the same manner as any other voter, but the ballot paper (referred to as a tendered ballot paper) must be of a colour different from the other ballot papers and, before placed in a ballot box, must be endorsed by the presiding officer with the name of the voter and his number in the register, and that number must be entered on a list (referred to as the tendered votes list).<sup>36</sup>

### **6.15 Procedure on Closing of Poll**

No ballot paper is to be delivered to a voter after the hour fixed for the closing of the poll. But if at that hour there is in the polling station any voter to whom a ballot paper has been delivered, the voter must be allowed to record his vote.

The presiding officer of each polling station, as soon as practicable after the close of the poll, must, in the presence of such of the candidates and their polling agents as attend, make up into separate packets, sealed with his own seal and the seals of the candidates or their agents if they desire to affix their seals –

- (a) the unused and spoilt ballot papers placed together;
- (b) the marked copies of the register of electors;
- (c) the counterfoils of the ballot papers; and
- (d) the tendered votes list.

The ballot box or boxes unopened must be secured by the presiding officer and sealed with his seal and with the seals of such of the candidates or their agents as attend and desire to affix their seals, in such a manner that the box or boxes cannot be opened and nothing can be inserted therein without breaking the seals.

The presiding officer must despatch each such packet and the ballot box or boxes in safe custody to the returning officer.<sup>37</sup>

### **6.16 Counting Votes**

Each candidate may appoint an agent (referred to as the counting agent) to attend the counting of the votes. Written notice of the name and address of the counting agent so appointed must be given by the candidate to the returning officer.

The returning officer must make arrangements for counting the votes, in the presence of such of the candidates and their counting agents as attend, as soon as practicable after he has received all the ballot boxes relating to the electoral division, and for that purpose must give notice in writing to each candidate, or, if the candidate has appointed a counting agent, to the counting agent, of the time and place at which he will begin to count the votes.

The returning officer, his assistants and clerks, and the candidates and their counting agents, but no other persons except with the sanction of the returning officer, may be present at the counting of the votes.

Before the returning officer proceeds to count the votes, he or a person authorised by him must, in the presence of such of the candidates and their counting agents as attend, open each ballot box and, taking out the papers contained therein, mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting the votes, must keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the back of the papers.

The returning officer must so far as practicable proceed continuously with counting the votes and must endorse "rejected" on any ballot paper which he may reject as invalid.

The returning officer must not count the tendered ballot papers but must place them in separate packets according to the candidate or group of candidates whom they support and mark each packet with the name of the candidate or group of candidates and must seal the packet and retain it unless it is required for the purposes of an election petition.

When the counting of the votes has been completed, the returning officer must forthwith declare the candidate or group of candidates to whom the greatest number of votes is given to be elected: provided that upon the application of any candidate or his counting agent, a recount must be made before the returning officer makes the declaration.

When an equality of votes is found to exist between any candidates or groups of candidates, and the addition of a vote would entitle any of the candidates or groups of candidates to be declared elected, the determination of the candidate or group of candidates to whom one

additional vote is deemed to have been given must be made by lot in the presence of the returning officer in such manner as he may determine.

Upon the completion of the counting, and after the results have been declared by him, the returning officer must seal up the ballot papers and all other documents relating to the election and must retain the ballot papers and documents for a period of six months and thereafter must cause them to be destroyed unless otherwise directed by order of the President.

A Judge of the Supreme Court may make an order that any ballot paper or other document relating to an election which has been sealed as required by the Act be inspected, copied or produced at such time and place and subject to such conditions as the Judge may consider expedient, but must not make such an order unless he is satisfied that the inspection, copy or production is required for the purpose of instituting or maintaining a prosecution or an election petition in connection with the election. Except as aforesaid, no person shall be allowed to inspect any such ballot paper or document after it has been sealed up.<sup>38</sup>

### **6.17 Votes to be Rejected**

The returning officer must reject as invalid the following ballot papers only, namely, any ballot paper:

- (a) which is not stamped or perforated with the official mark or initialled;
- (b) on which votes are given for more than one candidate or group of candidates;
- (c) on which anything is written or marked by which the voter can be identified except the printed number on the back;
- (d) which is unmarked;
- (e) which is void for uncertainty.

Where the returning officer is satisfied that any mark made on a ballot paper clearly indicates the intention of the voter and the candidate or group of candidates for whom he gives his vote, the returning officer must not reject the ballot paper on the ground solely that it has not been marked in all respects in accordance with the directions given for the guidance of voters under the Act: provided that before rejecting a ballot paper, the returning officer must show it to each candidate or his counting agent if present and hear his views thereon, taking all proper precautions to prevent any person from seeing the number printed on the back of the paper.

The decision of the returning officer whether or not any ballot paper must be rejected must be final and cannot be questioned on an election petition.<sup>39</sup>

### **6.18 Publication of Result**

The returning officer must forthwith after the result has been declared by him compile a statement of the poll in the prescribed form and must cause the name or names of the members so elected and also the statement to be published in the Gazette.<sup>40</sup>

## 6.19 Election of Non-Constituency Members

At any general election the number of non-constituency Members to be declared elected shall be three (or such greater number not exceeding six as the President may by order specify for the purpose of that general election) less the total number of opposition Members elected to Parliament.

Where any order is to be made under the foregoing provisions, such order must be made any time after Parliament is dissolved but not later than the day of nomination for a general election following the dissolution; and the order must cease to have effect at the next dissolution of Parliament.

The non-constituency Member or Members to be declared elected must be determined from among the candidates of those political parties (other than the party or parties that will form the Government) contesting the general election on the basis of the percentage of the votes polled at the same general election by such candidates in the following order of priority – the candidate receiving the highest percentage of votes being placed first and the other candidates being placed in descending order in accordance with the percentage of votes polled by them.

Where any non-constituency Member is to be declared elected under the provisions, the returning officer must as soon as he determines the candidate who stands first in accordance with the order of priority declare that candidate to be elected as a non-constituency Member; and if more than one non-constituency member is to be declared elected, the returning officer must declare also elected the next succeeding candidate or candidates, as the case may be, in order of priority: provided that no such candidate must be declared as so elected unless he has polled not less than 15 per cent of the total number of votes (other than rejected votes) polled at the election in the electoral division contested by him.

Where there is an equality of the percentage of the votes between any candidates and the number of such candidates who are eligible to be declared elected under these provisions exceeds the number of non-constituency Members to be declared elected, the determination of the candidate or candidates to be declared elected must be as follows:

- (a) if all such candidates are from the same group, the returning officer must inform that group of the number of candidate or candidates in that group to be declared elected and the group must within seven days determine among themselves who must be declared elected and must forthwith notify the returning officer of such determination;
- (b) in any other case, or where the group referred to in paragraph (a) fails to notify the returning officer, the determination must be made by lot in the presence of the returning officer in such manner and at such time as he may determine.

Upon receipt of a notification under (a) above, the returning officer must as soon as possible declare the candidate or candidates determined to be elected as non-constituency Member or Members, as the case may be.<sup>41</sup>

## **6.20 Failure to Comply with Provision of the Act**

No election must be invalid by reason of any failure to comply with any provision of the Act relating to elections if it appears that the election was conducted in accordance with the principles laid down in that provision, and that the failure did not affect the result of the election.

Where in the Act any act or thing is required or authorised to be done in the presence of the candidates or their agents, the non-attendance of any candidate or agent at the time and place appointed for the purpose must not, if that act or thing is otherwise duly done, invalidate that act or thing.<sup>42</sup>

## **— Section 7 —**

### **OFFENCES**

#### **7.01 Miscellaneous Offences**

A person who –

- (a) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper knowing it to be forged;
- (b) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (c) without due authority supplies any ballot paper to any person;
- (d) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
- (e) not being a person entitled under the Act to be in possession of any ballot paper which has been marked with the official mark in accordance with the Act, has any such ballot paper in his possession;
- (f) puts into any ballot box anything other than the ballot paper which he is authorised by law to put in;
- (g) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (h) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purposes of an election;
- (i) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or
- (j) manufactures, constructs, imports into Singapore, has in his possession, supplies or uses for the purposes of an election, or causes to be manufactured, constructed, imported into Singapore, supplied or used for the purposes of an election, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at an election,

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding two years and must, on conviction, become incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at any election under the

Act or of being elected as the President or a Member of Parliament, and if at that date he has been elected as the President or a Member of Parliament, his election or appointment must be vacated from the date of conviction.

Every person who attempts to commit an offence specified in these provisions is liable to the punishment prescribed for that offence.

In a prosecution for an offence in relation to a nomination paper, ballot box, ballot paper or marking instrument at an election, the property in the nomination paper, ballot box, ballot paper or marking instrument as well as the property in the counterfoil of any ballot paper, may be stated to be in the returning officer at that election.

A prosecution for an offence under these provisions must not be instituted without the sanction of the Public Prosecutor.<sup>43</sup>

### **7.02 Maintenance of Secrecy at Elections**

Every officer, clerk, interpreter, candidate and agent in attendance at a polling station must maintain, and aid in maintaining, the secrecy of the voting in the station, and must not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not voted or applied for a ballot paper at that station, or as to the official mark, but the total number of voters who have voted at any station at any time before the poll is closed may in the discretion of the presiding officer be divulged to the candidate or his agent authorised to attend at the polling station.

No such officer, clerk, interpreter, candidate or agent, and no person whomsoever shall attempt to obtain the polling station information as to the candidate or group of candidates, for whom any voter in the station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate or group of candidates, for whom any voter in the station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at the station.

Every officer, clerk, interpreter, candidate and agent in attendance at the counting of the votes must maintain, and aid in maintaining, the secrecy of the voting, and must not attempt to ascertain at the counting the number on the back of any ballot paper or communicate any information obtained at the counting as to the candidate or group of candidates, for whom any vote is given by any particular ballot paper.

No person, except a presiding officer acting for a purpose authorised by the Act or a person authorised by the presiding officer and acting for that purpose, must communicate or attempt to communicate with any voter after the voter has received a ballot paper and before he has placed it in a ballot box.

Every person who acts in contravention of these provisions is guilty of an offence and is liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding six months.<sup>44</sup>

### **7.03 Corrupt Practices**

#### **(a) *Personation***

Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, is guilty of the offence of personation, which is a seizable offence within the meaning of the Criminal Procedure Code.

#### **(b) *Treating***

A person is guilty of treating if he corruptly, by himself or any other person, either before, during or after an election directly or indirectly gives or provides, or pays wholly or in part the expense of giving, any meat, drink, refreshment, cigarette, entertainment or other provision or thing or any money or ticket or other means or device to enable the procuring of any such meat, drink, refreshment, cigarette, entertainment or other provision or thing to or for any person –

- (i) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting;
- (ii) for the purpose of inducing that person to attend or remain at any election meeting;
- (iii) on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at the election; or
- (iv) on account of any such person having attended an election meeting.

A person is also guilty of treating if he corruptly accepts or takes any such meat, drink, refreshment, cigarette, entertainment or other provision or thing or any such money or ticket or who adopts any other means or device to enable the procuring of such meat, drink, refreshment, cigarette, entertainment or other provision or thing.

#### **(c) *Undue Influence***

Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting at any election, or who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces or prevails upon any elector or voter either to give or refrain from giving his vote at any election, is guilty of the offence of undue influence.

#### **(d) *Bribery***

The following persons are deemed to be guilty of the offence of bribery –

- (i) every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to

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- procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting or corruptly does any such act on account of that elector or voter having voted or refrained from voting at any election under the Act;
- (ii) every person who directly or indirectly, by himself or by any other person on his behalf, gives or procures or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce that elector or voter to vote or refrain from voting, or corruptly does any such act on account of that elector or voter having voted or refrained from voting at any election under the Act;
  - (iii) every person who directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement as aforesaid to or for any person in order to induce that person to procure or endeavour to procure the return of any person as a Member of Parliament, or the vote of any elector or voter at any election under the Act;
  - (iv) every person who directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement to or for any person who is assisting or has promised to assist a candidate at an election to induce that person to refrain from assisting that candidate;
  - (v) every person who upon or in consequence of any such gift, loan, offer, promise, procurement or agreement procures or engages, promises or endeavours to procure, the return of any person as a Member of Parliament, or the vote of any elector or voter at an election under the Act;
  - (vi) every person who advances or pays or causes to be paid any money to or for the use of any other person with the intent that the money or any part thereof is to be expended in bribery at any election under the Act, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in the part expended in bribery at such election;
  - (vii) every elector or voter who, before or during any election under the Act, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;
  - (viii) every person who, after any election under the Act, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;
  - (ix) every person who directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate or group of candidates, at an election, or on account of and as payment for his having assisted or agreed to assist any candidate or group of candidates at an election, applies to that candidate or to any candidate in that group, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of any office, place or employment;
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- (x) every person who directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment to or for that other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for that other person, or to or for any person on behalf of that other person.<sup>45</sup>

#### **7.04 Punishment and Incapacities for Corrupt Practices**

Every person who –

- (a) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation;
- (b) commits the offence of treating, undue influence or bribery;
- (c) prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher;
- (d) makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of the candidate;
- (e) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at the election; or
- (f) being a candidate or election agent, knowingly makes the declaration as to election expenses, falsely,

is guilty of a corrupt practice and on conviction by a District Court is liable to a fine of not less than \$250 and not exceeding \$1,000 or to imprisonment for a term not exceeding twelve months or to both, and, in any other case, to a fine exceeding \$500 or to imprisonment for a term not exceeding six months or to both.

Every person who is convicted of a corrupt practice becomes incapable for a period of seven years from the date of his conviction of being registered as an elector or of voting at any election under the Act or of being elected a Member of Parliament, and if at that date he has been elected a Member of Parliament, his election must be vacated from the date of the conviction.

A prosecution for a corrupt practice except any corrupt practice under (d) and (e) of these provisions must not be instituted without the sanction of the Public Prosecutor.<sup>46</sup>

#### **7.05 Election Agent, Election Expenses and Illegal Practices**

##### **(a) *Nomination of Election Agent***

On or before the day of nomination at an election, a person must be named in writing by or

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on behalf of each candidate as his agent for that election and the person is referred to in the Act as the election agent.

A candidate may name himself as election agent, and thereupon must, so far as circumstances admit, be subject to the Act both as a candidate and as an election agent, and any reference to an election agent must be construed to refer to the candidate acting in his capacity of election agent.

On or before the day of nomination, the name and address of the election agent of each candidate must be declared in writing by the candidate or some other person on his behalf to the returning officer and the returning officer must forthwith by affixing a notice in a conspicuous place outside his office, give public notification of the name and address of every election agent so declared.

One election agent only must be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked and in the event of such revocation or of his death, whether the event is before, during or after the election, then forthwith another election agent must be appointed, and his name and address declared in writing to the returning officer, who must forthwith give public notice of the same in the manner aforesaid. No person must be appointed election agent who has within seven years prior to such appointment been convicted of any corrupt practice under the Act.

**(b) *Making of Contracts through Election Agent***

The election agent of a candidate must appoint every polling agent, clerk and messenger employed for payment on behalf of the candidate at an election, and hire every committee-room hired on behalf of the candidate, and must inform the presiding officer at each polling station in writing of the name of the polling agent or agents appointed to act at that station before the person is admitted to the station.

A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election must not be enforceable against a candidate at the election, unless made by the candidate himself or by his election agent: provided that inability under these provisions to enforce the contract against the candidate must not relieve the candidate from the consequences of any corrupt or illegal practice committed by his agent.

**(c) *Payment of Expenses through Election Agent***

Except as permitted by or in pursuance of the Act, no payment and no advance or deposit is to be made by a candidate at an election, or by any agent on behalf of the candidate, or by any other person at any time, whether before, during, or after the election, in respect of any expenses incurred on account of or in respect of the conduct or management of the election otherwise than by or through the election agent of the candidate; and all money provided by any person other than the candidate for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance or deposit, must be paid to the candidate or his election agent and not otherwise: provided that these provisions are not deemed to apply to any payment by the returning officer or to any sum

disbursed by any person out of his own money for any small expense legally incurred by himself, if the sum is not repaid to him.

A person who makes any payment, advance or deposit in contravention of these provisions or pays in contravention of these provisions any money so provided as aforesaid is guilty of an illegal practice.

**(d) *Period for Handing in Claims***

Every payment made by an election agent in respect of any expenses incurred on account of or in respect of the conduct and management of an election must, except where less than \$10 or where, from the nature of the case, such as travel by rail or postage, a receipt is not obtainable, be vouched for by a bill stating the particulars and by a receipt.

Every claim against a candidate at an election or his agent in respect of any expenses incurred on account of or in respect of the conduct or management of the election, which is not sent in to the election agent within the time limited by the Act, must be barred and must not be paid; and subject to such exception as may be allowed in pursuance of the Act, an election agent who pays a claim in contravention of these provisions is guilty of an illegal practice.

Except as by the Act permitted, the time limited by the Act for sending in claims is 14 days after the date of publication of the result of the election in the Gazette.

All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of the election, must be paid within the time limited by the Act and not otherwise; and, subject to such exception as may be allowed in pursuance of the Act, an election agent who makes a payment in contravention of this provision is guilty of an illegal practice.

Except as by the Act permitted, the time limited by the Act for the payment of those expenses is to be 28 days after the date of publication of the result of the election in the Gazette.

Where it has been proved to the satisfaction of the Election Judge by a candidate that any payment made by an election agent in contravention of these provisions was made without the sanction or connivance of the candidate, the election of the candidate shall not be void, nor shall be subject to any incapacity under the Act by reason only of the payment having been made in contravention of the Act.

If the election agent in the case of any claim sent in to him within the time limited by the Act disputes it, or refuses or fails to pay it within the period of 28 days, the claim is deemed to be a disputed claim.

The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court; and any sum paid by the candidate or his agent in pursuance of the judgment or order of that court is deemed to be paid within the time limited by the Act, and to be an exception from the Act, requiring claims to be paid by the election agent.

On cause shown to the satisfaction of a Judge of the Supreme Court, the Judge, on application by the claimant or by the candidate or his election agent, may by order give leave for the payment by a candidate or his election agent of a disputed claim, or of a claim for those expenses, although sent in after the time in these provisions mentioned for sending in claims, or although the claim was sent in to the candidate and not to the election agent.

Any sum specified in the order of leave may be paid by the candidate or his election agent; and when paid in pursuance of that leave is deemed to be paid within the time limited by the Act.

**(e) *Remuneration of Election Agent***

So far as circumstances admit, the Act applies to a claim for his remuneration by an election agent and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of the claim, the claim must be a disputed claim within the meaning of the Act, and be dealt with accordingly.

**(f) *Personal Expenses of Candidate***

The candidate at an election may pay any personal expenses incurred by him on account of or in connection with or incidental to the election to an amount not exceeding \$1,000, but any further personal expenses so incurred by him must be paid by his election agent.

The candidate must send to the election agent within the time limited by the Act for sending in claims a written statement of the amount of personal expenses paid by the candidate.

The personal expenses of a candidate include his reasonable travelling expenses and the reasonable expenses of his living at hotels or elsewhere for the purposes of the election.

Any person may, if so authorised in writing by the election agent of the candidate, pay any necessary expense for stationery, postage, telegrams, and other petty expenses to a total amount not exceeding that named in the authority, but any excess above the total amount so named must be paid by the election agent.

A statement of the particulars of payments made by any person so authorised must be sent to the election agent within the time limited by the Act for the sending in of claims, and must be vouched for by a bill containing the receipt of that person.

**(g) *Expenses in Excess of Maximum to be Illegal Practice***

Subject to such exception as may be allowed in pursuance of the Act, no sum must be paid and no expense must be incurred by a candidate at an election or his election agent, whether before, during or after an election, on account of or in respect of the conduct or management of the election in excess of the amount determined in accordance with the Third Schedule: provided that there are not included in the amount any expenditure incurred by the candidate for his personal expenses, nor the fee, if any, paid to the election agent not exceeding \$500.

Any candidate or election agent who knowingly acts in contravention of these provisions is guilty of an illegal practice.

The Minister may by order amend the Third Schedule; and every such order must be presented to Parliament as soon as possible after publication in the Gazette. Where a writ of election has been issued for an election in any electoral division, no order is to be made until after the day of nomination or, if a poll is to be taken, until after polling day of that election.

**(h) *Certain Expenditure to be Illegal Practice***

No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made –

- (i) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles or animals or transport of any kind whatsoever, or for railway or other fares, or otherwise; or
- (ii) to or with an elector or voter on account of the use of any house, land, building or premises for the exhibition of any address, bill or notice, or on account of the exhibition of any address, bill or notice.

Notwithstanding anything in the foregoing provisions –

- (i) where it is the ordinary business of an elector or voter as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with the elector or voter, if made in the ordinary course of business, must not be deemed to be illegal practice within the meaning of these provisions;
- (ii) where electors or voters are unable at an election to reach their polling stations from their place of residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying those electors or voters by sea to their polling stations, or to enable them to cross the river in order to reach their polling stations, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by the Act.<sup>47</sup>

## **7.06 Use of Motor Vehicles at Elections**

A person must not either let, lend, employ, hire, borrow or use any motor vehicle for the purpose of conveyance of electors or voters to or from the poll and a person knowingly acting in contravention of these provisions is guilty of an illegal practice: provided that –

- (a) the court before whom a person is convicted may, if it thinks it just in the circumstances of the case, mitigate or entirely remit any incapacity imposed;
- (b) a candidate must not be liable nor must his election be avoided for an illegal practice committed without his consent or connivance by any person other than his election agent.

Nothing in these provisions must prevent any person from employing a motor vehicle for the purpose of conveying to or from the poll himself or any member of his family.

Between 8 a.m. and 8 p.m. on polling day, no person is allowed to park a motor vehicle within 100 metres of any polling station other than a motor vehicle used for the conveyance of any sick, infirm or disabled person for such time as is reasonably necessary to enable the person to cast his vote.

Any person who contravenes the foregoing provisions is guilty of an offence and is liable on conviction to a fine not exceeding \$100.

A police officer in uniform may arrest without warrant any person in charge of or driving a motor vehicle, who has committed or is suspected of having committed an offence.

This power of arrest must not be exercised if either –

- (a) such person on the demand of the police officer produces his driving licence so as to enable the officer to ascertain the name and address of the holder of the licence, the date of issue and the authority by which it was issued; or
- (b) such person, not being a paid driver or the driver of a motor vehicle used for the carriage of passengers for hire or reward or for the carriage of goods, gives the officer his name and a place of address within Singapore,

provided that if the officer has reason to suspect that a name or address so ascertained or given is false he may, notwithstanding anything to the contrary in these provisions provided, exercise the power of arrest.<sup>48</sup>

### **7.07 Certain Employment to be Illegal**

No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for the purpose or in the capacities following:

- (a) one election agent and no more;
- (b) not more than one polling agent for each polling place;
- (c) a reasonable number of clerks and messengers having regard to the area of the electoral division and the number of electors on the register of electors for the division.

Subject to such exception as may be allowed in pursuance of the Act, if any person is engaged or employed in contravention of this provision, either before, during or after an election, the person engaging or employing him is guilty of an illegal practice.

The provisions of the Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of expenses in excess of a certain maximum, must not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant that they were in contravention of the Act.<sup>49</sup>

### **7.08 Return and Declaration Respecting Election Expenses**

Within 31 days after the date of publication of the result of an election in the Gazette, the

election agent of every candidate at that election must transmit to the returning officer a true return (referred to as the return respecting election expenses), in the prescribed form, containing detailed statements as respects that candidate of –

- (a) all payments made by the election agent together with all the bills and receipts which bills and receipts are in the Act included in the expression “return respecting election expenses” and the dates of payment of all sums for which no receipt is attached;
- (b) the amount of personal expenses, if any, paid by the candidate;
- (c) the disputed claims so far as the election agent is aware;
- (d) all unpaid claims, if any, of which the election agent is aware in respect of which application has been made or is about to be made to an Election Judge or Judge of the Supreme Court;
- (e) all money, securities and other valuable considerations, received by or promised to the election agent from or by any candidate or any other person for the purpose of expenses incurred or to be incurred on account or in respect of management of the election, naming every person from whom the sum may have been received or by whom the sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise.

The return respecting election expenses must be signed by the election agent and must be accompanied by a statement made by the candidate and his election agent which must be respectively in the prescribed forms in the First Schedule and must be on oath before a Justice of the Peace or a commissioner for oaths.

If the return and statements are not transmitted before the expiration of the time limited for the purpose, the candidate must not after the expiration of the time sit or vote in Parliament as a Member until either the return and statements have been transmitted or until the date of the allowance of such authorised excuse for failure to transmit them as in the Act mentioned; and if he sits or votes in contravention of the Act he is guilty of an offence and is liable on conviction to a penalty of \$500 for every day on which he so sits or votes.

If any candidate or election agent fails to comply with the requirements of these provisions, he is guilty of an illegal practice.<sup>50</sup>

### **7.09 Publication of Receipt of Return**

When any return respecting election expenses and the statements made in respect thereof have been received by the returning officer, he must, as soon as possible, cause a notice of the date on which the return and statements in question were received by him and of the time and place at which they can be inspected, to be fixed in some conspicuous place in his office and published in the Gazette.

The returning officer must preserve all such returns and statements with the bills and vouchers relating thereto and at all reasonable times during six months next after the publication in the Gazette of the notice mentioned in these provisions must permit any person to inspect them and to make extracts therefrom on payment of a fee of \$2 and must, on payment of 30 cents for each page, supply a copy or copies of any part thereof; and after

the expiration of that period of six months these documents may be destroyed or returned to the candidate if application for their return is made by the candidate before they are destroyed.<sup>51</sup>

### **7.10 Punishment for Conviction for Illegal Practice**

Every person who commits an illegal practice is guilty of an offence and is liable on conviction by a District Court to a fine not exceeding \$300 and become incapable for a period of three years from the date of his conviction of being registered as an elector or of voting at any election under the Act or of being elected as the President or a Member of Parliament, and if at that date he has been elected a Member of Parliament, his election must be vacated from the date of the conviction.

A prosecution for an illegal practice must not be instituted without the sanction of the Public Prosecutor.<sup>52</sup>

### **7.11 Prohibition of Canvassing on Polling Day**

No person must on polling day –

- (a) by word, message, writing or in any other manner endeavour to persuade any person to give or dissuade any person from giving his vote at any election; or
- (b) visit an elector at his home or place of work for any purpose in connection with an election.

Any person who contravenes any of these provisions is guilty of an offence and is liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding one year.

Any police officer may arrest without warrant any person offending in his view against any of these provisions and take him as soon as practicable before a Magistrate's Court to be dealt with according to law.

Any person who, on polling day, enters or is seen at more than two houses or places of work of electors in the same polling district other than his own home or place of work, must, unless he proves the contrary, be presumed to have committed an offence.<sup>53</sup>

### **7.12 Prohibition of Dissuasion from Voting**

No person shall between the day of nomination and polling day (both days being inclusive) at any election, by word, message, writing or in any other manner dissuade or attempt to dissuade any person from giving his vote at the election.

Any person who contravenes the foregoing provision is guilty of an offence.

Any police officer may arrest without warrant any person offending in his view against any of these provisions and take him as soon as practicable before a Magistrate's Court to be dealt with according to law.<sup>54</sup>

### **7.13 Undue Influence Near Polling Station**

No person shall –

- (a) endeavour to establish the identity of any person entering a polling station;
- (b) check the name of any person entering a polling station;
- (c) anywhere place any desk or table or establish any office or booth for the purpose of recording particulars of voters;
- (d) wait outside any polling station on polling day, except for the purpose of gaining entry to the polling station to cast his vote;
- (e) loiter in any street or public place within a radius of 200 metres of any polling station on polling day; or
- (f) open or maintain, for the purpose of any activity directed towards promoting or procuring the election of a candidate at any election, any office in any room, building or any place whatsoever, whether open or enclosed, on polling day.

Provided that every candidate or his election agent may open or maintain in his electoral division one office for each polling district, which shall not be within a radius of 200 metres of any polling station and the address of every such office must be registered by the candidate or his election agent with the returning officer before polling day.

Any person who contravenes any of these provisions is guilty of an offence and is liable on conviction to a fine not exceeding \$100 or to imprisonment for a term not exceeding one year.

Any police officer may arrest without warrant any person offending in his view against any of these provisions and take him before a Magistrate's Court to be dealt with according to law.<sup>55</sup>

### **7.14 Excuse for Corrupt and Illegal Practice**

Where, upon the trial of an election petition respecting an election under the Act, the Election Judge reports that a candidate at the election has been guilty by his agents of the offence of treating or undue influence or of any illegal practice in reference to the election and the Election Judge further reports, after giving the Public Prosecutor an opportunity of being heard, that the candidate has proved to the court –

- (a) that no corrupt or illegal practice was committed at the election by the candidate or his election agent and the offences mentioned in the report were committed contrary to the orders and without the sanction or connivance of the candidate or his election agent;
- (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at the election;
- (c) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents,

then the election of the candidate must not, by reason of the offences mentioned in the report, be void, nor must the candidate be subject to any incapacity under the Act.

Where, on application made, it is shown to an Election Judge or to a Judge of the Supreme Court by such evidence as seems to the Judge sufficient –

- (a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by the Act, or of being a payment, engagement, employment, or contract in contravention of any of the provisions of the Act, be but for these provisions an illegal practice; and
- (b) that the act or omission arose from inadvertence or from accidental miscalculations or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith,

and in the circumstances it seems to the Judge, after giving the candidates, the returning officer, and any elector within the electoral division an opportunity of being heard, to be just that the candidate in question and the election and other agent and person, or any of them, should not be subject to any of the consequences under the Act of that act or omission, the Judge may make an order allowing that act or omission to be an exception from the provisions of the Act which would otherwise make the act or omission an illegal practice or other unlawful act.

Where the return and statements respecting election expenses of a candidate at an election have not been transmitted as required by the Act, or being transmitted contain some error or false statement, then –

- (a) if the candidate applies to an Election Judge or a Judge of the Supreme Court and shows that the failure to transmit the return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of illness, or of the absence, death, illness or misconduct of his election agent or of any clerk or officer of the agent, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or
- (b) if the election agent of the candidate applies to an Election Judge or a Judge of the Supreme Court and shows that the failure to transmit the return and statements which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness, or of the death, illness or misconduct of any prior election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

the Judge may, after such notice of the application, and on production of such evidence of the grounds stated in the application, and of the good faith of the application, and otherwise, as to the Judge seems fit, and after giving the other candidates, the returning officer and any elector within the electoral division an opportunity of being heard, make such order for allowing an authorised excuse for the failure to transmit such return and statements, or for an error or false statement in such return and statements as to the Judge seems just.

Where it appears to the Judge that any person being or having been an election agent has refused or failed to make such return or supply such particulars as will enable the candidate and his election agent, respectively, to comply with the provisions of the Act as to the return and statements respecting election expenses, the Judge before making an order allowing the excuse as in these provisions mentioned must order the person to attend before the Judge,

and must, unless he attends and shows cause to the contrary, order him to make the return and statements, or to deliver a statement of the particulars required to be contained in the return, as to the Judge appears just, and to make or deliver them within such time and to such person and in such manner as the Judge may direct, or may order him to be examined with respect to those particulars, and, in default of compliance with that order, the person is guilty of an illegal practice.

The order may make the allowance conditional upon the making of the return and statements in a modified form or within an extended time, and upon the compliance with such other terms as to the Judge seems best calculated for carrying into effect the objects of the Act; and an order allowing an authorised excuse must relieve the applicant for the order from any liability or consequences under the Act in respect of the matter excused by the order; and where it is proved by the candidate to the Judge that any act or omission of the election agent in relation to the return and statements respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing the act or omission, the Judge must relieve the candidate from consequences of the act or omission on the part of his election agent.<sup>56</sup>

## —Section 8—

### ELECTION PETITIONS

#### 8.01 Grounds for Avoiding Elections

The election of a candidate as a Member is avoided by his conviction for any corrupt or illegal practice.

The election of a candidate as a Member must be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge:

- (a) that by reason of general bribery, general treating, or general intimidation, or other misconduct, or other circumstances, whether similar to those before enumerated or not, the majority of electors were or may have been prevented from electing the candidate or group of candidates whom they preferred;
- (b) non-compliance with the provisions of the Act relating to elections, if it appears that the election was not conducted in accordance with the principles laid down in those provisions and that the non-compliance affected the result of the election;
- (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent or by any agent of the candidate;
- (d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that the person had within seven years prior to the engagement been convicted or found guilty of a corrupt practice by a District Court or by the report of an Election Judge;
- (e) that the candidate was at the time of his election a person disqualified for election as a Member.

Proceedings may be instituted in the High Court against any person acting or claiming to be entitled to act as an elected Member of Parliament on the ground of his being disqualified within the meaning of these provisions for so acting: provided that proceedings under these provisions on the ground of a person acting as aforesaid must not be instituted after the expiration of six months from the date of the last occasion on which he so acted.

Where in proceedings instituted under these provisions it is proved that the defendant has acted as an elected Member of Parliament while disqualified from so acting, then the Court has power –

- (a) to make a declaration to that effect and to declare that the office in which the defendant has acted is vacant;
- (b) to grant an injunction restraining the defendant from so acting;
- (c) to make any order which may seem fit as to the costs of the proceedings.

Where in proceedings instituted under these provisions it is proved that the defendant claims to act as an elected Member of Parliament and is disqualified from so acting, the Court has the power to make a declaration to that effect and to declare that the office in which the defendant claims to be entitled to act is vacant, and to grant an injunction restraining him from so acting.

No proceedings must be instituted under these provisions by any person other than a person who pursuant to the Act is an elector for the electoral division for which the person against whom proceedings are to be instituted was elected.

A person is deemed to be disqualified for acting as an elected Member of Parliament –

- (a) if he is not qualified to be, or is disqualified from being, an elected Member of Parliament or for holding that office; or
- (b) if by reason of resignation or failure to attend meetings of Parliament or for any other reason his seat has become vacant and he has ceased to be an elected Member of Parliament or to hold that office.<sup>57</sup>

## **8.02 Powers of Election Judge**

Every election petition must be tried by the Chief Justice or a Judge of the Supreme Court nominated by the Chief Justice for the purpose.

The Chief Justice or the Judge so nominated is referred to as the Election Judge.

Witnesses must be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and are subject to the same penalties for the giving of false evidence.

On the trial of an election petition under the Act, the Election Judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey the

order is guilty of contempt of court. The Election Judge may examine any witness so compelled to attend or any person in court, although the witness is not called and examined by any party to the petition. After the examination of a witness by the Election Judge, the witness may be cross-examined by or on behalf of the petitioner and the respondent, or either of them.

The Election Judge must be attended on the trial of an election petition in the same manner as if he were a Judge of the Supreme Court sitting at assizes.

Unless otherwise ordered by the Chief Justice, all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the Supreme Court.<sup>58</sup>

### **8.03 Who May Present Petition**

An election petition may be presented to the Supreme Court by any one or more of the following persons –

- (a) some person who voted or had a right to vote at the election to which the petition relates;
- (b) some person claiming to have had a right to be returned or elected at the election;
- (c) some person alleging himself to have been a candidate at the election.<sup>59</sup>

### **8.04 Relief Which May be Claimed**

All or any of the following relief to which the petitioner may be entitled may be claimed in an election petition:

- (a) a declaration that the election is void;
- (b) a declaration that the return of the person elected was undue;
- (c) a declaration that any candidate was duly elected and ought to have been returned;
- (d) where the seat is claimed for an unsuccessful candidate on the ground that he or the group of candidates to which he belongs had a majority of lawful votes, a scrutiny.<sup>60</sup>

### **8.05 Certificate of Judge as to Validity of Election**

At the conclusion of the trial of an election petition, the Election Judge must determine whether the Member whose return or election is complained of, or any other and what person, was duly returned or elected, or whether the election was void, and must certify such determination to the President. Upon the certificate being given, the determination must be final, and the return must be confirmed or altered, or the President must within one month of the determination by notice in the Gazette, order the holding of an election in the electoral division concerned, as the case may require, in accordance with the certificate.

Where the election of any Member for a group representation constituency is determined by the Election Judge to be void, the election of the other Members for that constituency is deemed to be void.<sup>61</sup>

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### **8.06 Report of Judge as to Corrupt or Illegal Practice**

At the conclusion of the trial of an election petition, the Election Judge must also report in writing to the President –

- (a) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of the corrupt or illegal practice (if any); and
- (b) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice.

Before any person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Judge under these provisions, the Election Judge must give the person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

When an Election Judge reports that a corrupt or illegal practice has been committed by any person, that person must be subject to the same incapacities as if at the date of the report he had been convicted of that practice, and a person must be subject to the same incapacities if he was a candidate at the election and the Election Judge reports that the corrupt or illegal practice was committed with his knowledge and consent or by his agent.

The President must cause a copy of such report to be published in the Gazette and it shall be the duty of the registration officer forthwith to peruse the report and forthwith to delete from the registers of electors the name of every person appearing from the report to be incapable of voting at any election.<sup>62</sup>

### **8.07 Time for Presentation**

Every election petition must be presented within 21 days of publication of the result of the election in the Gazette: provided that –

- (a) an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the Member whose election is questioned or by an agent of the Member or with the privity of the Member or his election agent in pursuance or in furtherance of the corrupt practice may, so far as respects that corrupt practice, be presented at any time within 28 days after the date of the payment or act;
- (b) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects that illegal practice, be presented within the following time:
  - (i) at any time before the expiration of 14 days after the date of the publication in the Gazette of the notice as to the election expenses of the Member whose election is questioned;
  - (ii) if the election petition specifically alleges a payment of money or other act to have been made or done since that date by the Member whose election is

questioned or by an agent of the Member or with the privity of the Member or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within 28 days after the date of the payment or other act.

An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the Supreme Court within the time within which an election petition questioning the return or the election upon that ground may be presented.

No elector who has voted at any election shall, in any proceeding to question the election, be required to state for whom he has voted.<sup>63</sup>

### **8.08 Scrutiny**

On a scrutiny at the trial of an election petition, the following votes only must be struck off:

- (a) the vote of any person whose name was not on the register of electors assigned to the polling station at which the vote was recorded or who has not been authorised to vote at the station;
- (b) the vote of any person whose vote was procured by bribery, treating or undue influence;
- (c) the vote of any person who committed or procured the commission of personation at the election;
- (d) where the election was a general election, the vote of any person proved to have voted at the general election in more than one electoral division;
- (e) the vote of any person, who, by reason of a conviction of a corrupt or illegal practice or by reason of the report of an Election Judge, or by reason of his conviction of an offence, was incapable of voting at the election;
- (f) votes given for a disqualified candidate or group of candidates by a voter knowing that the candidate, or any candidate in that group, as the case may be, was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification, or when the disqualification or the facts causing it were notorious.

The vote of a registered elector must not, except in the case of (e) above, be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register of electors.

On a scrutiny, any tendered vote proved to be a valid vote must, on the application of any party to the petition, be added to the poll.<sup>64</sup>

### **8.09 Procedure and Practice on Election Petitions**

The procedure and practice on election petitions is regulated by rules which may be made by the Rules Committee constituted and appointed under the Supreme Court of Judicature Act.<sup>65</sup>

## 8.10 Rejection of Ballot Paper by Returning Officer

On an election petition the decision of a returning officer whether or not a ballot paper must be rejected must not be questioned.<sup>66</sup>

### NOTES

1. Parliamentary Elections Act 1954, see sections 3 and 4
- 1A. Ibid., see section 8
- 1B. Ibid., see section 8A
2. Ibid., see section 9
3. Ibid., see section 5
4. Ibid., see section 6
5. Ibid., see section 10
6. Ibid., see section 11
7. Ibid., see section 12
8. Ibid., see section 13
9. Ibid., see sections 14-20
10. Ibid., see section 24
11. Ibid., see section 25
12. Ibid., see section 26
13. Ibid., see section 27
14. Ibid., see section 27A
15. Ibid., see section 27B
16. Ibid., see section 27C
17. Ibid., see section 28
18. Ibid., see section 29
19. Ibid., see section 30
20. Ibid., see section 31
21. Ibid., see section 32
22. Ibid., see section 33
23. Ibid., see section 34
24. Ibid., see section 34A
25. Ibid., see section 35
26. Ibid., see section 36
27. Ibid., see section 37
28. Ibid., see section 38
29. Ibid., see section 39
30. Ibid., see section 40
31. Ibid., see section 41
32. Ibid., see section 42
33. Ibid., see section 43
34. Ibid., see section 44
35. Ibid., see section 45
36. Ibid., see section 46
37. Ibid., see sections 47 and 48
38. Ibid., see section 49
39. Ibid., see section 50
40. Ibid., see section 51
41. Ibid., see section 52
42. Ibid., see section 54
43. Ibid., see section 55
44. Ibid., see section 56
45. Ibid., see sections 57-60
46. Ibid., see section 61
47. Ibid., see sections 62-70
48. Ibid., see section 71
49. Ibid., see sections 72 and 73
50. Ibid., see section 74
51. Ibid., see section 75
52. Ibid., see section 79
53. Ibid., see section 80
54. Ibid., see section 81
55. Ibid., see section 82
56. Ibid., see sections 86-88
57. Ibid., see sections 89-91
58. Ibid., see section 92
59. Ibid., see section 93
60. Ibid., see section 94
61. Ibid., see section 95
62. Ibid., see section 96
63. Ibid., see sections 97 and 98
64. Ibid., see section 99
65. Ibid., see section 100
66. Ibid., see section 101

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## INTRODUCTION

The Constitution of Malta sets the tone and framework for election organisation in that country. It provides for a proportional representation form of electoral system with a single transferable vote and a preferential method of voting. The Constitution also establishes and defines the powers of the Electoral Commission.

The principal electoral legislation is the General Elections Act of 1991 which is referred to herein as “the Act”. An interesting feature of the legislative scheme is the right of political parties to appoint party delegates with rights of access to the records of the Electoral Commission. Generally, the Act seeks to raise the level of recognition and participation given to political parties in the organisation and conduct of elections.

### — *Section 1* —

#### RELEVANT CONSTITUTIONAL PROVISIONS

##### 1.01 Voting at Elections

The members of the House of Representatives shall be elected upon the principle of proportional representation by means of the single transferable vote from such number of electoral divisions, being an odd number and not less than nine and not more than fifteen, as Parliament shall from time to time determine.

The election of members of the House of Representatives shall be free of corrupt practices.

It shall be the duty of the Electoral Commission to suspend the election, either in all electoral divisions or in any one or more of such divisions, if it has reasonable ground to believe that corrupt practices or other offences connected with the election have been of such nature that they may reasonably be expected to affect the result of the election.

In any case in which an election is suspended, the Chief Electoral Commissioner shall forthwith refer the matter to the Constitutional Court for its decision.

Where any of the grounds on which an election may be suspended exists and the election has not been suspended, or where corrupt practices or other offences may reasonably be supposed to have affected the result of an election, in all or in any one or more of the electoral divisions, any person entitled to vote at that election may, not later than three days after the publication of the official result of the election, refer the matter to the Constitutional Court for its decision.

Any reference to the Constitutional Court shall be made and shall be determined by that Court in accordance with any law for the time being in force in Malta. On any such reference the Court shall, without prejudice to any other powers, have power to annul the election, in all or in any one or more of the electoral divisions, on any of the grounds set out in these provisions, and to give such directions and orders and to provide such redress and other remedies as it may deem appropriate in the circumstances and in particular to ensure that a free election, in place of any one that may have been annulled, be held at the earliest possible opportunity.

Where an election has been annulled, the result of the election shall not be completed before the publication of the official result of a valid election in all electoral divisions.

Except by a bill for an Act of Parliament passed in the manner specified in sub-section (2) of section 66 of the Constitution, no alteration in any law shall be made –

- (a) whereby any act or omission shall cease to be a corrupt practice or other offence relating to the election of members of the House of Representatives; or
- (b) which alters or adds to the circumstances or conditions in which or under which an act or omission is such a practice or other offence; or
- (c) which reduces the punishment to which from time to time any such practice or other offence renders the offender liable.

No person shall vote at the election of members of the House of Representatives in any electoral division other than a division in which he is registered as a voter.

At the election of members of the House of Representatives –

- (a) voting shall be by ballot and shall be carried out in such a manner as not to disclose the way in which the vote of any particular voter is given; and
- (b) no person shall be permitted to vote on behalf of another, but if a person is unable by reason of blindness, other physical cause or illiteracy to mark on his ballot paper, his ballot paper may be marked on his behalf and on his directions by some other person officially supervising the poll at the place of voting.

Ballot papers shall be drawn up in such a manner as to enable illiterates to distinguish between the political parties to which candidates belong.

Candidates and their agents shall be given facilities to watch the transportation of ballot boxes and the sealing and unsealing thereof.<sup>1</sup>

## **1.02 Qualification and Disqualification of Voters**

A person is qualified to be registered as a voter for the election of members of the House of Representatives if –

- (a) he is a citizen of Malta;
- (b) he has attained the age of eighteen years; and
- (c) he is resident in Malta and has during the eighteen months immediately preceding

his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months.

The foregoing provisions do not apply to a person who is ordinarily resident in Malta but has not been resident in Malta by reason of service abroad in the public service or by reason of service abroad in, or as a member of, the disciplined force.

No person is qualified to be registered as a voter for the election of members of the House of Representatives if –

- (a) he is interdicted or incapacitated for any mental infirmity by a court in Malta to be of unsound mind;
- (b) he is under sentence of death imposed on him by any court in Malta or is serving a sentence of imprisonment exceeding twelve months or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which is suspended; or
- (c) he is disqualified for registration as a voter by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives.<sup>2</sup>

### **1.03 Establishment of Electoral Commission**

There shall be an Electoral Commission for Malta.

The Electoral Commission shall consist of a Chairman, who shall be the person for the time being holding the office of the Chief Electoral Commissioner and who shall be appointed to that office from the public service, and such number of members not being less than four as may be prescribed by any law for the time being in force in Malta.

The members of the Electoral Commission shall be appointed by the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition.

A person is not qualified to hold office as a member of the Electoral Commission if he is a Minister, a Parliamentary Secretary, a member of, or a candidate for election to, the House of Representatives or a public officer.

A member of the Electoral Commission shall vacate his office –

- (a) at the expiration of three years from the date of his appointment or at such earlier time as may be specified in the instrument by which he was appointed; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

Subject to the provisions of the Constitution, a member of the Electoral Commission may be removed from the office by the President acting in accordance with the advice of the Prime Minister.

A member of the Electoral Commission shall not be removed from office except for inability to discharge the functions of his office or for misbehaviour.

If the office of a member of the Electoral Commission is vacant or if a member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition, may appoint a person who is qualified to be appointed as a member to be a temporary member of the Commission; and any person so appointed shall cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

In the exercise of its functions under the Constitution the Electoral Commission shall not be subject to the direction or control of any other person or authority.<sup>3</sup>

#### **1.04 Electoral Divisions**

The Electoral Commission shall review the boundaries of the electoral divisions at intervals of not less than two or more than five years and may alter such boundaries in the light of the review: provided that the Commission shall carry out such a review and alter the said boundaries whenever Parliament has made provision altering the number of electoral divisions; and in addition the Commission may at any time carry out such a review and alter the said boundaries to such extent as it considers desirable in consequence of the holding of a census of the population in pursuance of any law.

Any provision by Parliament altering the number of electoral divisions shall come into effect when the alteration of the boundaries of the electoral divisions that is consequential thereon comes into effect.

Whenever an alteration of boundaries is made by the Commission the following provisions shall have effect:

- (a) the Chief Electoral Commissioner shall, as soon as practicable after it is made, communicate the alteration to the Prime Minister and to the Leader of the Opposition;
- (b) not later than two months from the receipt of such communication, the Prime Minister shall cause the alteration to be placed before the House of Representatives for consideration by it;
- (c) not later than five months from the receipt of the said communication by the Prime Minister, the House may, by Resolution, either approve the alteration or refer it back to the Commission for reconsideration;
- (d) upon the expiration of six months from the date on which the alteration was communicated to the Prime Minister, or, if the alteration is approved by the House, upon such approval, or, if the alteration is referred back to the Commission, upon the expiration of two months from such reference, the Chief Electoral Commissioner shall cause the alteration to be published in the Gazette either in its original form or, if it has been modified by the Commission, as so modified; and
- (e) any such alteration shall come into effect upon the next dissolution of Parliament after the alteration is published in the Gazette: provided that nothing in this provision

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shall be construed as preventing the publication of any electoral register or any other requirement connected with the registration of voters from being carried out in accordance with the alteration, under any law for the time being in force in Malta, before that dissolution.

An alteration of the boundaries of any electoral division shall be made in such manner as secures that, at the time when the Commission carries out its review, the number obtained by dividing the total electorate in the division (as ascertained by reference to the electoral register in force at that time) by the number of members to be returned to the House of Representatives from that division is as equal to the electoral quota as is reasonably practicable: provided that any such alteration may be made in such manner that the number of voters in that division is, at the time when the Commission carries out its review, greater or less than the electoral quota multiplied by the number of members to be so returned, but in no case by more than five per centum, in order to take account of geographical vicinity, differences in density of population and other relevant factors.

For the purposes of any review carried out under this provision, “electoral quota” means the number obtained by dividing the total electorate of Malta (as ascertained from the electoral register in force at the time when the Commission carries out that review) by the total number of members to be returned to the House of Representatives at the general election following the next dissolution of Parliament.

The conduct of elections in every electoral division and of any vote taken shall be subject to the direction and supervision of the Electoral Commission.<sup>4</sup>

## — Section 2 —

### ELECTION ADMINISTRATION

#### **2.01 Electoral Commission**

The registration, transfer, correction and cancellation of voters, the compilation of the electoral register, the election of members of the House of Representatives and the administration of the Electoral Office shall be the sole responsibility of the Commission. The Chief Electoral Commissioner shall be responsible for the day to day running of the Electoral Office.

The Commission shall be composed of the Chief Electoral Commissioner as chairman and eight Electoral Commissioners.

The Commissioners shall, on their appointment, take before the Attorney-General the oath of allegiance in the prescribed form.<sup>5</sup>

#### **2.02 Powers of Commissioners**

In the execution of their duties, the Commissioners shall in the absence of any express

provisions in the Act, do all such things as appear to them to be necessary for the performance of their duties.

In the execution of their duties, the Commissioners have the powers conferred by law on the Courts of Magistrates for the purpose of enforcing order at their sittings and ensuring the respect due to them.<sup>6</sup>

### **2.03 Party Delegates**

Every political party represented in Parliament shall have the right to nominate two delegates (referred to as “party delegates”) to the Commission.

Party delegates represent the political party nominating them with the Commission and have the right in general to be informed of all sittings of the Commission and decisions taken thereat.

The party delegates have full and free right of access to the Electoral Office, to all records kept therein and to check, verify and obtain any information regarding the work of the Electoral Office: provided that the Commission shall have the right to nominate an official of the Commission to accompany such delegates at all times.

The party delegates shall continue in office until removed by the political party nominating them.

Party delegates shall have the right to seek and obtain from the Commissioners as well as from any other officials connected with the running, supervising or security of the elections or of any aspect thereof, information showing whether or not such persons are taking adequate measures to comply with the provisions of the law in the forthcoming elections, and the Commissioners or such other persons shall be bound to furnish such information immediately.

Party delegates have no right of access to medical records or to adoption records of voters and no right to be made aware prior to the day of the poll of security features relating to ballot papers, voting documents and the official mark used by the Commission on ballot papers. The information, documents or lists shall be given to the party delegates orally or in written or printed form that shall not require any device or electronic or magnetic or similar process to be read, and in no other form. Where the information, documents or lists are of a confidential nature the party delegates shall have the same obligations as to secrecy as the person from whom such information, documents or lists are obtained.<sup>7</sup>

### **2.04 Electoral Office**

There shall be an Electoral Office for the purpose of effecting the registration, transfer and cancellation of voters, the organisation required for the running of elections and all such administrative work as may be required by the Electoral Commission.

The Electoral Office shall be staffed by persons in the public service and whilst serving in

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the Electoral Office such persons shall only be responsible to the Commission in matters concerning the preparation for and running of general elections.<sup>8</sup>

### **2.05 Oath to be Taken by Staff of Electoral Office**

The staff of the Electoral Office shall, on their appointment, take an oath before the Chief Electoral Commissioner, that they will faithfully perform the duties of the Office according to law.

Any one of the Commissioners, or any other officer authorised by the Commission on their behalf, may administer an oath to any person whenever the taking of an oath is necessary for the purpose of making enquiries according to the Act.<sup>9</sup>

### **2.06 Revising Officers**

All Magistrates serving in the Court of Magistrates (Malta) and the Court of Magistrates (Gozo) are deemed to be revising officers.

Revising officers may hold sittings in any police station or other place for the purpose of dealing with any application or appeal regarding the registration, transfer, correction or cancellation of any voter.

All such applications or appeals to a revising officer shall be signed by the applicant or by an advocate or legal procurator or by any person on behalf of and authorised by the applicant or appellant, and shall be filed in the Registry of the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be.

The revising officer shall direct that such application or appeal be served on the person or persons whom it concerns and shall appoint a day for the hearing of the application or appeal.

Service of the notice of the day fixed for the hearing of such application or appeal shall be effected upon the applicant or appellant and upon any person whom such application or appeal concerns not less than two days before the day fixed for the hearing of the application or appeal, in the manner laid down in the Code of Organisation and Civil Procedure provided that service may be effected by any police officer.

If the person on whom such application, appeal or other order of the revising officer is to be served is not found by the officer who is to effect service, the revising officer shall, on the report of such officer, direct that the application, appeal or other order be posted on the notice board of the police station of the place in which the person concerned resides and shall, if necessary, appoint another day for the hearing.

If the applicant or appellant shall fail to appear on the day appointed for the hearing and is not represented by an advocate or legal procurator or other person, the application or appeal shall be considered as abandoned.

In the case of an application for the removal of the name of a person from the electoral register, if such person shall fail to appear on the day appointed for the hearing and is not represented by an advocate or legal procurator or other person, the application may be decided in default.

No fee shall be charged in the Registry on any application or appeal, for the service thereof, for any other proceeding in consequence thereof or for any decision.<sup>10</sup>

### **2.07 Appointment of Medical Board**

There shall be a Medical Board to whom must be referred questions as to whether a person who has applied to be registered as a voter or is already registered is disqualified from being so registered under the Constitution (section 58 – mental illness).

The Medical Board shall consist of a doctor appointed by the Commission, who shall act as chairperson, and a doctor appointed by each of the political parties represented in Parliament. The Medical Board shall be deemed to be validly constituted once the chairperson or any one of the members is appointed.<sup>11</sup>

## **— Section 3 —**

### **VOTES, ELECTORAL DIVISIONS AND METHOD OF ELECTION**

#### **3.01 Right to Vote**

Every person registered as a voter in an electoral division shall, while so registered, be entitled to vote at the election of Members of the House for that division.

No person shall vote at the election of Members of the House in any division other than a division in which he is registered as a voter.<sup>12</sup>

#### **3.02 Electoral Divisions**

For the purpose of the election of Members of the House, the Island of Malta and its Dependencies shall be divided into thirteen electoral divisions.

Subject to the provisions of the Constitution, the House shall consist of sixty-five members, each electoral division returning five members.<sup>13</sup>

#### **3.03 Method of Election**

The election of members of the House shall be according to the principle of proportional representation, each voter having one transferable vote.<sup>14</sup>

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— *Section 4* —

**REGISTRATION OF VOTERS**

**4.01 Enquiries by Commission**

The Commission shall make all such enquiries, and require from any person such information, as it may deem necessary for the purpose of determining whether and where a person is entitled to be registered as a voter or to remain so registered.<sup>15</sup>

**4.02 Duty of Government Officers to Give Information**

All public officers in the service of the Government of Malta are authorised under the Act and required to furnish to the Commission all information that it may require in order to be able to determine whether a person is entitled to be registered as a voter or to remain so registered.

The Commissioner of Police shall assist the Commission by causing enquiries to be made, information to be collected, and claims to be checked and in such other manner as may be necessary.

The public officer or officers responsible for the Public Registries of Malta and Gozo shall, within the first five days of each month, forward to the Commission a list containing the name, surname, identity card number, if any, and other particulars of each person over eighteen years of age whose death has been registered during the preceding month.

The Registrar of the Superior Courts in Malta and the Registrar of the Courts in Gozo shall, each with regard to the Courts to which he is attached, within the first five days of each month, forward to the Commission a list containing the name, surname, identity card number, if any, and other particulars of each person who has been interdicted for reasons of mental incapacity by a competent court.<sup>16</sup>

**4.03 Application for Registration**

Any person who has the requisite qualifications to vote at elections of members of the House may apply for registration to the Commission in the prescribed form: provided that the Commission shall register as a voter any person who is entitled to be so registered whether or not such an application has been made.

The Commission shall refuse an application by a person to be registered as a voter and the Commission shall not on its own initiative register a person as a voter only if such person:

- (a) has lost any of the qualifications necessary to be registered as a voter;
- (b) has become disqualified for being so registered for any of the reasons in section 58 of the Constitution.<sup>17</sup>

#### **4.04 Method of Registration**

A person who is qualified to be registered as a voter shall only be registered in the division and under the address at which he ordinarily resides: provided that if it is proved to the satisfaction of the Commission that any person is not registered in the division and under the address at which he ordinarily resides, the Commission shall not have the right to cancel the registration of such person but shall transfer the registration to another address or electoral division.<sup>18</sup>

#### **4.05 Transfers and Corrections**

Any person registered as a voter and who requires any correction in his designation or other particulars or to have his name transferred to another address or electoral division may apply to the Electoral Commission in the prescribed form: provided that such correction or transfer shall be made by the Commission whether or not any such application has been made, either on its own initiative or following the application by any other registered voter, hereinafter referred to as the applicant, if it is satisfied that such correction or transfer is justified and provided that it shall first communicate its decision in writing to the person to whom it relates and to the applicant, if any, either of whom shall have the right to appeal to a revising officer.<sup>19</sup>

#### **4.06 Cancellation of Registration**

Where the Commission is satisfied following the application by any other registered voter, or on its own initiative, that any person who is registered as a voter and whose name appears on the electoral register is not qualified to be registered as a voter, the Commission shall cancel the registration of such person and expunge his name from the electoral register.<sup>20</sup>

#### **4.07 Decision by Commission on Application for Registration, etc**

The Commission shall inform the applicant and the voter concerned of its decision on any application for registration as a voter or to correct, to transfer or cancel the registration of a voter and of any registration, correction, transfer or cancellation made on its own initiative.

The Commission shall effect the necessary changes in the electoral register in accordance with its decision and shall inform the voter concerned and the applicant of his right to appeal to a revising officer.<sup>21</sup>

#### **4.08 Cancellation of the Registration of Voters**

Prior to proceeding to the cancellation of the registration of any voter, the Commission shall by notice in writing require such person to provide such information or such proof or evidence as it may deem necessary to establish such person's right to remain registered as a voter and if such person fails, within ten days of the posting of such notice by the Commission, to provide in writing such information, proof or evidence to the satisfaction of

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the Commission, the Commission may cancel his registration or expunge his name from the electoral register: provided that in the case of a person's total failure to answer the aforesaid notice within the aforesaid period of time, the Commission shall not proceed to cancel his registration or expunge such person's name from the electoral register before it shall have served upon such person a further notice in writing to provide such information, proof or evidence to the satisfaction of the Commission within a period of seven days from the service of such further notice.

Any written communication which the Commission requires to be made to it may either be delivered at the Electoral Office or forwarded to the Commission free of any charge for posting.

The further notice referred to in the proviso clause above must be served by a police officer or by any other person appointed for the purpose by the Commission and such notice is deemed to have been served by delivery of the notice to the person to whom it is addressed, or to a person who is or reasonably appears to be not under fourteen years of age and who is either a member of the family or household or in its service, at the address of the voter as shown in the electoral register.<sup>22</sup>

#### **4.09 Mental Incapacity**

The Commission may not refuse an application by a person to be registered as a voter, or cancel the registration of a voter, or expunge his name from the electoral register on the grounds of mental incapacity before it obtains the decision of the Medical Board established under the Act or unless such person has been interdicted for mental incapacity by a competent court.

The decision of the Medical Board shall be final and binding on the Commission and the voter and no appeal lies therefrom.

Decisions of the Medical Board that a voter is of unsound mind shall be taken by unanimous vote and shall be communicated in writing to the Commission who shall thereupon inform the voter.

Every public officer shall be duty bound to provide the Board with any information it may require regarding the health of the person whose entitlement to be registered or to continue to be registered as a voter is being considered.<sup>23</sup>

#### **4.10 New Registrations**

The Commission shall, at least, every calendar month give to each party delegate a list showing new registrations, corrections, transfers and cancellations carried out by it indicating the name and all particulars of the person concerned and the reason for effecting any change.

The party delegates shall have the same powers granted to the Commission to seek, through the Commission, information from public officers regarding the entitlement of a person to

be registered as a voter and the duty of such public officers to give such information shall also apply in relation to the party delegates. The Commission shall give a copy of all requests for information and of all replies also to the other party delegates.<sup>24</sup>

#### **4.11 Publication of Electoral Register**

The lists of all persons who are entitled to be registered as voters for the election of members of the House shall constitute the electoral register.

The electoral register shall be compiled in such manner that the public may be aware of the persons who are registered as voters, and in such manner to enable the identification of every voter and giving every voter the opportunity to object to the inclusion of any other voter.

The electoral register shall consist of as many parts as there are divisions, one for each division, and each division shall be subdivided into as many parts as the Commission shall consider necessary or convenient.

The electoral register shall, in each section be drawn in alphabetical order according to the name of each street and voters shall be shown in alphabetical order of surnames under the name of the street where they are registered and against the name of each voter his place of residence and identity card number shall be shown.

The electoral register may also include against the name of each voter any other particulars which may be considered necessary for the proper identification of each voter.

Any printing error in any particular so shown shall not of itself affect a person's entitlement to vote.

The electoral register shall include all persons who are entitled to be registered as voters on the day mentioned, that is to say, as on the thirty-first day of March and the thirtieth day of September, as the case may be.

The Commission shall cause a revised electoral register to be published in the Gazette twice a year, that is to say, in the month of April and in the month of October. Such register shall contain all corrections, additions, transfers and cancellations as on the thirty-first day of March and the thirtieth day of September immediately preceding the publication thereof.

No such publication shall take place from the date of any dissolution of the House until the conclusion of the following general election: provided that where, prior to any dissolution of the House of Representatives –

- (a) any alteration to the boundaries of the electoral divisions has been approved by the House pursuant to the Constitution; and
  - (b) such alteration has not been shown in a revised electoral register,
- the Commission shall cause to be published in the Gazette, as soon as possible after the dissolution and in any case not later than three working days after the publication of the

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election writ in the Gazette, a revised electoral register, the revision of which consisting in the names included in the electoral register last published being shown in accordance with such alteration.

Any additions, cancellations or corrections to the electoral register ordered by a revising officer in accordance with the Act shall be published by the Commission in the Gazette and shall form part of the electoral register.

Whenever an election is to be held, the voters shall be those whose names appear in the revised electoral register last published, subject to such additions, cancellations or corrections ordered by the revising officer, and the Commission shall not have the right to withhold any voting document to any voter who is so registered unless such voter has died: provided that nothing in the foregoing provision shall entitle any person to vote who has ceased to have the necessary qualifications to vote or relieve such person from any penalties to which he may be liable for so voting. Nor shall anything in this provision entitle any person to vote unless he satisfies the requirements of the Act.<sup>25</sup>

#### **4.12 Appeals to Revising Officer**

Any person who has his designation or other particulars in the electoral register corrected or his name transferred to another address or division by the Commission may appeal to a revising officer not later than fourteen days from the day when he is officially informed of the decision of the Commission.

Any person whose application to be registered as a voter or for the correction of his designation or other particulars appearing in the register or for the transfer of his name to another address or division is rejected by the Commission shall have the right to appeal to a revising officer not later than fourteen days from the day when he is officially informed of the decision of the Commission.

Any person whose registration as a voter is cancelled from the electoral register has the right to appeal to a revising officer not later than fourteen days from the day when he is officially informed of the decision of the Commission.

Any person whose name has not been included in the electoral register and who claims that he has the necessary qualifications to vote, and, every voter who claims that his designation, address or other particulars have not been correctly shown in the electoral register may appeal to a revising officer to have his name included in the electoral register or to have his designation, address or other particulars corrected, as the case may be, not later than twenty-one days after the publication of the electoral register.

A revising officer may order the inclusion of a person's name in the electoral register or the correction of the designation, address or other particulars, notwithstanding that no prior application may have been made to the Commission for such purpose.

Any registered voter who claims that any other person whose name appears in the electoral register either is not entitled to be registered as a voter or, that the relative designation,

address or other particulars are not correctly shown in the electoral register in accordance with the Act, shall have the right to appeal to a revising officer not later than fourteen days after the publication of the electoral register either to have the name of such voter expunged from the electoral register or to have the designation, address or other particulars correctly shown.

A revising officer may order the cancellation of the registration of such voter or the correction of the designation, address or other particulars, notwithstanding that no prior application may have been made to the Commission for such purpose.

A revising officer shall before determining any appeal hear the appellant, the Commission and the person, if any, against whom the appeal is made, and shall admit such other evidence and hear such other persons as he may consider necessary.

Where the application is for the cancellation of the registration of a voter on the grounds of mental infirmity, the revising officer shall forthwith refer such application to the Medical Board.

The decision of the Medical Board must be referred to the revising officer who shall determine the appeal in accordance with such decision.

Revising officers shall adjourn sine die the consideration of all applications filed and still pending fourteen days before the date fixed for the election.

The Registrar of each of the Courts of Magistrates shall without delay forward to the Commission a certificate signed by the Registrar personally giving the names, addresses and particulars of all persons who, by order of the revising officer, are to be added to or expunged from the electoral register or whose designation, address or other particulars are to be corrected and the Commission shall revise the electoral register accordingly.<sup>26</sup>

## — Section 5 —

### PREPARATION FOR POLLING

#### 5.01 Election Writ

Whenever an election is to be held, the President is required to give notice thereof to the Commission by a writ under his hand in the prescribed form.

The Commissioners shall cause the writ to be published in the Gazette.<sup>27</sup>

#### 5.02 Election Notice

Within eight days of the publication of the writ, the Commissioners shall cause a notice or notices to be published in the Gazette stating:

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- (a) the place where, and the date and time when, the Commissioners will be in attendance to receive nominations of candidates for election as members of the House, and any objections to such nominations, such place being the Electoral Office. The time during which nominations of candidates for election may be made shall not be less than three days and shall not commence to run before six days from the date of the publication of the notice, and the time during which objections to such nominations may be made shall not extend beyond two working days from the expiration of the time fixed for the receipt of nominations;
  - (b) the places where, and the days and hours when, voting shall be held. Voting shall not take place before the expiration of three days from the date of the publication of the notice of the names of the candidates and the division for which they have been nominated;
  - (c) the place to which the ballot boxes shall be taken by the Assistant Commissioners after the close of voting, which shall also be the place where such boxes shall be kept until the counting of the votes;
  - (d) the place where, and the date and time when, the ballot boxes shall be opened and the counting of votes shall take place.<sup>28</sup>

### **5.03 Voting Document**

Within fifteen days of the publication of the writ, the Commission shall forward to each voter, whose name appears in the last revised electoral register, a document (the voting document) in the prescribed form and made of such material and in such manner as in the opinion of the Commission provides adequate security against forgery. Voting documents shall be numbered consecutively, each document having such distinctive number stamped on the face of it: provided that wherever the Commission is satisfied that a person whose name appears on the electoral register is dead, the relative voting document shall not be forwarded, and where such voting document has been forwarded the Commission shall withdraw it.

Provided further that the Commission shall not forward a voting document to any voter in respect of whom the Commission does not possess a photograph, and in respect of such voters the Commission shall follow the undermentioned procedure:

- (i) within seven days of the publication of the writ, the Commission shall publish in the Gazette a list of the said voters stating their name, surname, place of residence and identity card number;
- (ii) the names of such voters shall not be published in the list mentioned in sub-section 5 of section 46 of the Act;
- (iii) the voting document of such voters shall only be issued if the voter satisfies the requirements stipulated in the Act (section 47), set out in sub-section 5.04 below.

The political parties shall be granted all reasonable facilities to watch the printing of all voting documents, to check the exactness thereof and generally to ensure that only voting documents of voters entitled to receive them are printed.

The voting documents printed shall, until such time as they are forwarded to the voters,

be kept in boxes sealed with the seal of the Commission. The party delegates shall have the right to affix their own seals to such boxes and to be present whenever such seals are broken.

The voting document shall be served on each voter by a police officer or by any other person appointed for the purpose by the Commission, and such document shall be deemed to have been served by delivery to the person to whom it is addressed, or to an adult person, who either resides at the same address or is in his employment, at the address of the voter as shown in the electoral register. The political parties shall have the right to each nominate one representative to accompany each police officer or other person effecting service as aforesaid.

When the Commissioners are unable to effect service of the document aforesaid they shall as soon as possible, and in no case later than fifteen days from the time stipulated, publish in the Gazette a list containing the names, identity card numbers and addresses of the persons on whom the voting document has not been served, and shall state the reason why service has not been effected.

Any person on whom the voting document has not been served and whose name appears in the list published, may up to the Thursday immediately preceding the day of voting, appear personally before one of the Commissioners and claim delivery of the document.

The Commissioners may examine on oath any person so appearing for the purpose of ascertaining his identity and of establishing his claim to receive the document: provided that the document aforesaid shall not be delivered to him unless he produces his identity card to the Commissioners.<sup>29</sup>

#### **5.04 Special Voting Document**

Where a person whose name appears in the last revised electoral register, but does not appear in the list published, has not received the voting document or, after the receipt of such document, has lost or destroyed such document such person may, not later than 6.00 p.m. of the Wednesday immediately preceding the commencement of voting, appear before one of the Commissioners, and if:

- (a) he proves his identity by the production of his identity card; and
- (b) makes a declaration on oath before any such Commissioner that he has not received the voting document or that, after the receipt of such document, he has lost or destroyed it, and such further declaration on oath as the Commissioner may require, he shall be given a voting document issued specially for the purpose specifying as the polling booth where such person is to cast his vote, a polling booth designated for the purpose by the Commissioners; and in any such case:
  - (i) such person shall vote only at the polling booth specified in the voting document; and
  - (ii) if the name of such person appears on any list other than that of the polling booth aforesaid, the Commissioner shall cause the name of such person to be struck off such list; and
  - (iii) a list of all the persons to whom a special voting document is issued shall be kept at the

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Electoral Office and shall be open to inspection by any election agent, party agent or party delegate at all reasonable times until the poll closes.<sup>30</sup>

### **5.05 Number of Voting Documents**

Not later than the Friday before the start of the poll, the Commissioners shall cause to be published in the Gazette a list indicating the number of voting documents printed, the number distributed, the names and addresses of the persons who up to that time have claimed delivery thereof, the number of special voting documents issued and the names, addresses and identity card numbers of the persons to whom such documents have been delivered, the polling booth where such persons were originally supposed to vote, and the polling booth where they are now to cast their vote, the number of and reasons for voting documents withheld and the names, addresses and identity card numbers of the voters concerned and the number of voting documents remaining uncollected and the names, addresses and identity card numbers of the voters concerned.

Any political party shall have the right to nominate representatives to be present during the issuing of the voting documents and for this purpose the said parties shall be provided by the Commission with all such information as is required by them and as they may deem necessary for the better performance of their duties.<sup>31</sup>

### **5.06 Ballot Paper**

Not later than three days prior to the commencement of voting, the Commission shall cause to be published in the Gazette the number of ballot papers printed for each electoral division and the number to be distributed to each individual polling booth.

The Commission shall ensure as far as is practicable that ballot papers are made of such security paper and carry such markings as to ensure that they may not be duplicated.

The ballot paper of each voter shall consist of a paper in the prescribed form, containing a list of candidates described by the name (including any nickname), address and profession or occupation as given in their respective nomination paper and as approved by the Electoral Commissioners.

Candidates shall be arranged by political party and, within each party group alphabetically in the order of their surname. If there are two or more candidates of one party with the same surname, they will be arranged in order of their other names.

Every political party contesting the election shall provide the Commission with the names of the candidates contesting the election in its own interest. Such list shall be conclusive evidence as to whether a particular candidate belongs to that political party.

If supplied by the party to which he belongs, there may be printed on the ballot paper opposite the name of each candidate belonging to that party any badge or device, approved by the Electoral Commission, indicating the political party, if any, to which the candidate belongs, or otherwise calculated to assist the identification of the candidate by the voter.

Ballot papers shall show different colours for parties contesting all electoral divisions and having not less than four candidates in each division. Such colours shall be assigned by the Electoral Commission: provided that any party may decline the colour so assigned to it, and in any such case the ballot paper shall not show any special colour for that party.<sup>32</sup>

### **5.07 Distribution of Ballot Papers**

On the day or days as near as practicable to the day of voting, the Commission shall prepare in different packets the ballot papers and all other documents and materials to be consigned to the Assistant Commissioners on the day of voting.

The Electoral Commission shall retain possession of all packets until the day of the poll when it shall deliver the same to the Assistant Commissioners prior to the start of voting.

Representatives of the political parties shall be granted all reasonable facilities to oversee the printing and checking of all ballot papers, the packing thereof and their distribution to the Assistant Commissioners, and to affix their seals to all packets prepared by the Electoral Commission for delivery to the Assistant Commissioners.<sup>33</sup>

## **— Section 6 —**

### **NOMINATION OF CANDIDATES**

#### **6.01 Procedure for Nomination**

A candidate for election shall be nominated in writing. The nomination paper, which shall be in the form prescribed, shall be signed by the candidate himself, (or, in the event of his absence from the country, by a duly appointed representative), and by, at least, four voters registered in the electoral division for which the candidate is nominated. The nomination paper shall be delivered to one of the Commissioners at the Electoral Office by the candidate himself or if he is prevented by illness or absence from Malta by his lawful representative within the period specified. Immediately after a nomination paper has been delivered to the Commission the name of the candidate shall be posted at the entrance of the Electoral Office with an indication of the division for which the candidate was nominated.

Objections may be made to a nomination on the ground that the description of the candidate is insufficient to identify the candidate, that the nomination paper does not comply with, or was not delivered in accordance with, the Act, that the deposit has not been paid or that the candidate already stands nominated for two electoral divisions: provided that no such objection may be made after expiration of the time fixed for the making of such objection.

Every objection shall be in writing and signed by the objector and shall specify the ground of the objection. The Commission itself may lodge an objection.

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The Commissioners shall, with the least possible delay and in any case not later than twelve working days before the day fixed for voting, decide on the validity of every objection and inform the candidate to whose nomination the objection relates or his lawful representative of their decision and, if the objection is allowed, of the ground of their decision. The decision of the Commissioners, if disallowing an objection, shall be final, but if allowing an objection, shall be subject to appeal to the Court of Appeal by writ of summons filed in contestation with the Commissioners not later than ten working days before the day fixed for voting.

Any voter may ask the Commissioners to be allowed to see and examine any nomination paper accepted by them.<sup>34</sup>

### **6.02 Deposit by Candidates**

A candidate at any election shall deposit, or cause to be deposited on his behalf, with the Commission, before his nomination can be accepted, the sum of forty liri in respect of each nomination, and if he fails to do so, the nomination in respect of which no deposit is made shall not be accepted by the Commissioners.

If after the deposit is made the candidature is withdrawn, the deposit shall be returned to the person by whom it was made, and if the candidate dies after the deposit is made and before the voting has commenced, the deposit, if made by him, shall be returned to his heir and if not made by him, shall be returned to the person by whom it was made.

If a candidate who has made the required deposit is not elected, and the number of votes polled by him does not exceed one-tenth of the number of votes polled divided by the number of members to be elected for that division, the amount deposited shall be forfeited and paid by the Commissioners into the Consolidated Fund but in any other case the amount shall be returned to the candidate, where the candidate is elected, as soon as he has taken the oath as a member and where the candidate is not elected, as soon as practicable after the result of the election is declared.

Where a candidate is nominated at an election in two divisions he shall not recover his deposit more than once unless he is elected in both divisions, and if such candidate fails to obtain, in either division, the minimum number of votes required, he shall forfeit both deposits.

The number of votes polled by a candidate shall be the highest number of votes credited to him at any time during the counting of the votes.<sup>35</sup>

### **6.03 Where No Candidate is Nominated**

If at the expiration of the time fixed for the nomination of candidates, no candidate shall have been nominated for an electoral division, the Commissioners shall cause a report to that effect to be published in the Gazette on the following working day, and in such case the President may issue a new writ for an election for that division.<sup>36</sup>

#### **6.04 Uncontested and Contested Elections**

If at the expiration of the time fixed for the receipt of nominations, the number of candidates nominated for an electoral division is equal to or less than the number of candidates that the voters in such division are entitled to return, the Commissioners shall return to the President the names of the candidates nominated as members elected to the House to represent that division and such return shall be published in the Gazette.

If the number of candidates nominated for an electoral division be less than that which the voters in that division are entitled to return, the President on the return made to him shall issue a new writ for the election of members to fill the remaining vacant seats in that electoral division, and if thereupon no candidates are nominated, or if the number of candidates nominated is less than the number of vacant seats, the seats thereafter remaining vacant may be filled by co-option of a member or members by the House and the President shall not issue a new writ in respect thereof.

If more than such number of candidates as aforesaid be nominated for an electoral division, the Commissioner shall cause a notice to be published in the Gazette over their signature stating the names of the candidates and the division for which they have been nominated. No person whose name has not been published in the said notice may be elected to be a member of the House.<sup>37</sup>

#### **6.05 Withdrawal of Candidature**

A candidate may, during the time prescribed for nomination, but not later than six hours before the expiration of the said time, withdraw his candidature by giving notice to the Commission to that effect. Such notice shall be signed by the candidate or, if he is absent from Malta, by his duly appointed representative.<sup>38</sup>

### **— Section 7 —**

#### **ELECTION OFFICERS**

##### **7.01 Assistant Commissioners**

The Commission is required to appoint as many Assistant Electoral Commissioners (referred to as “Assistant Commissioners”) as may be necessary, to superintend the election in the manner prescribed. No Assistant Commissioner shall be appointed to superintend the poll in the electoral division in which he resides or where he habitually exercises his profession or calling.

The Assistant Commissioners shall take the oath of office before one of the Commissioners and shall follow the instructions which they may receive from the Electoral Commission for the discharge of their duties.<sup>39</sup>

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## **7.02 Political Parties' Role in Selection of Assistant Commissioners**

Every political party shall, within ten days of publication of the writ, be entitled to nominate a number of persons, equal to one and a half times the number of polling booths, to act as Assistant Commissioners, and to the extent that such persons have the necessary ability to perform the functions of Assistant Commissioner and are not disqualified from so acting, the Commission shall appoint Assistant Commissioners from amongst such persons.

The Commission shall itself nominate as Assistant Commissioners such number of persons as is necessary in order that in each of the polling booths there be in attendance at all times at least one person nominated by the Commission to act as Assistant Commissioner.

In no case shall there be less than three Assistant Commissioners nominated to superintend the poll in each polling booth and should all or any of the political parties fail to nominate all or any Assistant Commissioners, the Commission shall itself nominate other Assistant Commissioners in order to ensure that, at least, three Assistant Commissioners are in attendance in each polling booth.

The Commission shall, not later than two days after the publication of the writ, inform the parties of the number of Assistant Commissioners that each party will be required to nominate.<sup>40</sup>

## **7.03 Publication of Names of Assistant Commissioners**

A person shall not hold the office of Assistant Commissioner if he is a candidate for election to the House, or is a relative by consanguinity or affinity up to the second degree to any candidate for election, or is manifestly in the opinion of the Commission, after consulting the party delegates, unsuitable to perform the functions of Assistant Commissioner.

The Commission is required to deliver to the political parties within a stipulated period a list of all persons nominated to act as Assistant Commissioners indicating their names, identity card numbers, addresses and occupations as well as the polling booth at which each will be in attendance.<sup>41</sup>

## **7.04 Objections to Assistant Commissioners**

The political parties, not later than two days after the day on which the Commission delivers the list of persons nominated to act as Assistant Commissioners to the political parties, shall have the right to object in writing to the Commission with respect of the appointment of any person as Assistant Commissioner on any of the grounds stipulated.

Where an objection is received by the Commission, it shall, not later than the next following day, call a meeting of party delegates to discuss such objections.

Any objection made shall be determined by the Commission. The determination by the Commission shall be final and binding on all concerned. Where after hearing such objections the Commission determines that a person nominated by a political party to be

appointed as an Assistant Commissioner shall not be so appointed, the political party which had nominated that person shall have the right to nominate another person in his stead.

The fresh nominations shall be made immediately after the determination of all the objections. If any further objection is received and upheld by the Commission, the Commission itself shall appoint another person to be Assistant Commissioner and such appointment shall be final and no objection may be made in respect thereof.

Upon final determination of all objections the Commission shall assign the Assistant Commissioners to the various polling booths; such distribution shall be made in such manner as to ensure that in each polling booth there is, at least, one Assistant Commissioner nominated by the Commission and one Assistant Commissioner nominated by each party contesting the election in that division: provided that where a political party has not nominated a sufficient number of persons to be appointed Assistant Commissioners, the Commission shall only be required to assign, in respect of that political party, such Assistant Commissioners as have been nominated by it and appointed Assistant Commissioners.

The Commission shall, within two days of the final determination, cause a list to be published in the Gazette showing the name, address, identity card number and occupation of each Assistant Commissioner appointed, the polling booth to which each has been assigned and indicating the Assistant Commissioners who are assigned but held in reserve.

After the final distribution of all Assistant Commissioners and up to the end of voting, the Commission alone shall have the right to substitute Assistant Commissioners and then only for grave and sufficient reasons and in such manner as to ensure that where the Assistant Commissioner substituted is one nominated by a political party, his substitute must be one nominated by the same party, provided a sufficient number of Assistant Commissioners have been nominated by that party.<sup>42</sup>

## — Section 8 —

### VOTING

#### **8.01 Election Agents**

On or before the day of nomination at an election a person shall be named in writing by or on behalf of each candidate as his agent for such election and such person is referred to as the election agent.

A candidate may name himself as election agent, and thereupon shall act, so far as circumstances admit, both as a candidate and as an election agent, and any reference to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.

One election agent only shall be appointed for each candidate, but the appointment, whether

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the election agent appointed be the candidate or not, may be revoked, and in the event of such revocation or of the death of the election agent, whether such event is before, during, or after the election, then forthwith another election agent shall be appointed, and his name and address declared in writing to the Commissioners, who shall forthwith give public notice of the same.<sup>43</sup>

### **8.02 Party Agents**

Every political party has the right to nominate as its agents such number of persons as is equal to the number of ballot boxes and such persons are referred to as party agents.

The party agents so nominated have the right to be present in the polling booths prior to the start and at the close of the poll.

Political parties exercising the right granted to them shall forward lists to the Commission containing the names of the persons nominated by them as their agents not later than the day appointed for the nomination of Assistant Commissioners.

No person shall be appointed election agent or party agent who has within seven years previous to such appointment been found guilty of any corrupt practice under the Act or is determined by the Commission to be manifestly unsuitable to act as such.<sup>44</sup>

### **8.03 Identification of Election and Party Agents**

Together with the name, address and identity card number of the election or party agent, the candidate or political party, as the case may be, shall forward to the Commission a passport size photograph of the agent, and the Commission shall not later than seven days before the start of the voting forward to such agent a tamper-proof identity document bearing the photograph of the agent franked with the seal of the Commission and indicating the name, address and identity card number of the agent and by whom he has been nominated. The identity documents as issued shall be progressively numbered, shall be of a different colour so as to easily distinguish election and party agents and shall be worn in a conspicuous manner by the agent concerned in the exercise of his functions.

Within the time established in the preceding provision, the Commission shall cause to be published in the Gazette a list of the names, addresses and identity card numbers of all election and party agents nominated indicating with respect to each one of them by whom he has been nominated, and whether he is an election or party agent and the progressive number of the identity document issued to him.<sup>45</sup>

### **8.04 Polling Places and Polling Day**

In each polling booth a list of voters entitled to vote in that polling booth together with copies of the photograph of each voter shall be kept by the Assistant Commissioners. Every page of such list and every correction or cancellation thereon shall be signed by a Commissioner and a party delegate of each political party.

Copies of such lists without photographs shall be forwarded by the Commission to all political parties contesting the election at least fifteen days prior to the day fixed for voting and the Commission shall keep the political parties informed of all changes effected to such lists. The lists shall identify the polling booth where each voter entitled to vote shall exercise his right to vote, shall list the voters who are to vote in each polling booth in alphabetical order according to the surnames of the voters, assigning to each voter a distinct and consecutive number and indicating the name, surname, address and identity card number of each voter as well as the registered number of the respective voting document of each voter.

The name of every voter who delivers a valid voting document and to whom a ballot paper is delivered by the Assistant Commissioners shall be marked on such list kept for the purpose by the Assistant Commissioners and in such manner as is directed by the Commission.

Voting shall be held on a Saturday. Voting shall start at 7.00 a.m. and shall close at 10.00 p.m.: provided that every voter, who at the close of time of voting is present in a polling place for the purpose of voting, shall be entitled to receive a ballot paper and to vote; provided further that, where the Commissioners are satisfied that the time allowed for voting has been, or will be, for any reason beyond their control, reduced at all or in any one or more of the places, they may, whether before or after the poll has commenced, extend time fixed for the poll at such polling place or places so as to make good for the time lost, as aforesaid.

The Commission shall, as far as possible, provide facilities so that handicapped persons, including persons in wheelchairs, may vote in comfort.<sup>46</sup>

### **8.05 Prohibition of Public Meetings**

No public meeting or public demonstration shall be held on the day immediately preceding the commencement of voting and on the day fixed for voting.<sup>47</sup>

### **8.06 Maintenance of Order**

During the time fixed for voting at any polling place, no person, other than a person waiting to vote, shall loiter within a distance of fifty metres from that polling place nor shall any person within the said distance of fifty metres make political propaganda in any manner. Any club, shop or other public establishment within such distance must be kept closed on polling day.

No person shall congregate during voting, in any street, square or other place, leading from the place of residence of any voter to any polling place, in such numbers or otherwise in such manner as to be likely to intimidate any voter, or to obstruct his approach to or from a polling place, or to lead to a breach of the peace.<sup>48</sup>

### **8.07 Ballot Boxes**

The Commission shall deliver to the Assistant Commissioners for each polling booth one or

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more sealed ballot boxes, a sufficient number of ballot papers, lists of the voters entitled to vote at that polling booth and other relevant documents and materials.<sup>49</sup>

### **8.08 Sealing of Ballot Boxes**

Not later than four days prior to the transportation of the ballot boxes to the polling place, the Commission shall proceed to seal all the openings of the ballot boxes after ascertaining that the ballot boxes are empty. The Commission shall at least three days before such sealing publish a notice in the Gazette stating the time and place where such sealing is to take place, the total number of ballot boxes available, the number to be used for polling and the place where the extra ballot boxes will be held. Candidates, election agents, party delegates and a number, previously determined by the Electoral Commission, of persons from each political party, shall have the right to attend at such sealing and place their personal seals on all the openings of the ballot boxes.

After the ballot boxes have been sealed in the manner aforesaid they must be placed in a room which must be sealed until the day immediately preceding the day fixed for voting, on which day the room shall be opened and the ballot boxes transported to the various polling places. The room wherein the ballot boxes are kept until transportation shall be adequately lit at all times and shall have a small opening in the door to allow visual checking; so however for the purpose of transporting the ballot boxes to Gozo, such transportation may take place two days preceding the day of the poll, and transportation of the ballot boxes to the individual polling places in Gozo shall take place on the day immediately preceding the day of the poll.

Political parties, as well as candidates, election agents and the party delegates, shall be granted adequate facilities to seal all openings into the room, to physically check the ballot boxes through the opening in the outside door and to accompany the boxes in the transportation to the polling places: provided that for the purposes of overseeing the transportation of the ballot boxes from the room designated for holding them to the polling places the political parties shall have the right to nominate an adequate number of persons in proportion to the number of ballot boxes, provided that such persons are not considered manifestly unsuitable by the Commissioners.

After transportation to the polling place, all ballot boxes consigned to each polling place shall be sealed in one room which shall be adequately lit at all times and which shall allow visual checking through a small opening in the door. On the day fixed for voting and 30 minutes prior to the start thereof the room shall be opened and the ballot boxes transported to the various polling booths.

Political parties as well as candidates, election agents and the party delegates shall be given adequate facilities to seal all openings into the room, to physically check the ballot boxes at all times through the opening in the outside door, to be present when the seals to the room are broken and to watch the transportation of the ballot boxes to the polling booths.

Immediately prior to the start of voting the Assistant Commissioners in the presence of any candidate, election agent or party agent or party delegate as may be present shall, without

breaking the seals, check that the ballot boxes consigned to them are empty by shaking the ballot boxes and shall thereupon break the seal or seals to the opening through which ballot papers shall be inserted. If the Assistant Commissioners or any one of them or any candidate or election agent or party agent or party delegate as may be present suspects that the ballot box is not empty, the Assistant Commissioners shall not break the seal or seals as aforesaid but shall immediately notify the Commission which shall break open all seals in the presence of the party delegates and Assistant Commissioners concerned. The Commission shall ascertain that the ballot box is empty and reseal the ballot box before allowing the start of the voting and the party delegates shall have the right to place their personal seals thereon. Except as set out herein, the seals placed on the lid of the ballot boxes shall not be broken except when the ballot boxes are opened for the counting of votes.

Where the Commission determines that because of lack of space, not all the seals may be conveniently placed, the Commission may direct that not all seals shall be so affixed ensuring however that each political party will be given the opportunity to affix at least one seal on each ballot box.<sup>50</sup>

### **8.09 Voting**

Any voter wishing to vote shall attend at the polling booth, specified in the voting document received by him and shall deliver such document to an Assistant Commissioner at such polling booth during the hours appointed for voting.

No person shall be allowed to vote unless he produces and delivers the voting document to the Assistant Commissioners.

No inquiry shall be permitted at the time of voting as to the right of any person to vote, so long as the name of such person is included in the list, but the Assistant Commissioners may, before the delivery of the ballot paper to a voter, put to him such questions as they may deem proper to satisfy themselves of the identity of such voter.

The Assistant Commissioners, upon the production and delivery to them of the voting document and having satisfied themselves of the identity of the voter, shall strike out the name of the voter from the list and shall deliver to him, after marking it with official marks, a ballot paper. "Official mark" means the stamp which the Commission directs the Assistant Commissioners to use; so however that each political party may direct the Assistant Commissioner nominated by it to use a stamp of its own to mark the ballot papers, provided that an imprint of the stamp so used is deposited with the Commission prior to the start of the poll; such stamp shall not be necessary for the validity of the ballot paper.

The Assistant Commissioners may at their discretion administer an oath to any voter in the form prescribed.

Any person refusing to answer any questions put to him or to take the oath shall not be permitted to vote.

The Assistant Commissioners shall not refuse a ballot paper to any person whose name

is included in the list and otherwise satisfies the requirements of the Act, unless the person claiming to vote, upon being questioned appears to the Assistant Commissioners not to be the person whose name is on the aforesaid list or to have previously voted at the same election.

The Assistant Commissioners must keep a written record of the taking of any oath administered to any person and of the refusal to allow any person to vote.

Subject to any exception provided in the Act, no voter shall be allowed to vote except at the polling booth specified in the voting document produced by him for the purposes of voting.

A voter who has inadvertently spoilt his ballot paper may, on delivering the spoilt ballot paper to the Assistant Commissioner, and proving the fact of inadvertence to the satisfaction of the Assistant Commissioner, obtain another ballot paper in its place and the spoilt paper shall be immediately cancelled.<sup>51</sup>

### **8.10 Method of Voting**

Each voter shall have one transferable vote.

A voter in recording his vote:

- (a) must place on his ballot paper the figure 1 opposite the name of the candidate for whom he votes; and
- (b) may in addition indicate the order of his choice or preference for as many other candidates as he pleases by placing against their respective names the figures 2, 3, 4, 5 and 6 and so on in consecutive numerical order.

A ballot paper is invalid in which:

- (a) the figure 1 standing alone indicating a first preference for one candidate is not placed; or
- (b) the figure 1 standing alone indicating a first preference is set opposite the name of more than one candidate; or
- (c) the figure 1 standing alone indicating a first preference and some other number is set opposite the name of the same candidate; or
- (d) it cannot be determined with certainty for which candidate the first preference of the voter is expressed; or
- (e) any writing or mark is made by which the voter can be identified; or
- (f) the official mark is not made.

A voter shall record his vote secretly inside a cubicle in the booth provided for this purpose and constructed in such a manner as not to allow the voter to be seen when marking his ballot paper.

After marking his ballot paper the voter shall fold the ballot paper so as to conceal his vote and shall then put the ballot paper in the ballot box in the presence of the Assistant Commissioners.<sup>52</sup>

### **8.11 Illiterate or Incapacitated Voters**

Any voter who declares to, and shows to the satisfaction of, the Assistant Commissioners that he is unable by reason of blindness, or other physical cause or illiteracy to mark his ballot paper, may request an Assistant Commissioner to mark the paper on his behalf indicating for which candidate or candidates he wishes to vote and the order in which he wishes to record his vote: provided that the voter may not ask for any particular Assistant Commissioner to mark the ballot paper on his behalf.

The Assistant Commissioners are bound to secrecy with regard to the voting of persons whom they have assisted to vote.

There shall be not less than two Assistant Commissioners present when the vote is being recorded, but no other person shall be allowed in the room.

When an Assistant Commissioner is authorised to assist a voter record his vote, the Assistant Commissioner shall require such voter to confirm his declaration on oath, and on satisfying himself of the correctness of such declaration he shall record the vote of such voter on the ballot paper, in accordance with the indication made by such voter and following the procedure set down hereunder:

- (a) the Assistant Commissioner shall ask the voter: "Which of the candidates do you most desire see elected?" and shall place the figure 1 on the ballot paper opposite the name of the candidate indicated by the voter;
- (b) the Assistant Commissioner shall then ask the voter: "For which of the candidates do you desire to express a second choice?" and shall place the figure 2 on the ballot paper opposite the name of the candidate indicated by the voter;
- (c) the Assistant Commissioner shall repeat the operation in reference to a third or any subsequent preference until the voter shall declare that he does not desire to express any further choice;
- (d) in order to assist such voters in indicating their preferences, the Electoral Commissioners shall permit the display in the polling places of photographs of the candidates, if the same are supplied by the candidates themselves or by a political party on their behalf. Each photograph may bear, in addition to the name of the candidate represented, the badge and the name of the party, if any, to which he belongs. Such photographs shall be of such size and description as the Electoral Commission may require and shall be displayed in such manner as it shall direct and in the order in which the candidates' names appear on the ballot paper;
- (e) at the commencement of these operations and at any subsequent stage the Assistant Commissioner shall, if desired by the voter, read out in the order in which they appear on the ballot paper, the names of all candidates for whom a choice has not already been expressed by the voter;
- (f) if any such voter, however, requests the Assistant Commissioner to read out the names of the candidates of one particular political party only, the Assistant Commissioner shall do so by reading in alphabetical order the names of the candidates who have supplied an indication of their adhesion to that political party and omitting the names of the other candidates.<sup>53</sup>

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### **8.12 Secrecy of the Ballot**

While a voter is recording his vote, the Assistant Commissioners shall keep at sufficient distance so as not to be able to see the vote recorded.<sup>54</sup>

### **8.13 Ballot Paper Not to be Removed from Polling Place**

The Assistant Commissioners must not permit any person to take his ballot paper out of the room or out of their sight until it is inserted into the ballot box.<sup>55</sup>

### **8.14 Assistant Commissioners Not to Make Suggestions as to Manner of Voting**

No Assistant Commissioner or any other person shall record the voter for any vote, except as provided for under the Act, or shall, at any polling place make any suggestion to him directly or indirectly regarding the candidate or candidates for whom he should vote or regarding his choice of preference.<sup>56</sup>

### **8.15 Voting in Polling Place Other than Specified in Voting Document**

The Commissioners, the Assistant Commissioners, police officers and other persons entrusted with some duty at a specific polling place may, with the approval of the Commission and provided that they so inform the Commission at least forty-eight hours prior to the start of voting, record their votes in the polling place in which they are performing such duty and which has been designated for this purpose by the Commission. Such persons shall cast their votes as early as practicable at the start of voting.

A list of persons so entitled to vote shall be kept at the Electoral Office and in such polling place and shall be open to inspection by the party delegates at least twenty-four hours prior to the start of voting.

Candidates for election may record their votes in one of the polling places designated for the purpose by the Commission and situated in the division in which they stand for election.<sup>57</sup>

### **8.16 Closure of Voting**

After the expiration of the time fixed for voting, the Assistant Commissioners shall seal the opening of the ballot box, shall place in a packet all unused and spoilt ballot papers and all printed or written records kept by them, affixing their seal thereto, after stating and signing on the said packet the number thereof, and shall place in a separate packet all voting documents delivered to them. The official marks used by the Assistant Commissioners including those used by the Assistant Commissioners nominated by the political parties shall be put in a separate packet which shall be sealed with the seal of the Commission after all Assistant Commissioners have affixed their signatures thereto.

The Assistant Commissioners must physically count and reconcile the number of unused and spoilt ballot papers, the number of persons marked as having voted on the list and the number of voting documents delivered to them.

After the close of the poll and before ballot boxes are removed from the polling booths, the Assistant Commissioners shall affix a notice on the door of each polling booth and signed by all the Assistant Commissioners stating the number of voters entitled to vote at that polling booth, the number of ballot papers received by them from the Commission, the number of voting documents delivered to them distinguishing as to whether they are ordinary or special, the number of spoiled ballot papers and the number of unused ballot papers being returned by them to the Commission and the number of persons who have voted in that polling booth. The said notice is referred to as "ballot paper account".

A copy of the ballot paper account shall be delivered by the Assistant Commissioners to each political party by handing it to any candidate, election agent or party agent representing such party as may be present, and shall also be delivered to the Commission at the place specified in the Act and the Commission shall immediately thereon provide a copy to the party delegates.

On completion of all the duties mentioned in the foregoing provisions, the Assistant Commissioners shall deliver the ballot box or boxes and all documents and packets entrusted to them to the Commission at the place specified.

Party delegates, candidates, election agents and party agents shall have the right to attend at the reconciliation and sealing of papers and sealing of ballot boxes, to affix their own personal seals to the packages containing the papers and to the ballot boxes and shall be granted facilities to watch and accompany the transportation of the ballot boxes from the polling place up to their delivery to the Commission.

No more than one party agent from each political party may be present in each polling booth at any one time during the procedure for the sealing of ballot boxes.

The Assistant Commissioners shall ensure that candidates, election agents, party agents or party delegates as may be present shall be called in prior to their starting the procedures outlined in the previous provisions for the sealing of ballot boxes and packets and reconciliation.

The candidates, election agents, party agents and party delegates that may be present shall be granted all reasonable facilities to oversee, record and request recounts of all the operations undertaken by the Assistant Commissioners and without prejudice to the generality of the above:

- (i) to reconcile the number of persons who have voted as stated in the ballot paper account with the number of persons which the Assistant Commissioners have struck off the list, and the number of voting documents received by the Assistant Commissioners;
- (ii) to reconcile the names of the voters which the Assistant Commissioners have struck off the list with the names or the voting documents received by them;
- (iii) to record the names of the persons who have not voted.

After all the procedures indicated have been completed, the Assistant Commissioners shall

keep the ballot boxes and all documents and packets in the polling booth until such time as the vehicle designated by the Commission for the transfer of the ballot boxes arrives at the polling place. Any candidate, election agent or party agent or party delegate as may be present shall also have the right to remain at such polling booth.

During the transportation from the polling place to the place designated by the Commission for the delivery of ballot boxes no more than one representative from each of the political parties may board the vehicle designated by the Commission for transportation. The representatives shall be designated by the political parties and shall be duly authorised by the Commission and shall bear the identification stipulated and shall have the said names publicised.

The refusal by any Assistant Commissioner to sign any declaration or document shall not to itself invalidate the contents thereof.

The Assistant Commissioners shall keep order in the polling place under their charge and shall be responsible for any irregularity in the voting in that place in so far as such irregularity could have been prevented by them.<sup>58</sup>

### **8.17 Voting Arrangements for Retirement Homes**

A retirement home means a place or places principally used for the care of elderly persons in which at least fifty voters reside.

Within twenty-four hours of the publication of the writ for the election of members to the House, the Commission shall form a subcommittee consisting of a Commissioner, who shall act as chairperson, and a representative of each of the political parties and shall delegate to the subcommittee the running of the election in all retirement homes.

The subcommittee shall have the duty to ensure that no undue pressure is brought to bear on voters in old age homes, that proper and adequate facilities are given to all political parties to canvass such voters, that adequate arrangements for voting are made in view of special needs of such voters and that no political party enjoys any unfair advantage.

Without prejudice to the generality of the above provisions, the subcommittee shall ensure that:

- (a) immediate steps are taken to temporarily remove and substitute members of staff gravely suspected to have attempted to influence voters;
- (b) arrangements are made for the receipt and proper delivery of propaganda material and for canvassing during visiting hours by candidates and political parties contesting that electoral division;
- (c) complaints by political parties and or candidates are speedily investigated and rectified when found to be justified.<sup>59</sup>

### **8.18 Duties of Persons Responsible for the Administration of Retirement Homes**

Within three days of the publication of the writ the person responsible for the administration of a retirement home shall send to the subcommittee:

- (a) a list of all persons resident at such retirement home, indicating the name, identity card number, last known address, age, ward number, name and address of next of kin and whether registered as a voter in the home address or otherwise;
- (b) a list of all staff at the retirement home, indicating the name, identity card number, address, grade and working hours up to the day following the day fixed for voting.

On receipt thereof the subcommittee shall immediately provide the political parties with copies of such lists.

The administrator of every retirement home shall keep such lists updated and shall immediately send to the subcommittee any amendments thereto and the subcommittee shall immediately inform the political parties of such amendments.

Members of the staff in retirement homes are expressly prohibited from engaging in propaganda for any political party or candidate and any employee contravening these provisions is guilty of an offence and shall on conviction be liable to the penalty of general interdiction for a period of ten years.<sup>60</sup>

### **8.19 Voting at Retirement Homes**

The voting documents of voters registered in retirement homes shall be delivered to the voters personally. The voter may opt to deliver the voting document to the administrator of the home for safe keeping and such administrator shall return the same to the voter on the day fixed for voting or on such earlier day as may be requested by the voter.

Voters in retirement homes shall have the option to proceed to the polling place:

- (a) without the assistance of any person;
  - (b) with the assistance of members of the staff;
  - (c) with the assistance of members of their families,
- and it shall be the responsibility of the subcommittee to ascertain the option chosen by each voter.

Voters opting to be assisted by members of the staff shall be accompanied by members of the staff chosen from a pool thereof nominated in equal numbers by all the political parties. Political parties shall have the right to demand, and the Commission shall have the duty to ensure, that if the ordinary staff at such home is not sufficient other persons are transferred to such home for such purpose.

Voters opting to be assisted by members of the staff or by members of their families shall be so accompanied up to the door of the relative polling booth.

During the day fixed for voting no person other than members of the subcommittee, members of the staff and relatives of patients who have been previously authorised to accompany voters to vote, shall without the express authority of the Commission be allowed to enter retirement homes.

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Except with the special authorisation of the subcommittee, no voter in a retirement home who has chosen the option to vote on his own or to be accompanied by members of his family may be taken to vote by members of the staff.

The subcommittee appointed shall function under the general direction of the Commission and shall be bound to implement the decisions of the Commission.<sup>61</sup>

## — Section 9 —

### COUNTING OF VOTES

#### 9.01 Start of Counting of Votes

The counting of votes shall take place at the place and time specified in the notice of election and shall be conducted as prescribed. Counting shall not commence until all ballot boxes have been deposited in the room designated for the purpose by the Commission, all packets containing the papers and other material used by the Assistant Commissioners have been delivered to the Commission and neither ballot boxes nor packets have been declared to be in a state that gives rise to the suspicion that they have been tampered with.<sup>62</sup>

#### 9.02 Tampering with Ballot Boxes

Political parties contesting the election shall have the right to nominate a sufficient number of agents, to be determined by the Commission, to oversee at all times the receipt of the ballot boxes, documents and packets, by the Commission from the Assistant Commissioners and the storage of the said ballot boxes, documents and packets after the receipt thereof.

These agents are referred to as “delivery agents”.

Party delegates, candidates and their agents as well as delivery agents shall have the right to monitor the receipt of the ballot boxes by the Electoral Commission from the Assistant Commissioners and to make representations thereon.

If any of the Commissioners or any party delegate, candidate or delivery agent claims that any ballot box or package is received in a state that gives rise to suspicion that it may have been tampered with, the Commission shall order such box or packet to be dealt with separately from the other boxes or packets, and shall immediately call a meeting of the Commission and at such meeting the Commission shall have the power to hear such evidence under oath as it deems necessary.

Where the Commission decides that there is no evidence that justifies the suspicion that the box or packet has been tampered with, its decision is final and no appeal shall lie therefrom.

Any claim shall be made as soon as the ballot box or packet is delivered by the Assistant Commissioners to the Commission and for this purpose the Commission shall ensure that

the party delegates, candidates or delivery agents are given adequate facilities to attentively inspect the ballot boxes, documents or packets.

It shall be the duty of the Commission to ensure the mathematical accuracy of the ballot paper account and that this tallies with the declared number of voting documents returned by the Assistant Commissioners. Political parties have the right to demand that the Commission shall for this purpose, open all packets containing voting documents relative to no more than ten per cent of all ballot boxes in order to physically check the accuracy of such returns.

Political parties shall select the ballot boxes in relation to which the packets containing voting documents are to be opened during delivery of the ballot boxes to the Commission and prior to the storage of the ballot boxes.

As each ballot box is received and cleared by the Commission it shall be transferred to the room designated by the Commissioners for the storage of all ballot boxes.

As soon as practicable after all ballot boxes have been received and cleared and prior to the start of the counting process the Electoral Commission shall publicly declare the total number of votes declared to be cast in accordance with the ballot paper accounts delivered by the Assistant Commissioners as well as the number of votes in each ballot box as resulting from the same account.

The Commission shall preserve until the publication of the official results of the next following election all papers delivered to it by the Assistant Commissioners, as well as the unused ballot papers and the voting documents, in separate sealed packets indicating on each packet the nature of the documents contained therein, and the electoral division to which they appertain.

On every packet there shall be affixed the seal of the Electoral Commission and the signature of at least two Commissioners, and of any party delegate, candidate or delivery agent who may wish to sign it.<sup>63</sup>

### **9.03 Counters, Supervisors and Calculators**

The Commission shall appoint a number of persons to act as counters, supervisors and calculators to assist it in the counting and transfer of votes which shall be effected under the direct supervision of the Commission.

A list of the persons appointed as counters, supervisors and calculators shall be published by the Commission in the Gazette, together with the list of persons appointed as Assistant Commissioners and the procedures established for the nomination by political parties of and for objections to Assistant Commissioners apply *mutatis mutandis* to supervisors and counters.

All counters, supervisors and calculators shall be issued with identity documents specifying the details provided for election and party agents. The identity documents must be worn at

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all times by the counters, supervisors and agents whilst in the precincts of the building where the counting of votes is held.

The calculators shall perform all mathematical calculations connected with the counting of votes and the Commission shall ensure that the persons so chosen are proficient in mathematical calculations.

Supervisors are responsible for a number of counters and shall oversee the opening of ballot boxes, and the sorting and counting of ballot papers for every electoral division. The Electoral Commission shall ensure that at all times during the counting of votes there are no less than two supervisors for each electoral division and that the political parties are adequately represented in the choice of persons to act as supervisors for each electoral division.

Counters are required to work under the direction of the supervisors; they shall physically sort and count the ballot papers. The Electoral Commission shall ensure that there are sufficient number of counters in every electoral division to ensure a quick and efficient counting process and that the political parties are adequately represented at all times during the counting of votes in the choice of persons to act as counters in each electoral division.<sup>64</sup>

#### **9.04 Appointment of Persons to Assist Commissioners in Counting the Votes**

The Commission may authorise any one or more of its members or any other persons appointed by it to do anything on its behalf in connection with the receipt and storage of ballot boxes and the counting and transfer of votes and anything done by virtue of such authority shall be deemed to have been done by the Commission.

The Commissioners or any one or more of them shall administer to every person authorised to act for the Commission an oath for the faithful discharge of the duties assigned to him.<sup>65</sup>

#### **9.05 Candidates and Agents**

Unless otherwise provided under the Act, candidates and election agents shall have free access to the building where the counting of votes will take place, and to the counting hall at all times.

Every political party has the right to nominate a number of agents equal to the number of candidates presented by it to contest the election and such agents shall at all times have access to the said building and to the counting hall at all times. These agents are referred to as "counting agents".

The list of counting agents shall be presented to the Commission at least twenty-one days prior to the start of the poll; the Commission shall inform the political parties of all the agents so nominated so that the said political parties may have an opportunity to make representation to the Commission before the same accepts or rejects them; the agents so nominated are to be of good character and acceptable to the Commission and once nominated and accepted by the Commission, may not, for any reason, be changed by the political party nominating them.

The party delegates, candidates, election agents and counting agents shall be issued with an identity document indicating the details required for election agents and such identity document is to be worn at all times on entry into and inside the building or complex where the votes are counted.<sup>66</sup>

### **9.06 Counting Place**

With respect to the building designated by the Commission for the counting of votes the Commission shall ensure that:

- (a) all roads of access at least within 500 metres of the said building are enclosed and patrolled by the police who shall permit entry only to authorised persons and only after scrupulously having ascertained their identity;
- (b) entry into the actual building or perimeter shall be checked by both the police, the Commission and representatives of the political parties;
- (c) a number of rooms as may be necessary either in or as near as possible to the building wherein the counting hall is situated shall be provided to ensure full press and broadcasting coverage of the counting and transfer of votes provided that the entrance to such rooms shall at all times be guarded by the police who shall only allow entry to bona fide broadcasting personnel and newspaper reporters who shall have been previously accredited by the Commission;
- (d) an area adjacent and communicating with the counting hall shall be provided for the storage of the ballot boxes and that during the time the boxes are stored in such area they shall at all times be visible from all parts of the counting hall;
- (e) a number of rooms as near as possible to the counting hall shall be provided for every political party contesting the election and shall be equipped with such facilities as the Commission, after consulting the political parties, thinks fit;
- (f) in the counting hall itself counters shall be separated from the candidates and agents by a wall of unbreakable transparent material or similar sturdy transparent material except for some means including any appropriate electronic device, of clear communication for the purpose of speaking through and except in the cases expressly provided for in the Act, access to the area designated by the Commission for the counting of votes shall only be allowed to candidates and agents with the express consent of the Commission; provided that the party delegates and six substitutes thereof, previously nominated by such delegates, shall have free access to the counting area at all times;
- (g) the disposition of the counting area shall be such that as far as possible all the counting process can be closely viewed by candidates, agents and representatives of political parties;
- (h) the room wherein the ballot boxes are stored until the start of the counting of votes is in full view of the representatives of the parties, candidates and their agents and party delegates and their substitutes have a right of access thereto at all times;
- (i) all rooms and corridors which are not being used for a purpose designated by the Commission must be barred and all areas leading thereto closed;
- (j) adequate back-up facilities for services failure are provided especially with respect to lighting;
- (k) there is strict security at all times in and around the building, that the entry is

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restricted to authorised persons only and that no lethal instruments or instruments which may be rendered lethal are introduced in the building;

- (l) at least thirty days before the start of voting the Commission shall show the party delegates how it proposes to allocate and separate the different areas of the said building and shall consider suggestions made by the said delegates in this regard;
- (m) the party delegates and their substitutes, shall at all times have access to any part of the building for the purpose of ensuring that the provisions of the Act are enforced.<sup>67</sup>

### **9.07 Broadcasting Coverage**

The Commission shall ensure that as far as practicable full and constant broadcasting coverage is given of the counting and transfer of votes and for such purpose shall allow entry into the building to bona fide broadcasting personnel and apparatus.<sup>68</sup>

### **9.08 Representations to Commissioners**

Candidates, election agents and the counting agents shall at all times have access to the Commissioners for the purpose of making representations on their own behalf or on behalf of the candidate or party represented by them.<sup>69</sup>

### **9.09 Direction of Building**

The Commission has the sole direction of the building designated for the counting and transfer of votes and shall have the right to give such orders as are necessary for the maintenance of order and security within the building.<sup>70</sup>

### **9.10 Procedure for Counting the Votes**

The Commission shall proceed to ensure that the votes of all the electoral divisions are counted simultaneously in order to establish the total number of votes cast in the election.

Prior to the removal of each ballot box from the room designated by the Commission to hold all the ballot boxes, the party delegates or their substitutes shall have the right to examine the seals affixed to each ballot box.

Any objection raised by the party delegates or their substitutes as to the integrity of such seals must be examined by the Commission whose decision thereon shall be final and not subject to appeal.

One ballot box at a time shall be opened in each division and prior to the opening of each ballot box the Commission shall cause the ballot paper account for that ballot box to be affixed in such a manner that it may be clearly seen by the candidates and agents and shall show the candidates and agents the seals on the ballot box in order that they may ascertain that such seals are intact.

Any party delegate, candidate or agent may, prior to the opening of the ballot box, make

representations claiming that the seals of the box have been tampered with. Where such an objection is made the box shall not be opened until the Commission, after consulting the party delegates or their substitutes, shall have given such directions and taken such measures as it may consider necessary.

Where no objections are made and where the Electoral Commission so directs, the ballot box shall be opened and the number of ballot papers contained therein shall be counted, face downwards, to ascertain that the number of votes in that ballot box corresponds to the ballot paper account.

Where the ballot papers in the ballot box do not tally with the ballot paper account the attention of the Commission shall be drawn to the fact and the Commission after consultation with the party delegates, or their substitutes, shall give such directions as it may deem fit and such decision shall be final.

Where the ballot papers in the ballot box and the ballot paper account tally, the votes shall be put together and placed in a pigeon hole indicating the number of the ballot box. The pigeon hole and ballot papers must at all times be clearly visible by parties, candidates and agents. The ballot papers in each pigeon hole shall be put in parcels of fifty ballot papers each with any remainder being at the bottom of the pile and the supervisor shall ensure that each parcel is counted for accuracy by more than one counter. The process shall be repeated until all ballot boxes have been opened to ascertain that the ballot papers in each box tally with the ballot paper account relative to it.

Ballot papers belonging to a division other than that to which the ballot box pertains shall be treated in the manner established and shall be retained at the counting table of the division where the relative ballot box from which they originated was placed and shall not, at this stage, be transferred to the appropriate division.

After all ballot boxes in all electoral divisions have been opened and reconciled with the relative ballot paper account the Electoral Commission shall prior to proceeding to the sorting of votes declare the number of votes cast and their distribution by ballot box and electoral division.

The Electoral Commission shall cause the papers held in each electoral division and belonging to other divisions to be transferred to the division to which they properly belong.

The physical transportation of the papers from one division to another shall be performed either by the Commissioners or by the supervisors and in such a manner as not to create confusion.<sup>71</sup>

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— *Section 10* —

**SORTING OF VOTES AND PUBLICATION OF RESULTS**

**10.01 Sorting of Ballot Papers**

Ballot papers must be sorted in accordance with the relevant regulations that are in force for the time being.<sup>72</sup>

**10.02 Publication of Results**

The Commission shall, not later than on the working day following that on which the result of the counting of the votes has been ascertained, publish a declaration containing the names of the candidates elected and such other particulars as the Commission may consider necessary.

The Commission shall deposit the declaration aforesaid with the Clerk of the House and shall cause a copy of such declaration to be published without delay in the Gazette.

Every candidate whose name is published in the Gazette or who is declared elected shall be considered to be a Member of the House of Representatives.

The Commission shall publish in the Gazette not later than seven days after the end of counting a declaration of the result of the election which declaration shall include a record of the total votes cast, both on a national level and subdivided by polling booth, the total valid votes, the total votes credited to each political party, the quota for each electoral division, the record and result in all stages of any transfer of votes between political parties, the first preference credited to each candidate, any transfer of votes made, and of the total number of votes credited to each candidate after any such transfer, and any such other information as the Electoral Commission may consider necessary. Such declaration shall be in such form as the Electoral Commission may determine as likely to impart easily all the information likely to be required by the public.

Within three months of the publication of the official results of the election the Electoral Commission shall publish a report explaining in detail what steps were taken by it to perform the various duties imposed on it by the Act, to give all relevant statistics connected with the election including the publication of all statistics regarding eligible voters, printing and distribution of voting documents and ballot papers, voters per polling place, returns submitted by Assistant Commissioners and the like, and to make such suggestions as they consider necessary.

The Commission shall preserve until the publication of the official results of the next following election all used ballot papers for each electoral division in separate sealed packets, as follows:

- (a) the spoilt ballot papers;
- (b) the invalid ballot papers;

- (c) the papers at the completion of the counting in the parcel of each elected candidate and of each non-elected candidate whose papers have not been transferred;
- (d) all the non-transferable papers not retained in the parcel of an elected candidate.

The Commissioners shall endorse on each packet a description of its contents, the date of the election and the number of the election and the number of the electoral division to which it relates.

The Commission shall further preserve for the same period for each electoral division a copy of the declaration of the result of the count and of any document showing the operations of the transfer of each surplus.

Party delegates, candidates, election agents and counting agents shall have the right to affix their seals and signatures to such packets.<sup>73</sup>

### **10.03 Power of Court to Order Unsealing of Packets**

It shall be lawful for the Constitutional Court before which any question is brought as to the right of any person to be or to remain an elected Member of the House and for any Court before which any proceedings are commenced in accordance with the Act to order the opening of the packets and the production of one or more of the documents therein contained under such condition and precautions as may be necessary to maintain the secrecy of the voting consistently with the due administration of justice.<sup>74</sup>

### **10.04 Candidates Returned in Both Divisions**

If at an election any person is returned as a member for two divisions, such person shall, by a writing under his hand delivered to the Clerk of the House on or before appearing to take the oath or to make the affirmation in the prescribed form declare which of the two divisions he elects to represent.

As soon as a person who is returned for two divisions declares which of the two divisions he elects to represent, he shall be deemed to have vacated his seat in the other division.<sup>75</sup>

## **— Section 11 —**

### **PENAL PROVISIONS**

#### **11.01 Giving False Information**

Any person who knowingly makes or subscribes to a false declaration or otherwise gives false information in connection with the registration, transfer or cancellation of any voter is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding one month or to a fine not exceeding fifty liri or to both such imprisonment and fine.<sup>76</sup>

### **11.02 Misconduct in Polling Places**

Every person who misconducts himself in any polling place or contravenes any of the provisions which prohibits certain stipulated activities in the vicinity of polling places, or takes part in any public meeting or public demonstration held in contravention of the Act, or fails to obey the lawful order of the Assistant Commissioners or other lawful authority in relation to an election is liable on conviction to a fine not exceeding fifty liri.<sup>77</sup>

### **11.03 Offences in Respect of Nominations, etc**

Every person who:

- (a) forges or fraudulently defaces or fraudulently destroys any nomination paper or delivers to the Commission any nomination paper knowing the same to be forged; or
- (b) forges or counterfeits or fraudulently destroys any voting document or ballot paper or official mark on any ballot paper; or
- (c) without due authority supplies any voting document or ballot paper to any person; or
- (d) forges or counterfeits or is in unlawful possession of any stamp or seal used by the Chief Electoral Commissioner or the Electoral Commissioners or the Assistant Commissioners; or
- (e) is in unlawful possession of any voting document or ballot paper; or
- (f) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or
- (g) fraudulently takes out of the polling place any ballot paper; or
- (h) without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the election,

shall be guilty of an offence and is liable, on conviction, to a fine not exceeding five hundred liri or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Every person who aids or abets the commission of an offence or attempts to commit any such offence is liable, on conviction, to the punishment provided for the offence.<sup>78</sup>

### **11.04 Infringement of Secrecy**

Every Assistant Commissioner who shall reveal the manner of voting of any voter when such manner of voting shall have come to his knowledge in the course of the exercise of his functions shall be guilty of an offence, and shall, on conviction, be liable to a fine not exceeding one hundred liri or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.<sup>79</sup>

### **11.05 Prohibition of Activities Capable of Influencing Voters**

During the day on which an election of Members of the House is held and during the day immediately preceding such an election, no person shall address any public meeting or any

other gathering whatsoever in any place or building accessible to the public, or on the broadcasting media, on any matter intended or likely to influence voters in the exercise of the franchise, or publish or cause to be published any newspaper, printed matter or other means of communication to the public containing any matter aforesaid, or issue or cause to be issued any statement or declaration on any matter aforesaid or knowingly distribute any newspaper, printed matter, or other means of communication, or any statement or declaration as aforesaid, and any person acting in contravention of any of these provisions is liable on conviction to a fine not exceeding five hundred liri or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

Every person who aids or abets the commission of an offence or attempts to commit any such offence, shall be liable on conviction to the punishment provided for the offence.<sup>80</sup>

### **11.06 Competent Courts**

All questions regarding the right of any person to be or to remain a Member of the House shall be referred to and decided by the Constitutional Court.

Any criminal proceedings for offences under the Act shall be brought before the Courts of Magistrates.

Notwithstanding anything contained in the Probation of Offenders Act, a person who commits any offence under the General Elections Act shall be convicted and sentenced in respect of that offence and may not be placed on probation under the Probation of Offenders Act.<sup>81</sup>

### **11.07 Prohibition of Display of Posters**

Except as provided in the Act, it is not lawful for any person, at any time in contemplation or in anticipation of an election, to display or cause to be displayed in a public place, or in a place accessible to the public or visible from any public place, any bill, poster or other advertisement intended or likely to influence voters in the exercise of the franchise, or to write or make or cause to be written or made on any wall or other place visible from a public place any word or sign intended or likely to influence voters in the exercise of the franchise.

The foregoing provisions do not apply to any bill, poster or other advertisement which –

- (a) is worn or carried by a person; or
- (b) which is displayed on the inside of a private building even though it may be visible from a public place.

Any person acting in contravention of any of the foregoing provisions is liable on conviction in respect of each offence to a fine not exceeding five hundred liri or to imprisonment for a period of not more than six months, and in respect of any second or subsequent offence to both such fine and imprisonment.

The police shall remove or otherwise cancel or delete anything displayed unlawfully in contravention of these provisions.<sup>82</sup>

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### **11.08 Right of Action before Constitutional Court**

Notwithstanding any other provisions contained in the Act, whereby the decision of the Commission is declared as final and/or not subject to appeal such provision shall not exclude recourse to the Constitutional Court by any person on an action to invalidate the election, whether in any or in all divisions.<sup>83</sup>

### **11.09 Non-exercise of Certain Rights**

The non-exercise by any political party, delegate, candidate, agent or any person nominated for appointment by a political party, of any right, power or privilege granted by the Act shall not of itself invalidate any action or procedure in respect of which the right, power or privilege has been granted by the Act.<sup>84</sup>

## **— Section 12 —**

### **COUNTING PROCEDURES**

#### **12.01 Counting the Votes**

A candidate or agent is permitted at the end of any count to request that the Commission re-examine and recount all or any of the papers, and the Commission is required to do so promptly. The court is allowed also, upon an election petition being brought, to order a recount of the whole or a part of the ballot papers. The decision of the Commission on any question relating to the transfer of votes is final unless reversed upon an election petition.

The following example of the application of the method of counting the votes at an election conducted on the proportional representation system of the single transferable vote has been taken from the General Elections Act 1991 and set out here to assist the reader.

Let it be assumed that there are six members to be elected and that there are eleven candidates: A, B, C, D, E, F, G, H, I, K and L.

#### **First Count**

The ballot papers having been mixed and examined, the invalid papers excluded, and the valid papers sorted into separate parcels under the names of the candidates marked with the figure 1, each separate parcel is counted, and each candidate is credited with a number of votes equal to the number of papers on which a first preference has been recorded for him.

The results of the count may be supposed as follows:

	<b>Votes</b>
B .....	140
F .....	62
H .....	50
C .....	25
L .....	24
G .....	14
I .....	12
D .....	10
A .....	7
E .....	4
K .....	-
<b>Total</b> .....	<b>348</b>

### *The Quota*

It is found that the total of all the valid votes is 348. This total is divided by seven (i.e., the number which exceeds by one the number of vacancies to be filled), and 50 (i.e., the quotient 49 increased by 1, neglecting the fraction) is the quota, or the number of votes sufficient to elect a member.

The votes obtained by B, F and H exceed or equal the quota, and they are thereupon elected.

### **Second Count**

B has 90 surplus votes (i.e., B's total 140, less the quota 50), and it is necessary to transfer this surplus first as being the largest.

All B's 140 papers are examined and arranged in separate sub-parcels according to the next available preferences indicated thereon.

In general the next available preference will be the second preference. But any paper on which the second preference is given to either F or H, both already elected, passes to the next available preference after such candidates. A paper marked with 1 for B, 2 for H, 3 for F, 4 for I, is placed in sub-parcel for I.

A separate sub-parcel is also formed of those papers on which no further available preference (i.e., no further preference for any continuing candidate) is shown, and which are therefore not transferable.

The result is found to be as follows:

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The next available preference is shown for D on .....	80 papers
The next available preference is shown for E on .....	2 papers
The next available preference is shown for I on .....	25 papers
The next available preference is shown for K on .....	29 papers
Total of transferable papers .....	136 papers
Total non-transferable papers .....	4 papers
Total of B's papers .....	140 papers

Since the total number of transferable papers (136) exceeds the surplus (90), only a portion of each sub-parcel can be transferred, and the number of papers to be transferred from each sub-parcel must bear the same proportion to the total number of papers in the sub-parcels as that which the surplus bears to the total number of transferable papers.

In other words, the number of papers to be transferred from each sub-parcel is ascertained by multiplying the number of papers in the sub-parcel by 90 (the surplus), and dividing the results by 136 (the total number of transferable papers).

In practice the calculation may be simplified by reducing the fraction  $\frac{90}{136}$  to the equivalent fraction  $\frac{45}{68}$ .

The process is as follows:

D's sub-parcel contains 80 papers and his share of the surplus is therefore

$$80 \times \frac{45}{68} \text{ or } 52\frac{64}{68};$$

E's sub-parcel contains 2 papers and his share of the surplus is therefore

$$2 \times \frac{45}{68} \text{ or } 1\frac{22}{68};$$

I's sub-parcel contains 25 papers and his share of the surplus is therefore

$$25 \times \frac{45}{68} \text{ or } 16\frac{37}{68};$$

K's sub-parcel contains 29 papers and his share of the surplus is therefore

$$29 \times \frac{45}{68} \text{ or } 19\frac{13}{68};$$

**Total** ..... **90**

The numbers of papers to be transferred as determined by the preceding process contain fractions, and since only whole papers can be transferred, so many of the largest of these fractions, taken in order of their magnitude as will make the total number of papers to be transferred equal to the surplus are reckoned as of the value of unity.

Thus as the whole numbers determined above amount to only 88, viz. (52+1+16+19), or two short of the surplus, and the two largest fractions  $\frac{64}{68}$  and  $\frac{37}{68}$  are reckoned as unity, the numbers of papers actually transferred are as follows:

To D .....	53 papers
To E .....	1 paper
To I .....	17 papers
To K .....	19 papers
<b>Total, being B's surplus</b> .....	<b>90 papers</b>

The particular papers to be transferred to D, E, I and K are those last filed in their respective sub-parcels, and, therefore at the top of the sub-parcels. The papers transferred are marked with the number of the count at which the transfer is made.

These papers are added in separate sub-parcels to the parcels of D, E, I and K. (Note: K had no parcel of original votes.)

The totals of the votes credited to these candidates then become:

D .....	$10 + 53 = 63$
E .....	$4 + 1 = 5$
I .....	$12 + 17 = 29$
K .....	$0 + 19 = 19$

The remainders of the papers in the sub-parcels (i.e., those papers not transferred), together with the papers on which no further available preferences were marked, are collected together and formed into one parcel, representing B's quota of votes (50).

The parcel is made up as follows:

The remainder of D's sub-parcel,	$80 \text{ less } 53 = 27$
The remainder of E's sub-parcel,	$2 \text{ less } 1 = 1$
The remainder of I's sub-parcel,	$25 \text{ less } 17 = 8$
The remainder of K's sub-parcel,	$29 \text{ less } 19 = 10$
Non-transferable papers .....	4
<b>Total, being B's quota</b> .....	<b>50</b>

The operations involved in this transfer are summarised in Table 1.

**TABLE 1: COUNT NO. 2  
TRANSFER OF B'S SURPLUS**

Surplus .....	90
Number of transferable papers .....	136
Proportion to be transferred =	
Surplus	$\frac{90}{136}$
Number of transferable papers	$\frac{45}{68}$

Names of candidates marked as the next available preference	Numbers of papers examined	Number of papers transferred			Number of papers retained for B's quota
		As calculated		Actual nos. transferred (largest fractions treated as whole nos.)	
		Whole numbers	Fractional parts		
A					
C					
D .....	80	52	$\frac{64}{68}$	53	27
E .....	2	1	$\frac{22}{68}$	1	1
G					
I .....	25	16	$\frac{37}{68}$	17	8
K .....	29	19	$\frac{13}{68}$	19	10
L					
<b>Total number of transferable papers</b>	<b>136</b>	<b>88</b>	$\frac{136}{68}$	<b>90</b>	<b>46</b>
<b>Number of non-transferable papers</b>	<b>4</b>	—	—	#	<b>4</b>
<b>TOTAL</b>	<b>140*</b> (Total)	—	—	<b>90*</b> (Surplus)	<b>50*</b> (For quota)

**Notes for Electoral Commissioners**

- \* It will be found convenient to begin filling in the transfer sheet by inserting the totals in the spaces marked with an asterisk. These totals are known before the count is commenced.
- # When transferring a surplus all the non-transferable papers are usually retained as part of the quota, but when the number of transferable papers is less than the surplus, the difference should be inserted in the space marked with a hash, and a corresponding number of non-transferable papers should be transferred to the non-transferable box. These papers should be taken from the top of the parcel of non-transferable papers and the number taken should be shown on the Result Sheet on the line provided for non-transferable papers.

The state of the poll on the conclusion of the count is as follows:

	<b>Votes</b>
B .....	50 (elected)
F .....	62 (elected)
H .....	50 (elected)
D .....	63 (elected)
I .....	29
C .....	25
L .....	24
K .....	19
G .....	14
A .....	7
E .....	5
<b>Total</b> .....	<b>348</b>

D now has 63 votes, a number which is more than the quota. He is accordingly elected.

### Third Count

There are now two surpluses that of F (12) and that of D (13). F's surplus, though the smaller, is the first dealt with as it arose on a prior count. F's surplus is distributed proportionately among the next available preferences on F's original 62 papers in exactly the same manner as in the case of B, with the result that 9 papers are transferred to L, 2 to C and 1 to A.

The papers forming F's quota are placed together in one parcel, which is marked with F's name. The papers forming the quota of H (who obtained an exact quota at the first count) are likewise placed together in one parcel, which is marked with H's name.

### Fourth Count

D's surplus (13) must now be distributed. For this purpose only the sub-parcel last transferred, containing 53 papers, is considered. These are examined and sorted into sub-parcels, according to available preferences, with the following result:

A next available preference is shown for I on .....	42 papers
A next available preference is shown for K on .....	10 papers
Total of Transferable papers .....	52 papers
No further preference is shown on .....	1 paper
<b>Total</b> .....	<b>53</b>

The number of papers to be transferred from each sub-parcel is ascertained by multiplying the number of papers in the sub-parcel by 13 (the surplus) and dividing the result by 52 (the total number of transferable papers); therefore:

$$\begin{aligned} \text{I's share of the surplus is} & \dots\dots\dots 42 \times \frac{13}{52} = 10\frac{1}{2} \\ \text{K's share of the surplus is} & \dots\dots\dots 10 \times \frac{13}{52} = 2\frac{1}{2} \end{aligned}$$

As the fractional parts above are equal, that which arises from the larger sub-parcel is deemed to be larger. I's share of D's surplus is, accordingly, 11 votes, and K's share is 2 votes.

The number of votes transferred and retained are in accordance with the simplified transfer sheet illustrated in Table 2.

**TABLE 2: COUNT NO. 4  
TRANSFER OF D'S SURPLUS**

Surplus .....		13
Number of transferable papers .....		52
Proportion to be transferred =		
<u>Surplus</u>	-	$\frac{13}{52}$
Number of transferable papers	-	$\frac{1}{4}$

Names of candidates marked as the next available preference	Nos. of papers examined	No. of papers transferred	No. of papers retained for D's quota
I	42	(10½) 11	31
K	10	(2½) 2	8
Total number of transferable papers	52	(13) 13	39
Number of non-transferable papers	1		1
Total	53 (Total)	13 (Surplus)	40 (For quota)

Sub-parcels of 11 papers and 2 papers marked with the number of the count at which the transfer took place are added to parcels of I and K respectively, and the remainders (31 and 8) together with the 1 non-transferable paper and the 10 papers received by D on the first count, making 50 papers altogether, are formed into one parcel, making D's quota of votes.

The state of the poll on the conclusion of the count is as follows:

	<b>Votes</b>
B .....	50(elected)
F .....	50(elected)
H .....	50(elected)
D .....	50(elected)
I .....	40
L .....	33
C .....	27
K .....	21
G .....	14
A .....	8
E .....	5
<b>Total</b> .....	<b>348</b>

### Fifth Count

There being now no surplus required to be dealt with, the Electoral Commissioner proceeds to transfer the votes of the candidate with the smallest total number of votes. The candidate lowest on the poll is E with 5 votes, but since the combined totals of E and A ( $5+8=13$ ) are less than 14, the total of G, the next highest candidate, the Electoral Commissioner transfers the papers of both E and A at the same count.

The papers in the parcels of E and A (total of 13) are examined, and it is found that:

C is marked next available preference on .....	1 paper
G is marked next available preference on .....	7 papers
I is marked next available preference on .....	4 papers
Non-transferable papers .....	1 paper
<b>Total</b> .....	<b>13 papers</b>

The operation is completed by the transfer of 1 paper to C, 7 papers to G, 4 papers to I, and the 1 non-transferable paper is set aside as a separate parcel.

The state of the poll is as follows:

	<b>Votes</b>
B .....	50 (elected)
F .....	50 (elected)
H .....	50 (elected)
D .....	50 (elected)
I .....	44
L .....	33
C .....	28
G .....	21
K .....	21
Non-transferable papers .....	1
<b>Total</b> .....	<b>348</b>

#### Sixth Count

No candidate is elected as the result of the fifth count and the next operation has to be determined upon. Candidates G and K have each the same number of votes (21) and are lowest on the poll. K's papers are distributed, as he obtained fewer votes than G in the first count. From the distribution of K's papers (21), 3 papers are transferred to C, 15 to I, 1 to L, and 2 are non-transferable. I thereby reaches a total of 59 votes, and is elected.

The state of the poll is now as follows:

	<b>Votes</b>
B .....	50 (elected)
F .....	50 (elected)
H .....	50 (elected)
D .....	50 (elected)
I .....	59 (elected)
L .....	34
C .....	31
G .....	21
Non-transferable papers .....	3
<b>Total</b> .....	<b>348</b>

### Seventh Count

I's surplus (9) must now be distributed.

For this purpose only the sub-parcel of papers last transferred to I (15 papers) is taken in account. These are examined and arranged in sub-parcels for the continuing candidates, with the following result:

C is next available preference on .....	4 papers
L is next available preference on .....	3 papers
Total transferable papers .....	7
Non-transferable papers .....	8
<b>Total</b> .....	<b>15</b>

In this case the total number of transferable papers (7) is less than the surplus (9), therefore the Electoral Commissioner transfers the whole sub-parcels of transferable papers to the continuing candidates indicated thereon as the next available preference. This accounts for 7 votes out of the surplus 9. There is a difference of 2 papers. The sub-parcel of non-transferable papers is therefore divided into two portions, once containing 2 papers (which form part of the surplus) the other containing 6 papers (which are required for I's quota). The portion of 2 papers is set aside as a separate parcel with the other parcels of non-transferable papers, and the portion of 6 papers is retained to make up I's quota (6+44=50).

The number of votes transferred and retained are in accordance with the transfer sheet shown in Table 2.

The state of the poll after the seventh count is as follows:

	<b>Votes</b>
B .....	50 (elected)
F .....	50( elected)
H .....	50 (elected)
D .....	50 (elected)
I .....	50 (elected)
L .....	37
C .....	35
G .....	21
Non-transferable paper .....	5
<b>Total</b> .....	<b>348</b>

The operations involved in this transfer are summarised in Table 3.

**TABLE 3: COUNT NO. 7  
TRANSFER OF I'S SURPLUS**

Surplus .....	9
Number of transferable papers .....	7
Proportion to be transferred -	
$\frac{\text{Surplus}}{\text{Number of transferable papers}} \quad - \quad \frac{9}{7} \quad (\text{taken as } 1)$	

Names of candidates marked as the next available preference	Numbers of papers examined	Number of papers transferred			Number of papers retained for I's quota
		As calculated		Actual nos. transferred (largest fractions treated as whole nos.)	
		Whole numbers	Fractional parts		
C	4	4	-	4	-
L	3	3	-	3	-
<b>Total number of transferable papers</b>	7	7	-	7	-
<b>Number of non-transferable papers</b>	8	-	-	# 2	6
<b>TOTAL</b>	<b>15*</b> (Total)	-	-	<b>9*</b> (Surplus)	<b>6*</b> (For quota)

**Notes for Electoral Commissioners**

- \* It will be found convenient to begin filling in the transfer sheet by inserting the totals in the spaces marked with an asterisk. These totals are known before the count is commenced.
- # When transferring a surplus all the non-transferable papers are usually retained as part of the quota, but when the number of transferable papers is less than the surplus, the difference should be inserted in the space marked with a hash, and a corresponding number of non-transferable papers should be transferred to the non-transferable box. These papers should be taken from the top of the parcel of non-transferable papers and the number taken should be shown on the Result Sheet on the line provided for non-transferable papers.

### Eighth Count

There being now no surplus, the votes of G, the candidate lowest on the poll, are distributed.

G's parcel of 21 papers is found to contain 7 papers on which C is next in preference, and 12 on which L is next in preference, and 2 papers which are non-transferable.

Therefore 7 papers are transferred to C, and 12 to L, and 2 are filed as a separate parcel with the other parcels of non-transferable papers.

The state of the poll is now as follows:

	<b>Votes</b>
B .....	50 (elected)
F .....	50 (elected)
H .....	50 (elected)
D .....	50 (elected)
I .....	50 (elected)
L .....	49
C .....	42
Non-transferable papers .....	7
<b>Total</b> .....	<b>348</b>

There being now no surplus, C, the candidate lowest on the poll, is excluded from the poll. However, as there remains only one vacancy to be filled and only one continuing candidate, namely L, L is elected without any further transfer of votes. The final result is that B, F, H, D, I and L are elected.

### NOTES

- |  |   |
|--|---|
| <p>1. } Constitution of Malta, see sections 54,<br/>2. } 57 and 58</p> <p>3. Ibid., see section 60</p> <p>4. Ibid., see section 61</p> <p>5. General Elections Act 1991, see sections 7 and 8</p> <p>6. Ibid., see section 9</p> <p>7. Ibid., see section 10</p> <p>8. Ibid., see section 11</p> <p>9. Ibid., see section 12</p> <p>10. Ibid., see section 13</p> <p>11. Ibid., see section 14</p> <p>12. Ibid., see section 16</p> <p>13. Ibid., see section 17</p> | <p>14. Ibid., see section 18</p> <p>15. Ibid., see section 19</p> <p>16. Ibid., see section 20</p> <p>17. Ibid., see section 21</p> <p>18. Ibid., see section 22</p> <p>19. Ibid., see section 23</p> <p>20. Ibid., see section 24</p> <p>21. Ibid., see section 25</p> <p>22. Ibid., see section 26</p> <p>23. Ibid., see section 27</p> <p>24. Ibid., see sections 28 and 29</p> <p>25. Ibid., see sections 30-35</p> <p>26. Ibid., see sections 36-43</p> <p>27. Ibid., see section 44</p> |
|--|---|

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28. Ibid., see section 45
  29. Ibid., see section 46
  30. Ibid., see section 47
  31. Ibid., see section 48
  32. Ibid., see section 49
  33. Ibid., see section 50
  34. Ibid., see section 51
  35. Ibid., see section 52
  36. Ibid., see section 53
  37. Ibid., see section 54
  38. Ibid., see section 55
  39. Ibid., see section 56
  40. Ibid., see section 57
  41. Ibid., see section 58
  42. Ibid., see section 59
  43. Ibid., see section 60
  44. Ibid., see sections 61 and 62
  45. Ibid., see section 63
  46. Ibid., see section 64
  47. Ibid., see section 65
  48. Ibid., see sections 66 and 67
  49. Ibid., see section 68
  50. Ibid., see section 69
  51. Ibid., see section 70
  52. Ibid., see section 71
  53. Ibid., see section 72
  54. Ibid., see section 73
  55. Ibid., see section 74
  56. Ibid., see section 75
  57. Ibid., see section 77
  58. Ibid., see sections 78 and 79
  59. Ibid., see section 81
  60. Ibid., see section 82
  61. Ibid., see sections 83 and 84
  62. Ibid., see section 85
  63. Ibid., see section 86
  64. Ibid., see section 87
  65. Ibid., see section 88
  66. Ibid., see section 89
  67. Ibid., see section 90
  68. Ibid., see section 91
  69. Ibid., see section 93
  70. Ibid., see section 94
  71. Ibid., see sections 95-104
  72. Ibid., see section 105
  73. Ibid., see sections 106 and 107
  74. Ibid., see section 108
  75. Ibid., see section 109
  76. Ibid., see section 110
  77. Ibid., see section 111
  78. Ibid., see section 112
  79. Ibid., see section 113
  80. Ibid., see section 114
  81. Ibid., see section 115
  82. Ibid., see section 116
  83. Ibid., see section 117
  84. Ibid., see section 120

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# THE UNITED KINGDOM

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## INTRODUCTION

The election laws of the United Kingdom reflect the fact that there is no written constitution and so there are no written constitutional provisions relating to elections or the organisation thereof.

There is an absence of any central body or authority which is responsible for the organisation and conduct of elections throughout the United Kingdom. Indeed the structure of the organisation of elections exists largely within the Local Government framework of the political units of England, Wales, Scotland and Northern Ireland, with the London Boroughs exhibiting a measure of distinguishing features.

The elections legislative scheme of the UK displays in part different rules for parliamentary, local and European parliamentary elections. The discussion of the legislative scheme herein is focused on the framework for the national parliamentary elections only.

### — *Section 1* —

#### ADMINISTRATION

##### **1.01 The Secretary of State**

The Secretary of State for Home Affairs is responsible for the regulatory machinery of the election laws and the Home Office assists with their implementation and application with the issuance of regular circulars and memoranda.<sup>1</sup>

##### **1.02 Returning Officers – England and Wales**

The sheriff of the county is the returning officer of a county constituency which is coterminous with or wholly contained in a county.

In the case of a borough constituency which is coterminous with or wholly contained in a district, the returning officer is the chairman of the district council.

In the case of any other constituency wholly outside Greater London, such sheriff or chairman of a district council may be designated returning officer in an order by the Secretary of State made by statutory instrument.

In the case of a constituency which is coterminous with or wholly contained in a London borough, the returning officer is the mayor of the borough.

In the case of a constituency wholly or partly in Greater London which is situated partly in one London borough and partly in a district or any other London borough, the returning officer is the mayor of such London borough or the chairman of such district council as may be designated in an order by the Secretary of State made by statutory instrument.

The City, the Inner Temple and the Middle Temple are treated as if together they formed a London borough.<sup>2</sup>

### **1.03 Returning Officers – Scotland**

In the case of a constituency wholly situated in one region or islands area, the officer appointed by the local authority to be returning officer (under section 41 of the Representation of the People Act (RPA) 1983).

In the case of a constituency situated in more than one region or islands area, such person mentioned above as the Secretary of State may by order direct.<sup>3</sup>

### **1.04 Returning Officers – Northern Ireland**

The Chief Electoral Officer for Northern Ireland is the returning officer for each constituency.<sup>4</sup>

### **1.05 General Duties of Returning Officers**

It is the duty of the returning officer to execute the writ for a parliamentary election. Where a person takes any office by virtue of which he becomes returning officer, he (and not the outgoing holder of the office) has the responsibility to complete the execution of any writ for a parliamentary election previously issued and not yet returned.<sup>5</sup>

### **1.06 Acting Returning Officers – England and Wales**

In England and Wales the duties of the returning officer are performed by an acting returning officer except those duties in connection with the receipt of the writ and any other duties which the returning officer has reserved for himself.

The acting returning officer is the registration officer appointed by the council in the case of a constituency for which the chairman of a district council or the mayor of a London borough is returning officer.

In the case of any other constituency, the acting returning officer is the registration officer who is designated in an order made by statutory instrument by the Secretary of State.<sup>6</sup>

### **1.07 Duties of Acting Returning Officers**

The returning officer must give written notice to the acting returning officer of any duties which he reserves to himself. In the discharge of the duties imposed on an acting returning officer, he has all the powers, obligations, rights and liabilities of the returning officer.<sup>7</sup>

### **1.08 Deputy Acting Returning Officers**

Deputy acting returning officers may be appointed by an acting returning officer to discharge any or all of the duties imposed on the latter.<sup>8</sup>

### **1.09 Other Staff of Returning Officer**

District councils and London borough councils may assign officers to assist the acting returning officers to carry out their parliamentary election functions in the constituency.<sup>9</sup>

In Scotland, the returning officer for a constituency wholly or partly situated in a region or islands area may request the council to assign staff to assist him in the discharge of his functions relating to a parliamentary election in the constituency.<sup>10</sup>

In Northern Ireland, the Chief Electoral Officer in his capacity as returning officer has power to appoint temporary deputy returning officers and assistants.

### **1.10 Appointment of Presiding Officers, Poll Clerks and Counting Clerks**

The returning officer is required to appoint and pay a presiding officer to manage each polling station. He also has to appoint such clerks as may be necessary for the election.<sup>11</sup>

Any person who has been employed by or on behalf of a candidate in the election must not be appointed as a presiding officer or clerk.

The functions of the presiding officer, except the arrest, exclusion or removal of any person from the polling station, may be performed by a clerk.

The legislative scheme does not provide specifically for the appointment of accounting clerks, but rule 26 of the Parliamentary Election Rules (PER) requires the returning officer to appoint clerks to assist him with the election. (Rule 45 of the PER which deals with the count does not refer to the role of clerks.)

### **1.11 Charges for Returning Officers' Services and Expenses**

A returning officer is entitled to recover his charges for services properly rendered and for expenses properly incurred for or in connection with a parliamentary election if the services or charges are of a class specified and reasonable.<sup>12</sup>

The schedule to Parliamentary Elections (Returning Officers' Charges) Order 1994 specifies the types of services or expenses for which a returning officer may recover his charges.<sup>13</sup>

On the request of a returning officer, the Secretary of State may, on such terms as he thinks fit, make an advance on account of his charges.<sup>14</sup>

— *Section 2* —

**CONSTITUENCY BOUNDARIES**

**2.01 Constituencies**

A “constituency” is an area which has a separate representation in the House of Commons, and each constituency returns one member to that House.

The Parliamentary Constituencies Act 1986 established four permanent Boundary Commissions, namely a Boundary Commission for England, a Boundary Commission for Scotland, a Boundary Commission for Wales and a Boundary Commission for Northern Ireland, for the purpose of the continuous review and distribution of seats at parliamentary elections.<sup>15</sup>

**2.02 Constitution of the Commissions**

The chairman of each of the Commissions is the Speaker of the House of Commons.

Each of the four Commissions consists of the chairman, a deputy chairman and two other members appointed by the Secretary of State.

The deputy chairman

- (a) in the case of the Commission for England is a judge of the High Court appointed by the Lord Chancellor;
- (b) in the case of the Commission for Scotland is a judge of the Court of Session appointed by the Lord President of the Court of Session;
- (c) in the case of the Commission for Wales is a judge of the High Court appointed by the Lord Chancellor; and
- (d) in the case of the Commission for Northern Ireland is a judge of the High Court in Northern Ireland appointed by the Lord Chief Justice of Northern Ireland.

A member of any Commission (other than the chairman) holds office for such term and on such conditions as may be determined before his appointment by the person appointing him.<sup>16</sup>

**2.03 Officers of Each Commission**

Each Commission may be assisted by assessors as follows:

- (a) in the case of the Commission for England, the Registrar General for England and Wales and the Director General of Ordnance Survey;
- (b) in the case of the Commission for Scotland, the Registrar General of Births, Deaths and Marriages for Scotland and the Director General of Ordnance Survey;
- (c) in the case of the Commission for Wales, the Registrar General for England and Wales and the Director General of Ordnance Survey; and

- (d) in the case of the Commission for Northern Ireland, the Registrar General of Births and Deaths in Northern Ireland, the Commissioner of Valuation for Northern Ireland and the Chief Electoral Officer for Northern Ireland.

The Secretary of State may, at the request of any Commission, appoint one or more assistant Commissioners to inquire into, and report to the Commission upon, such matters as the Commission thinks fit. The Secretary of State is required to appoint a Secretary to each of the Commissions, and may appoint such other officers of any Commission as he may determine with the approval of the Treasury.

#### **2.04 Work of the Commissions**

Each Boundary Commission is required to keep the representation of the House of Commons of the part of the United Kingdom with which it is concerned under review and submit reports to the Secretary of State on the whole of that part of the UK, either showing the constituencies into which that Commission recommends that it should be divided or stating that, in the Commission's opinion no alteration is required to be made in respect of that part of the United Kingdom.

The first report of each Boundary Commission to be made after the passing of the 1986 Act was due to be submitted to the Secretary of State not later than 31 December 1994.<sup>17</sup>

In other cases, reports are required to be submitted by a Boundary Commission not less than eight nor more than twelve years from the date of its last report.<sup>18</sup>

Any Boundary Commission may also from time to time submit to the Secretary of State reports with respect to the area comprised in any particular constituency or constituencies in the part of the United Kingdom with which it is concerned, showing the constituencies into which it recommends that that area should be divided.

The Secretary of State is required to lay the report of a Boundary Commission before Parliament. Where an alteration is recommended by the Boundary Commission concerned, the Secretary of State includes a draft of an Order in Council for giving effect, with or without modifications, to the recommendations contained in the report when laying it before Parliament.

#### **2.05 Orders in Council**

The draft of any Order in Council laid before Parliament by the Secretary of State for giving effect to the recommendations contained in the report of a Boundary Commission may make provision for any matters which appear to him to be incidental to, or consequential on, the recommendations.

Where any such draft gives effect to the recommendations with modifications, the Secretary of State must lay before Parliament a statement of the reasons for the modifications. If the draft is approved by resolution of each House of Parliament, the Secretary of State submits it to Her Majesty in Council.

## **2.06 Rules for the Redistribution of Seats**

The number of constituencies in Great Britain shall not be substantially greater or less than 613. The number of constituencies in Scotland shall not be less than 71 and in Wales not less than 35 and not more than 18 nor less than 16 in Northern Ireland. There has to be a constituency which includes the whole of the City of London the name of which shall refer to the City of London.

Having regard to the foregoing rules:

- (a) in England and Wales –
  - (i) no county or any part of a county is to be included in a constituency which includes the whole or part of any other county or the whole or part of a London borough;
  - (ii) no London borough or any part of a London borough is to be included in a constituency which includes the whole or part of any other London borough;
- (b) in Scotland, regard is to be had to the boundaries of local authority areas;
- (c) in Northern Ireland, no ward is to be included partly in one constituency and partly in another.

A Boundary Commission may depart from the strict application of certain of the rules if special geographical considerations, including in particular size, shape and accessibility of a constituency, appear to them to render a departure desirable.

A Boundary Commission, in applying the rules may take account of:

- (a) the electorate of any constituency and the electoral quota, that is to say, the number obtained by dividing the electorate for that part of the United Kingdom by the number of constituencies in it existing on the enumeration date;
- (b) the inconveniences attendant on alterations of constituencies; and
- (c) any local ties which would be broken by such alterations.<sup>19</sup>

## **2.07 Procedures**

Where a Boundary Commission intends to consider making a report it shall give notice in writing to the Secretary of State and a copy of the notice must be published –

- (a) in a case where it was given by the Boundary Commission for England or the Boundary Commission for Wales, in the London Gazette;
- (b) in the case where it was given by the Boundary Commission for Scotland, in the Edinburgh Gazette;
- (c) in the case where it was given by the Boundary Commission for Northern Ireland, in the Belfast Gazette.

Where a Boundary Commission has provisionally determined to make recommendations affecting any constituency, it is required to publish in at least one newspaper circulating in the constituency a notice stating the effect of the proposed recommendations is open to inspection at a specified place within the constituency. The notice should also state that

representations with respect to the proposed recommendations may be made to the Commission within one month after the publication of the notice. The Commission is required to take into account any representations made in accordance with such notice.

A Boundary Commission may, if it thinks fit, cause a local inquiry to be held in respect of any constituency or constituencies.

Where, as a result of the publication of the notice above-mentioned of a recommendation affecting any constituency, the Commission receives any representation objecting to the proposed recommendation from a local authority whose area is wholly or partly comprised in the constituency or constituencies affected by the recommendation or from a body of electors numbering one hundred or more, the Commission must not make the recommendation unless a local inquiry has been held in respect of the constituencies.<sup>20</sup>

### — Section 3 —

## REGISTRATION OF ELECTORS

### 3.01 The Franchise

A person entitled to vote as an elector at a parliamentary election in any constituency is one who –

- (a) is resident there on the qualifying date and
- (b) on that date and on the date of the poll –
  - (i) is not subject to any legal incapacity to vote; and
  - (ii) is either a Commonwealth citizen or a citizen of the Republic of Ireland; and
- (c) is of voting age on the date of the poll.

A person is not entitled to vote as an elector at a parliamentary election in any constituency in Northern Ireland unless he was resident in Northern Ireland during the whole of the period of three months ending on the qualifying date for the electoral register to be used at that election.

A person is not entitled to vote as an elector in any constituency unless registered there in the register of parliamentary electors to be used at the election.

A person is not entitled to vote as an elector –

- (a) unless he is 18 years or over;
- (b) more than once in the same constituency at any parliamentary election;
- (c) in more than one constituency at a general election.<sup>21</sup>

### 3.02 The Qualifying Date

In England, Wales and Scotland, 10 October in any year is the electoral registration qualifying date.

In Northern Ireland, 15 September in any year is the qualifying date for a parliamentary election, but this date may be varied by the Secretary of State.

### **3.03 Residence**

A person's residence on the qualifying date for an election is determined in the light of several factors including –

- (a) the purpose of his presence at or absence from the address in question;
- (b) residence is not interrupted by the performance of any duty arising from or incidental to any office, service or employment held or undertaken by a person, if he intends to resume actual residence within six months of giving it up.

A person who is detained at any place in legal custody is not treated as resident there.

A merchant seaman is entitled to be treated as resident –

- (a) at any place at which he would have been resident but for the nature of his occupation, or
- (b) at any hotel or club providing accommodation for merchant seamen at which he commonly stays in the course of his occupation.

A person who is detained at any place on grounds of mental disorder is not treated as resident there. A voluntary mental patient may make a declaration for transmission to the registration officer and when this is done in proper form, that person is qualified to be registered as an elector.

### **3.04 Right to be Registered**

All persons who may be entitled to vote at a parliamentary election for which any register is to be used is entitled to be registered in that register, except –

- (a) persons disqualified by statute from registration under provisions dealing with corrupt and illegal practices;
- (b) persons who are voluntary mental patients and who have not made a patient's declaration;
- (c) persons who on the qualifying date have a service qualification but who have not made an appropriate service declaration;
- (d) British citizens resident abroad who under the RPA 1985 and 1989 would be entitled to register but have not made an overseas electors declaration.

A person otherwise qualified is entitled to be registered in a register of parliamentary electors if he will attain voting age before the end of twelve months following the day by which the register is required to be published.<sup>22</sup>

### **3.05 Registration Officers**

Registration officers are appointed to register electors in the following manner:

In England and Wales –

- (a) the council of every district and London borough must appoint an officer of the council to be registration officer for any constituency or part of a constituency coterminous with or situated in the district or borough, and
- (b) the Common Council shall appoint an officer to be registration officer for the part of the constituency containing the City and the Inner Temple and the Middle Temple.

In Scotland, the council of every region and islands area appoints an officer of the council for their area, or an officer appointed by any combination of such councils, to be registration officer for any constituency or part of a constituency which is situated within that region or islands area.

In Northern Ireland, the Chief Electoral Officer for Northern Ireland is the registration officer for each constituency.<sup>23</sup>

### **3.06 Registers of Electors**

Every registration officer has a statutory duty to prepare and publish in each year a register of parliamentary electors for each constituency or part of a constituency in the area for which he acts.

The law requires that so far as practicable the registers of local government and parliamentary electors must be combined, but the names of persons registered only as parliamentary electors or local government electors should be marked to indicate that fact.

### **3.07 Preparation of Registers**

In preparing the register, the registration officer must cause a house to house or other sufficient inquiry to be undertaken to have persons registered.

The registration officer must prepare and publish lists of electors who appear to him to be entitled to be registered and their addresses.

The registration officer shall determine any claim for registration made by any person, and all objections to any person's registration made by another person appearing from the electors lists to be himself entitled to be registered.

### **3.08 Service Qualification and Declaration**

A person has a service qualification who

- (a) is a member of the forces,

- (b) is employed in the service of the Crown in a post outside the United Kingdom of any prescribed class or description,
- (c) is employed by the British Council in a post outside the United Kingdom,
- (d) is the wife or husband of a member of the forces,
- (e) is the wife or husband of a person mentioned in paragraph (b) or paragraph (c) above and is residing outside the United Kingdom to be with her husband or his wife, as the case may be.

A service declaration shall be made by

- (a) a person who has a service qualification, or
- (b) a person about to leave the United Kingdom in such circumstances as to acquire a service qualification.

A service declaration must state the date of the declaration, the fact that the declarant is entitled to make it, the address of the declarant, that the declarant is a Commonwealth citizen or a citizen of the Republic of Ireland, the age of the declarant and any prescribed particulars of identity, and service qualifications.

A member of the forces or wife or husband of such a member whose service declaration is in force on the qualifying date shall be treated for the purposes of registration as a resident on the qualifying date at the address specified in the declaration.<sup>24</sup>

### **3.09 Overseas Electors and Declaration**

A person is entitled to vote as an elector at a parliamentary election if –

- (a) he qualifies as an overseas elector in respect of a constituency on the qualifying date, and
- (b) on that date and on the date of the poll he is not subject to any legal incapacity to vote and is a British citizen.

A person qualifies as an overseas elector in respect of a constituency on the qualifying date if –

- (a) on that date he is not resident in the United Kingdom, and
- (b) he satisfies one of the following sets of conditions; namely –
  - (A) (i) that he was included in a register of parliamentary electors in respect of an address situated in the constituency concerned,
  - (ii) on the date by reference to which the register was prepared, he was resident or treated for the purposes of registration as resident at that address,
  - (iii) that the date fell within the period of twenty years ending immediately before the qualifying date, and
  - (iv) if he was included in any register of parliamentary electors prepared by reference to a date later than the date referred to in paragraph (ii) above, he was not resident or treated for the purposes of registration as resident at an address in the United Kingdom on that later date.

The second set of conditions is that –

- (B) (i) he was last resident in the United Kingdom within the period of twenty years ending immediately before the qualifying date,
- (ii) he was by reason of his age only incapable of being included in any register of parliamentary electors prepared by reference to the last date, within that period by reference to which such registers were prepared, on which he was so resident, and
- (iii) the address at which he was resident on the date referred to in paragraph (ii) above was at a place that is situated within the constituency concerned and a parent or guardian of his was included, in respect of that address, in a register of parliamentary electors prepared by reference to that date.<sup>25</sup>

In order for a person to be included in any register as an overseas elector, he has to make a declaration (overseas elector's declaration). An overseas elector's declaration must state –

- (a) the date of the declaration,
- (b) that the declarant is a British Citizen,
- (c) that the declarant will not be resident in the United Kingdom on the qualifying date,
- (d) when he ceased to be resident in the United Kingdom or, if he relies on registration as a service voter or, if later, ceased to be so resident.

The declarant must –

- (a) show which set of conditions (set out above) he satisfies,
- (b) in the case of the first set of conditions, specify the address in respect of which he was registered, and
- (c) in the case of the second set of conditions, specify
  - (i) the date of the declarant's birth,
  - (ii) the address in the United Kingdom at which he was registered, and
  - (iii) the name of the parent or guardian on whose registration in respect of that address he relies, and whether the person named was a parent or a guardian, and may not, in the case of either set of conditions, specify more than one such address.<sup>26</sup>

### 3.10 Electors List

The Representation of the People Regulations (RPR) 1986 provide practical guidelines on the preparation of electors lists.

The electors lists must be framed in separate parts for each parliamentary polling district, except that, where a parliamentary polling district is contained in more than one electoral area, there has to be a separate part of the electors lists for each part of the polling district which is contained in each electoral area.

The electors list for each separate part referred to above may be prepared in the form of a draft register.

Each separate part of the electors lists may be divided into three, namely:

List A, which is a copy of the register in force for that part,

List B, which sets out –

- (i) the names and addresses of those persons who appear to the registration officer to be entitled to be registered as parliamentary electors in respect of qualifying addresses for which they are not registered in the register in force, and
- (ii) the names of those persons who appear to the registration officer to be entitled to be so registered but whose addresses are not included in the electors lists,

List C, which sets out –

- (i) the names of those persons who no longer appear to the registration officer to be entitled to be registered as parliamentary electors in respect of qualifying addresses for which they are registered in the register in force, together with those addresses, and
- (ii) the names of those persons who no longer appear to the registration officer to be so entitled and whose addresses do not appear in the register in force.

The registration officer prepares a list of the names of each person who appears to him to be entitled to be registered in pursuance of an overseas elector's declaration ("the list of overseas electors"). The addresses specified in the declaration are to be included in the list.

The registration officer must, on or before 28 November, publish the electors lists by –

- (a) making a copy of them available for inspection at his office, and
- (b) as soon as practicable thereafter, making a copy of the part of the electors lists relating to each electoral area available for inspection at a specified place in or near that electoral area to which the public have access.

The registration officer shall –

- (a) on request, and
  - (b) if he is not the acting returning officer for the constituency in respect of which the request was made, after consultation with that officer,
- supply free of charge four copies of so much of the electors lists as related to the constituency, and four copies of so much of the list of overseas electors as so relates, as long as those lists are kept published, to any person who satisfies the registration officer that he requires them for use in connection with his own or some other person's prospective candidature at a parliamentary election for that constituency.

The electors lists must be altered to:

- (a) give effect to the registration officer's decision on any claim or objection;
- (b) correct any misnomer or inaccurate description;
- (c) give effect to alterations to parliamentary polling districts pursuant to a direction by the Secretary of State;

- (d) delete the name of any person who the registration officer is satisfied is dead; or
- (e) give effect to a correction that is not covered by the foregoing provisions.<sup>27</sup>

### **3.11 Claims and Objections**

The registration officer must at the time of publishing the electors lists publish a notice, in the prescribed form, specifying the manner in which and the time within which claims and objections in respect of the electors lists may be made. A claim to be added to the electors lists may be made by or on behalf of the person who claims to be entitled to be included in the lists (“the claimant”). A claim must state the full name of the claimant and, where a person makes the claim on behalf of the claimant, that person’s name and address. It must also state the address in respect of which the claimant claims to be registered and whether he was resident there on the qualifying date; whether the claimant will be 18 years of age or more on the day when the next register comes into force and, if not, the day on which he will attain that age; if the claimant was not resident at the address in respect of which he claims to be registered on the qualifying date, whether he had made a service declaration, patient’s declaration or overseas elector’s declaration by that date, and if he was a merchant seaman on the qualifying date, that fact.

Claims must be made available for inspection at the office of the registration officer until the completion of the hearing of claims and objections.

An objection to an entry in the electors lists or, as the case may be, to a claim is made in writing to the registration officer and must be signed and dated by the objector and must state the following –

- (a) the name of the person against whom the objection is made,
- (b) the address of that person as shown in the electors lists, or as the case may, given in the claim,
- (c) the grounds of the objection, and
- (d) the name of the objector and his address as shown in the electors lists.

Objections must be made available for inspection at the office of the registration officer until the completion of the hearing of claims and objections. A claim or an objection in respect of the electors lists must be delivered to the registration officer by 16 December.<sup>28</sup>

### **3.12 Treatment of Claims and Objections**

The registration officer keeps separate lists of claims and objections and on receipt he enters a claim or objection in the appropriate list together with the name and qualifying address of the claimant or the person in respect of whom the objection is made. If the registration officer is of the opinion –

- (a) that the particulars given in a claim or objection are insufficient, he may ask for further information and take no further action until such information is supplied;
- (b) that a claim may be allowed without a hearing, he may allow the claim, provided that no objection is made to it, and inform the claimant accordingly;

- (c) that the objector is not entitled to object, he may disallow the objection and inform the objector accordingly;
- (d) that a claim or objection cannot be allowed because –
  - (i) the matter had been concluded by the decision of a court, or
  - (ii) the particulars given in a claim or objection do not entitle the claimant or objector to succeed,he may send to the person making the claim or objection a notice stating his opinion, the grounds for it and that he intends to disallow the claim or objection unless that person gives the registration officer notice within three days from the date of registration officer's notice that he requires the claim or objection to be heard, and, if he receives no such notice within that time, he may disallow the claim or objection.

The registration officer must, if the matter is not disposed of, send a notice, in the case of a claim, to the person making the claim and, in the case of an objection, to the objector and the person objected to, stating the time and place at which he proposes to hear the claim or objection. The notice sent to a person objected to shall state the name and address of the objector and the grounds of the objection.

On the hearing of a claim, the person making the claim and any person who has duly made an objection to it and on the hearing of an objection, the objector and the person objected to and, on the hearing of either, any other person who appears to the registration officer to be interested is entitled to appear and be heard.

An appeal from a decision of the registration officer to the county court may be made within 14 days of the decision. A person desiring to appeal must give notice of appeal to the registration officer and to the opposite party specifying the ground of appeal.

An appeal lies from a decision of the county court to the Court of Appeal.<sup>29</sup>

### **3.13 The Register**

The register is framed in separate parts for each parliamentary polling district, except that, where a parliamentary polling district is contained in more than one electoral area, a separate part of the register is provided for each part of the polling district which is contained in each electoral area.

There must be a different letter or letters in the register for each parliamentary polling district and such letter or letters form part of an elector's number in the register.

The names and addresses in each separate part of the register are arranged in street order unless the council which appointed the registration officer determines for any part of the register the strict order is not reasonably practicable in which case the names and addresses are arranged in alphabetical order or partly in street order and partly in alphabetical order as the council may determine.

The names of –

- (a) each service voter and voluntary mental patient and  
 (b) each overseas elector  
 are grouped together in alphabetical order at the end of that part of the register which relates to –
- (i) the address given by that service voter or patient in his declaration, or
  - (ii) the address specified by an overseas elector in his declaration.

The names in the register are to be numbered so far as is reasonably practical consecutively, and there must be a separate series of numbers for each parliamentary polling district.

The registration officer shall publish the register by making a copy of it available for inspection at his office and by making copies of the part of the register relating to each electoral area available for inspection as soon as practicable thereafter at the place at which copies of the part of the electors lists relating to that electoral area have been made available for inspection.<sup>30</sup>

### 3.14 Supply of Registers

The registration officer shall, on request, supply free of charge to the Member of Parliament for a constituency one copy of so much of the register as relates to that constituency and one copy of so much of the list of overseas electors as so relates. He shall also supply free of charge –

- (i) four copies of so much of the register as relates to the constituency to any person who satisfies the registration officer that he requires them for use in connection with his own or some other person's prospective candidature at a parliamentary election for the constituency; and
- (ii) two copies of so much of the register as relates to the constituency to each candidate at a parliamentary election for that constituency or his election agent. A copy of the register and of the list of overseas electors shall, on publication, be supplied free of charge by the registration officer to the Secretary of State and the British Library. The registration officer shall also, on request, supply free of charge one copy of so much of the register as relates to an electoral act to every councillor for that area and each candidate at a local government election. The registration officer shall on the request of a party or community council supply free of charge to that council one copy of so much of each register as relates to the areas of a party or community.

Any remaining copies of the register may be so sold to any person upon payment of the prescribed fee. Copies of the register may also be ordered before 1 November each year.

The registration officer shall –

- (a) on payment of a fee as prescribed, and
  - (b) if he is not acting returning officer for the constituency in respect of which the application was made, after consultation with that officer,
- supply to a person, who is entitled to free copies of the whole or part of the register, so

much of the data as relates to the part or parts of the register to which such a person is entitled.<sup>31</sup>

### **3.15 Published Register – Alterations, Claims, Objections and Corrections**

Where any alteration is made to a parliamentary polling district, the registration officer concerned may be directed to adapt the register in force to the alteration.

Claims and objections may be made in respect of the register under section 11(2) of the RPA 1983. The procedure to be followed is similar to that outlined above in connection with claims and objections in respect of the electors lists. The hearing of claims and objections also follows a procedure similar to that followed in hearing claims and objections regarding electors lists. The appeals procedures are likewise similar.

Where the registration officer makes an alteration in a register pursuant to a decision in respect of a claim or objection, he shall –

- (a) send to the person affected by the alteration and, if he gives effect to a decision on an objection, to the objector a notice stating the alteration,
- (b) make a copy of the alteration available for inspection at his office,
- (c) make copies of the alteration available for inspection at the place at which copies of the part of the register to which the alteration relates have been made available for inspection, and
- (d) supply free of charge a copy of the alteration to each person to whom he has supplied a copy of the part of the register to which the alteration relates.<sup>32</sup>

### **3.16 Absent Voters**

A person may apply to vote by post or by proxy at a parliamentary election. The registration officer shall grant the application if –

- (a) he is satisfied that the applicant is eligible for an absent vote at elections to which the application relates for an indefinite period,
- (b) he is satisfied that the applicant is or will be registered in the register for such elections, and
- (c) the application meets the prescribed requirements.

A person is eligible for an absent vote at a parliamentary election for an indefinite period –

- (a) if he is or will be registered as a service voter,
- (aa) if he is no longer resident at his qualifying address or at any other address in the same area,
- (b) if he cannot reasonably be expected –
  - (i) to go in person to the polling station allotted or likely to be allotted to him, or
  - (ii) to vote unaided there,by reason of blindness or other physical incapacity,

- (c) if he cannot reasonably be expected to go in person to that polling station by reason of the general nature of his occupation, service or employment or that of his spouse, or
- (d) if he cannot go in person from his qualifying address to that polling station without making a journey by air or sea.

The registration officer is required to keep a record of those whose applications have been granted showing –

- (a) that their applications were granted in respect of a parliamentary election,
- (b) in the case of those who may vote by post, the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent, and
- (c) in the case of those who may vote by proxy, the names and addresses of those appointed as their proxies.

A person may apply to the registration officer to vote by post or to vote by proxy at a particular parliamentary election and the application will be granted if –

- (a) he is satisfied that the applicant's circumstances on the date of the poll will be or are likely to be such that he cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to him,
- (b) he is satisfied that the applicant is or will be registered in the register of parliamentary electors, and
- (c) the application meets the prescribed requirements.<sup>33</sup>

## — *Section 4* —

### WRIT OF ELECTION

#### 4.01 The Writ

The Writ of Election is a document which, in the case of a general election, is directed to the returning officer of each constituency, and, in the case of a by-election, to the returning officer of the constituency concerned. It is issued by the Lord Chancellor from the office of the Clerk of the Crown in Chancery and directs the returning officer to cause election to be made for the constituency concerned and cause the name of the person elected to be certified without delay.<sup>34</sup>

Her Majesty may by Order in Council –

- (a) specify the manner in which writs are to be conveyed, whether by post, by an officer appointed by the Lord Chancellor, or as regards Northern Ireland, the Secretary of State, or otherwise, and make different provision for different classes of writs, and
- (b) provide for the giving of receipts for writs by persons to whom they are delivered or who may receive them in the course of their conveyance.

An Order in Council may –

- (a) require a returning officer to provide an address to which writs are to be conveyed and any change of that address, and
- (b) provide for recording those addresses, and
- (c) provide that the delivery of a writ to a person found in and for the time being in charge of a place so recorded as the office of a returning officer shall be as good as delivery to that returning officer.

A draft of an Order in Council dealing with the foregoing matters is required to be laid before Parliament.<sup>35</sup>

#### **4.02 Conveyance of Writ in England and Wales**

For a constituency in England and Wales the writ is conveyed to the acting returning officer if the returning officer –

- (a) has so requested by notice in the form prescribed by an Order in Council and received by the Clerk of the Crown one month or more before the issue of the writ, and
- (b) has not revoked by a further notice in the form so prescribed and received within such time as mentioned above.

The notice applies to the constituencies which are within the jurisdiction of the returning officer giving it.

#### **4.03 Notice of Election**

The returning officer is required to publish a notice of election, stating –

- (a) the place and times at which nomination papers are to be delivered, and
  - (b) the date of the poll in the event of a contest,
- and the notice shall state that forms of nomination papers may be obtained at that place and those times.

The notice must state the date by which –

- (a) applications to vote by post or by proxy, and
  - (b) other applications and notice about postal or proxy voting,
- must reach the registration officer in order that they may be effective for the election.<sup>36</sup>

### **— Section 5 —**

## **CONDUCT OF ELECTION**

#### **5.01 Nomination of Candidates**

A candidate is nominated by his nomination paper in the prescribed form being delivered by himself, his proposer or seconder or agent to the returning officer.

The nomination paper must state the candidate's –

- (a) full name,
- (b) home address in full, and
- (c) if desired, description (of no more than six words in length) and the surname is to be placed first in the list of names.

The nomination paper is required to be subscribed by two electors as proposer and seconder, and by eight other electors as assenting to the nomination. The nomination paper must state the electoral number of each person subscribing it.

The general rule is that a person cannot be validly nominated unless he consents in writing, but if a person satisfies the returning officer that he is absent from the United Kingdom, the returning officer may accept a telegram (or similar means of communication), consenting to his nomination and purporting to have been sent by him.

A candidate's consent shall –

- (a) state the day, month, and year of his birth; and
- (b) state that he is not disqualified for membership of the House of Commons.

A person cannot be validly nominated unless the prescribed sum (£500 at the time of writing) is deposited by him or on his behalf with the returning officer at the place and during the time for delivery of nomination papers.

The returning officer is required to fix the place at which nomination papers are to be delivered to him, and to attend there during the time for their delivery.

Except in Scotland, the place for nomination shall be in –

- (a) the constituency; or
- (b) the registration area which includes the constituency; or
- (c) unless the constituency is a borough constituency, in a district adjoining the constituency or registration area.

In Scotland the place shall be –

- (a) the constituency; or
- (b) the district or (if more than one) any of the districts in which the constituency is situated; or
- (c) any district adjoining the district or districts in which the constituency is situated.

A person standing nominated as a candidate, his election agent, proposer or seconder are entitled to be present at the proceedings during the time for delivery of nomination papers or for making objections to them. Where the candidate acts as his own agent he may name one other person to attend in place of his election agent. A candidate's wife or husband is entitled to be present at the delivery of the candidate's nomination.

Where a nomination paper and the candidate's consent to it are delivered and a deposit is made as required, the candidate is deemed to stand nominated unless and until –

- (a) the returning officer decides that the nomination paper is invalid; or
- (b) proof is given to the returning officer that the candidate has died; or
- (c) the candidate withdraws.

The returning officer is entitled to hold a nomination paper invalid only on one of the following grounds –

- (a) that the particulars of the candidate or the persons subscribing the paper are not as required by law;
- (b) that the paper is not subscribed as so required; and
- (c) that the candidate is disqualified by the RPA 1981.

The returning officer shall give his decision on any objection to a nomination paper as soon as practicable after it is made. Where he decides that a nomination paper is invalid, the returning officer must endorse and sign on the paper the fact and the reasons for his decision.

The returning officer's decision that a nomination paper is valid is final and cannot be questioned in proceedings; but in other cases the validity of a nomination may be questioned on an election petition.

A candidate may withdraw his candidature by notice of withdrawal –

- (a) signed by him and attested by one witness, and
- (b) delivered to the returning officer at the place for delivery of nomination papers.

The returning officer is required to prepare and publish a statement showing the persons who have been nominated. The statement must show the persons standing nominated arranged alphabetically in order of their surnames and, if there are two or more of them with the same surname of their other names.

Where the proceedings for or in connection with nomination are on any day interrupted or obstructed by riot or open violence –

- (a) the proceedings shall be abandoned for that day, and
- (b) if that day is the last day for the delivery of nomination papers, the proceedings shall be continued on the next day as if that were the last day of such delivery.

If the statement of persons nominated shows more than one person standing nominated, a poll shall be taken. If the statement of persons nominated shows only one person standing nominated, that person is declared to be elected.<sup>37</sup>

## **5.02 Preparation for the Poll**

The votes at the poll are given by ballot, the result is ascertained by counting the votes given to each candidate and the candidate to whom the majority of votes has been given is declared to be elected.

The ballot of every voter consists of a ballot paper which carries the names of the persons shown in the statement of persons nominated. Every ballot paper shall be in prescribed form and –

- (a) shall contain the names and other particulars of the candidates as shown in the statement of persons nominated,
- (b) shall be capable of being folded up,
- (c) shall have a number printed on the back, and
- (d) shall have attached a counterfoil with the same number printed on it.

The ballot paper must be marked with an official mark which shall perforate the ballot paper. The official mark is required to be kept secret, and an interval of not less than seven years must intervene between the use of the same official mark at elections for the same constituency. The official mark used for ballot papers issued for the purpose of voting by post must not be used at the same election for ballot papers issued for the purpose of voting in person.

The returning officer may use, free of charge, for the purpose of taking the poll –

- (a) a room in a school, or
- (b) a room the expense of maintaining which is payable out of any rate.

The returning officer must make good any damage done to, and defray any expense incurred by the persons having control over, such room which is used for the purpose of taking the poll.

The returning officer is required to include a notice of the poll in the statement of persons nominated, stating the day on which and hours during which the poll will be taken.

The returning officer shall also give public notice of –

- (a) the situation of each polling station,
- (b) the description of voters entitled to vote there.

The returning officer shall send to those entitled to vote by post, at the addresses shown in the absent voters list, a ballot paper and a declaration of identity in the prescribed form together with an envelope for their return.

The returning officer shall provide a sufficient number of polling stations in such manner as he thinks convenient. One or more polling stations may be provided in the same room. The polling station allotted to electors from any polling district must be in the polling place for

that district. In a constituency in Scotland comprising the whole or any part of more districts than one, there shall be at least one polling station in each of those districts. The returning officer is to ensure that there are such number of compartments at each polling station as may be necessary for the voters to mark their votes screened from observation.

The returning officer must appoint and pay a presiding officer to attend at each polling station and such clerks as may be necessary for the election.

The returning officer is required to send in good time to electors and their proxies an official poll card. Such a card need not be sent to an elector who is in the absent voters list or a proxy voter who is entitled to vote by post or to a person who is registered in pursuance of an overseas elector's declaration. An official poll card must be in the prescribed form and set out –

- (a) the name of the constituency;
- (b) the elector's name, qualifying address and number on the register;
- (c) the date and hours of the poll and the situation of the elector's polling station.

The returning officer is required to provide each presiding officer with such number of ballot boxes and ballot papers as may be necessary. The ballot box must be so constructed that the ballot papers can be put in, but cannot be withdrawn from it, without the box being unlocked.

The returning officer must also provide each polling station with –

- (a) materials to enable voters to mark the ballot papers;
- (b) instruments for stamping on them the official mark;
- (c) copies of the register of electors or such part of it as contains the names of the electors allotted to the station; and
- (d) the parts of any special lists prepared for the election corresponding to the register of electors or part of it.

In every compartment of every polling station there must be exhibited the notice "Vote for one candidate only. Put no other mark on the ballot paper, or your vote may not be counted".<sup>38</sup>

### **5.03 Candidates' Polling and Counting Agents**

Each candidate is entitled, before the commencement of the poll, to appoint –

- (a) polling agents to attend at polling stations for the purpose of detecting personation; and
- (b) counting agents to attend at the counting of the votes.

The candidate is required to give notice of the appointments in writing to the returning officer not later than the second day before polling day. If an agent dies, or becomes incapable of acting, the candidate may appoint another in his place and notify the returning

officer accordingly. A candidate may himself do any act or thing which any polling or counting agent of his is authorised to do, or he may assist his agent in doing any such act or thing.

A candidate's election agent may do or assist in doing anything which a polling or counting agent of his is authorised to do.<sup>39</sup>

#### **5.04 The Poll**

The presiding officer is required to regulate the number of voters to be admitted to the polling station at the same time and he shall exclude other persons except –

- (a) the candidates and their agents;
- (b) the polling agents appointed to attend at the polling station;
- (c) the clerks appointed to attend at the polling station;
- (d) the constables on duty; and
- (e) the companions of blind voters.

Not more than one polling agent is to be admitted at the same time to a polling station on behalf of the same candidate.

It is the presiding officer's duty to keep order at his polling station. Where a person misconducts himself in a polling station, or fails to obey the presiding officer's order, he may be removed from the polling station –

- (a) by a constable in or near that station, or
- (b) by any other person authorised in writing by the returning officer to remove him.

The powers must not be exercised in such a manner as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Before the commencement of the poll, the presiding officer must show the ballot box empty to such persons as are present in the polling station, so that they may see that it is empty. He must then lock it up and place his seal on it in such a manner as to prevent its being opened without breaking the seal and place it in his view for receipt of ballot papers, and keep it so locked and sealed.

The presiding officer, may, and if required by a candidate or his election or polling agent shall, put to any person applying for a ballot paper at the time of his application, the following questions, or either of them –

- (a) in the case of a person applying as an elector –
  - (i) “Are you the person registered in the register of parliamentary electors for this election as follows?” (He is required to read the whole entry from the register.)
  - (ii) “Have you already voted, here or elsewhere, at this general election, otherwise than as proxy for some other person?”
- (b) in the case of a person applying as proxy –

- (i) “Are you the person whose name appears as AB in the list of proxies for this election as entitled to vote as proxy on behalf of CD?”
- (ii) “Have you already voted here or elsewhere at this general election as proxy on behalf of CD?”

In the case of a person applying as proxy, the presiding officer, if required, shall put additional questions to the applicant asking him if he is the husband (wife), parent, grandparent, brother (sister), child or grandchild of the person purported to appoint them.<sup>40</sup>

### **5.05 Voting Procedure**

If at the time a person applies for a ballot paper for the purpose of voting in person, a candidate or his election or polling agent –

- (a) declares to the presiding officer that he has reasonable cause to believe that the applicant has committed an offence of personation, and
- (b) undertakes to substantiate the charge in a court of law, the presiding officer may order a constable to arrest the applicant.

The person against whom the declaration is made must not by it alone be prevented from voting.

A ballot paper must be delivered to a voter who applies for one, and immediately before delivery –

- (a) the ballot paper shall be stamped with the official mark;
- (b) the number and name of the elector as stated in the copy of the register of electors shall be called out;
- (c) the number of the elector shall be marked on the counterfoil;
- (d) a mark shall be placed in the register of electors against the number of the elector to denote that a ballot paper has been received but without showing the particular ballot paper has been received;
- (e) in the case of a person applying for a ballot paper as a proxy, a mark shall also be placed against his name in the list of proxies.

The voter, on receiving the ballot paper, is required forthwith to proceed into one of the compartments in the polling station and mark secretly his paper and fold it up so as to conceal his vote. He will then show to the presiding officer the back of the paper, so as to disclose the official mark, and put the ballot paper so folded up into the ballot box in the presiding officer’s presence. The voter must leave the polling station without delay as soon as he has put his ballot paper into the ballot box.<sup>41</sup>

### **5.06 Voting by Incapacitated Persons**

The presiding officer, on the application of a voter –

- (a) who is incapacitated by blindness or other physical cause from voting in the general manner; or

(b) who declares orally that he is unable to read, is required, in the presence of the polling agents, to cause the voter's vote to be marked on a ballot paper in a manner directed by the voter, and the ballot paper to be placed in the ballot box. The presiding officer must keep a list ("the list of votes marked by the presiding officer") of every voter whose vote is treated in this manner.

A blind person may make an application to the presiding officer to be allowed to vote with the assistance of another person by whom he is accompanied and the presiding officer shall grant the application if he is satisfied that the applicant is so incapacitated and that either his companion is entitled to vote at the election or is the father, mother, brother, sister, husband, wife, son or daughter of the blind voter and has attained the age of 18 years. A list is kept of the blind persons who vote with the assistance of a companion.<sup>42</sup>

### **5.07 Tendered and Spoilt Ballot Papers**

Where a person, representing himself to be –

- (a) a particular elector named on the register and not named in the absent voters list, or
- (b) a particular person named in the list of proxies as proxy for an elector and not entitled to vote by post as proxy,

applies for a ballot paper after another person has voted in person either as the elector or his proxy, the applicant shall, on satisfactorily answering the question permitted by law to be asked at the poll, be entitled to mark a ballot paper ("a tendered ballot paper") in the same manner as any other voter.

A tendered ballot paper is –

- (a) of a colour differing from the other ballot paper;
- (b) instead of being put into the ballot box, to be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of electors, and set aside in a separate packet.

The name of the voter and his number on the register of electors must be entered on a list ("tendered votes list").

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, if the presiding officer is satisfied that was done inadvertently, obtain another ballot paper in place of the ballot paper ("spoilt ballot paper") which is returned to the presiding officer, and the spoilt ballot paper must be cancelled immediately.<sup>43</sup>

### **5.08 Adjournment of Poll in Case of Riot**

Where the proceedings at any polling station are interrupted by riot or open violence, the presiding officer shall adjourn the proceedings till the following day and shall give notice of the postponement to the returning officer.

### **5.09 Close of the Poll and the Count**

At the close of the poll, the presiding officer shall, in the presence of the polling agents, make up into separate packets, sealed with his own seal and the seals of such polling agents as desire to affix their seals –

- (a) each ballot box in use at the station, sealed so as to prevent the introduction of additional ballot papers and unopened, but with the key attached,
- (b) the unused and spoilt ballot papers placed together,
- (c) the tendered ballot papers,
- (d) the marked copies of the register of electors and the list of proxies,
- (e) the counterfoils of the used ballot papers and the certificates as to employment on duty on the day of the poll,
- (f) the tendered votes list, the list of blind voters assisted by companions, the list of votes marked by the presiding officer, a statement of the number of voters whose votes are so marked by the presiding officer under the heads “physical incapacity” and “unable to read”, and the declarations made by the companions of blind voters, and deliver the packets to the returning officer.

The marked copies of the register of electors and the list of proxies shall be in one packet but not in the same packet as the counterfoils of the used ballot papers and the certificates as to employment on duty on the day of the poll.

The packets must be accompanied by a statement (“the ballot paper account”) made by the presiding officer showing the number of ballot papers given to him, and accounting for them under the heads of ballot papers issued and not otherwise accounted for, unused, spoilt and tendered ballot papers.<sup>44</sup>

### **5.10 Counting of Votes**

The returning officer is required to make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll, and must give notice in writing to the counting agents of the time and place at which he will begin to count the votes.

No person other than –

- (a) the returning officer and his clerks,
  - (b) the candidates and their wives or husbands,
  - (c) the election agents, and
  - (d) the counting agents,
- may be present at the counting of votes, unless permitted by the returning officer to attend.

The returning officer shall –

- (a) in the presence of the counting agents open each ballot box and count and record the number of ballot papers in it;

- 
- (b) in the presence of the election agents verify each ballot paper account; and
  - (c) count such of the postal ballot papers as have been duly returned and record the number counted.

The returning officer must not count the votes given in any ballot papers until –

- (a) in the case of postal ballot papers, they have been mixed with the ballot papers from at least one ballot box, and
- (b) in the case of ballot papers from a ballot box, they have been mixed with the ballot papers from at least one other ballot box.

The returning officer must not count any tendered ballot papers and in counting the votes, the returning officer must keep the ballot papers with their faces upwards and take all proper precautions to prevent any person from seeing the numbers printed on the back of the papers.

The returning officer must verify each ballot paper account by comparing it with the number of ballot papers recorded by him, and the unused and spoilt ballot papers in his possession and the tendered votes list and draw up a statement as to the result of the verification, which any election agent may copy.

The returning officer must as far as practicable proceed continuously with counting the votes, allowing only time for refreshment, but with the agreement of the agents, he may break off between 7pm and 9am the following morning.

A candidate or his election agent may, if present when the counting or any re-count of the votes is completed, require the returning officer to have the votes re-counted or again re-counted but the returning officer may refuse to do so if in his opinion the request is unreasonable.

Any ballot paper –

- (a) which does not bear the official mark, or
  - (b) on which votes are given for more than one candidate, or
  - (c) on which anything is written or marked by which the voter can be identified except the printed number on the back, or
  - (d) which is unmarked or void for uncertainty,
- shall be void and not counted.

The returning officer is required to endorse the word “rejected” on any ballot paper which cannot be counted for the aforementioned reasons.

The returning officer shall draw up a statement showing the number of ballot papers rejected under each of the headings above-mentioned.

The decision of the returning officer on any question arising in respect of a ballot paper is final, but may be reviewed on an election petition.

Where, after the counting of the votes (including any recount) is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer must decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.<sup>45</sup>

### **5.11 Declaration of Result and Return to the Writ**

In a contested election, when the result has been ascertained, the returning officer shall forthwith –

- (a) declare to be elected the candidate with the majority of votes;
- (b) return his name to the Clerk of the Crown; and
- (c) give public notice of his name and of the total number of votes given for each candidate together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.

In an uncontested election, the statement of persons nominated, in addition to showing the person standing nominated, shall also declare that person elected, and the returning officer shall forthwith return his name to the Clerk of the Crown.

The returning officer shall return the name of the member elected by endorsing in the writ a certificate in the prescribed form. The Clerk of the Crown enters the name of the member returned in book kept by him for that purpose.<sup>46</sup>

### **5.12 Forfeiture of Candidate's Deposit**

When the count is completed, if any candidates fail to have polled more than one-twentieth of the total number of votes polled by all the candidates, his deposit is forfeited. In all other cases the candidate's deposit is returned.<sup>47</sup>

### **5.13 Disposal of Documents**

On the completion of the counting at a contested election the returning officer must seal up in separate packets the counted and rejected ballot papers.

The returning officer shall then forward to the Clerk of the Crown the following documents –

- (a) the packets of ballot papers in his possession,
- (b) the ballot paper accounts and the statements of rejected ballot papers and the result of the verification of the ballot paper accounts,
- (c) the tendered votes lists, the lists of blind voters assisted by companions, the lists of votes marked by the presiding officer and related statements, and the declarations made by the companions of blind voters,
- (d) the packets of counterfoils and certificates as to employment on duty on the day of the poll,
- (e) the packets containing marked copies of registers and of lists of proxies, endorsing

on each packet a description of its contents, the date of the election to which they relate and the name of the constituency for which the election was held.

The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him by a returning officer, and then unless otherwise directed by order of the House of Commons or the High Court, shall cause them to be destroyed.<sup>48</sup>

## — Section 6 —

### PARLIAMENTARY ELECTION PETITION

#### 6.01 Challenging a Parliamentary Election

A petition complaining of no return is deemed to be a parliamentary election petition and the High Court may make such order on the petition as they think expedient for compelling a return to be made, or may allow the petition to be heard by an election court.

A parliamentary election petition may be presented by one or more of the following persons –

- (a) a person who voted as an elector at the election or who had a right to do so; or
- (b) a person claiming to have had a right to be elected or returned at the election; or
- (c) a person alleging himself to have been a candidate at the election.

The member whose election or return is complained of is referred to as the respondent, but if the petition complains of the conduct of the returning officer, the returning officer is deemed to be a respondent.

The petition shall be in the prescribed form and be signed by the petitioner or petitioners and shall be presented to the High Court, or to the Court of Session, or to the High Court of Northern Ireland, depending on whether the constituency to which it relates is in England and Wales, or Scotland or Northern Ireland.

A parliamentary election petition shall be presented within 21 days after the return to the Clerk of the Crown, or to the Clerk of the Crown for Northern Ireland, as the case may be, of the member to whose election the petition relates.

If the petition questions the election or return upon an allegation of corrupt practices and specifically alleges a payment of money or other reward to have been made by the member or on his account or with his privity since the time of that return in pursuance or in furtherance of the alleged corrupt practice, it may be presented within 28 days after the date of the payment.

A petition questioning the election or return upon an allegation of an illegal practice may, so far as respects that illegal practice, be presented –

- (a) within 21 days after the day specified in sub-section (4) below; or

- (b) if specifically alleging a payment of money or some other act to have been made or done since the day so specified by the member to whose election the petition relates or an agent of his, or with the privity of that member or his election agent, in pursuance or in furtherance of the alleged illegal practice, within 28 days after the date of the payment or other act.

Sub-section (4) stated that the day referred to above is the tenth day after the end of the time allowed for delivering to the returning officer returns as to election expenses at the election or, if later –

- (a) that on which the returning officer receives the return and declarations as to the election expenses by that member and his election agent; or
- (b) where the return and declarations are received on different days, the last of those days; or
- (c) where there is an authorised excuse for failing to make the return and declarations, the date of the allowance of the excuse, or if there was a failure as regards two or more of them, and the excuse was allowed at different times, the date of the allowance of the last excuse.<sup>49</sup>

## **6.02 Election Court**

A parliamentary election petition shall be tried by –

- (a) two judges on a rota for the trial of parliamentary election petitions,
  - (b) in Northern Ireland, two judges of the High Court or the Court of Appeal for the time being selected for the purpose,
- and the judges presiding at the trial of a parliamentary election petition are referred to as the election court.

The place of trial is normally within the constituency for which the election was held.

The judges' expenses are met by the Treasury out of money provided by Parliament.

## **6.03 Procedure on Election Petitions**

At the time of presenting an election petition or within three days afterwards the petitioner is required to give security for all costs which may become payable by him to any witness summoned on his behalf or to any respondent.

The security, in the case of a parliamentary election petition, is such amount not exceeding £5,000 as the High Court or a judge of the High Court, on summons, directs. The security must be given in the prescribed manner by recognizance entered into by any number of sureties not exceeding four or a deposit of money, or partly in one way and partly in the other.

In Scotland, the amount of surety is the same (not exceeding £5,000) as the Court of Session or a judge of the Court of Session directs, but the persons finding caution for that amount may exceed four.

Within the prescribed time after giving the security, the petitioner is required to serve on the respondent in the prescribed manner –

- (a) a notice of presentation of the petition and of the amount and nature of the security, and
- (b) a copy of the petition.

Within a further prescribed time, the respondent may object in writing to any recognizance on the ground that any surety is insufficient or is dead or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not acknowledged the recognizance.

If the objection is allowed, the petitioner may within a further prescribed time, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognizance of the matter, make the security sufficient.

Where no security is given as required or any objection is allowed and not removed as mentioned above, no further proceedings will be had on the petition.<sup>50</sup>

#### **6.04 Trial of Petition**

The petition is at issue –

- (a) on the expiry of the time limited for objections, or
- (b) if an objection is made, on that objection being disallowed or removed, whichever happens last.

The prescribed officer is required to make out a list of all election petitions at issue presented to the court of which he is officer, placing them in the order in which they were presented, and keeping at his office a copy of the list open to inspection in the prescribed manner.

Petitions are normally tried in the order in which they stand in the list.

An election petition is tried in open court without a jury. Notice of the time and place of the trial must be given in the prescribed manner, not less than 14 days before the trial.

The election court may in its discretion adjourn the trial from time to time, but the trial is required, so far as is practicable consistently with the interests of justice, to be continued from day to day on every lawful day until its conclusion.

On the trial of a petition, unless the court otherwise directs, any charge of a corrupt practice may be gone into, and evidence in relation to received, before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice.

On the trial of a petition complaining of an undue election and claiming the seat or office for some person, the respondent may give evidence to prove that that person was not

duly elected, in the same manner as if he had presented a petition against the election of that person.

Witnesses must be summoned and sworn in the same manner as in an action trial in the High Court. On the trial a member of the election court may, by order signed by him, require any person who appears to him to have been concerned in the election to attend as a witness, and any person refusing to obey the order is guilty of contempt of court. A witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them, after his examination by the court.

The Director of Public Prosecutions shall without any direction from any court cause any person appearing to him to be able to give material evidence as to the subject of the trial to attend the trial and must with leave of the court, examine him as a witness. The foregoing provision does not apply to Scotland where one of the deputies of the Lord Advocate or the procurator-fiscal of the district may, if the Lord Advocate so decides, and must if the court so requests attend the trial of the petition as part of his official duty.

A person called as a witness respecting an election before any election court must not be excused from answering any question relating to any offence at or connected with the election –

- (a) on the ground that the answer to it may incriminate or tend to incriminate –
  - (i) that person or that person's husband or wife, or
  - (ii) in Scotland, that person; or
- (b) on the ground of privilege.

Answer by a person to a question put before any election court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be in any proceeding, civil or criminal, admissible evidence against –

- (a) that person or that person's husband or wife; or
- (b) in Scotland, that person.

The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions, may be allowed to him by a certificate of the election court or of the prescribed officers. Where the witness was called by an order of the election court, the expenses are deemed part of the expenses of providing a court.<sup>51</sup>

### **6.05 Conclusion of Trial**

At the conclusion of the trial of a parliamentary election petition, the election court shall determine whether the member whose election or return is complained of, or any and what other person, was duly returned or elected or whether the election was void, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

The election court shall forthwith certify in writing the determination to the Speaker.

If the judges constituting the election court –

- (a) differ as to whether the member whose election or return is complained of was duly elected or returned, they shall certify that difference and the member shall be deemed to be duly elected or returned;
- (b) determine that the member was not duly elected or returned but differ as to the rest of the determination, they shall certify that difference and the election shall be deemed to be void.

Where any charge is made in the petition of any corrupt or illegal practice having been committed at the election the court shall, in addition to giving a certificate, and at the same time, make a report to the Speaker stating whether corrupt or illegal practices have, or whether there is reason to believe that corrupt or illegal practices have, extensively prevailed at the election.

Every report sent to the Speaker shall be signed by both judges of the election court and if the judges differ as to the subject of the report, they shall certify that difference and make no report on the subject on which they so differ.

The House of Commons, on being informed by the Speaker of a certificate and any report of an election court, shall order the certificate and report (if any) to be entered in their journals and give the necessary direction –

- (a) for confirming or altering the return, or
- (b) for issuing a writ for a new election, or
- (c) for carrying the determination into execution as the circumstances may require, and where the court makes a special report, the House of Commons may make such order in respect of that report as they think fit.<sup>52</sup>

### **6.06 Withdrawal of Petition**

A petitioner cannot withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner at the prescribed time and place. If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent. The applicant and his solicitor must produce affidavits stating the grounds on which the petition is sought to be withdrawn.

Copies of the affidavits must be delivered to the Director of Public Prosecutions at a reasonable time before the application for the withdrawal is heard, and the court –

- (a) may hear the Director of Public Prosecutions or his assistant or other representative in opposition to the allowance of the withdrawal of the petition, and
- (b) shall have power to receive on the oath of any person or persons whose evidence the Director of Public Prosecutions or his assistant, or other representative, may consider material.

In every case of withdrawal of a parliamentary election petition, the court giving leave for the withdrawal is required to make a report to the Speaker.<sup>53</sup>

### **6.07 Costs of Petition**

All costs of and incidental to the presentation of an election petition and the proceedings consequent on it, except as otherwise provided in RPA 1983, must be met by the parties to the petition in such manner and in such proportions as the election court or High Court may determine.

In particular –

- (a) any costs which in the opinion of the election court or High Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent, and
- (b) any needless expense incurred or caused on the part of the petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused whether or not they are on the whole successful.<sup>54</sup>

## **— Section 7 —**

### **ELECTION EXPENSES**

#### **7.01 Making of Contracts Through Election Agent**

The election agent of a candidate is required to appoint every polling agent, clerk and messenger employed for payment on behalf of the candidate at an election, and hire every committee room hired on behalf of the candidate.

A contract by which any election expenses are incurred cannot be enforced against a candidate at the election unless made by the candidate himself or by his election agent. Every payment made by an election agent in respect of any election expenses must, except where less than £20, be vouched for by a bill stating the particulars and by a receipt. Reference to an election agent includes a sub-agent.

All money provided by any person other than the candidate for any election expenses, whether as gift, loan, advance or deposit, must be paid to the candidate or his election agent and not otherwise.

A person who makes any payment, advance or deposit contrary to the RPA 1983 is guilty of an illegal practice.<sup>55</sup>

#### **7.02 Candidate's Expenses**

The candidate at an election may pay any personal expenses incurred by him on account of or in connection with or incidental to the election, but the amount which a candidate at a parliamentary election may pay must not exceed £600, and any further personal expenses so incurred by him must be paid by his election agent.

The candidate must send to his election agent within the stipulated time limit a written statement of the amount of personal expenses paid by him.

Any person may, if so authorised in writing by the candidate's election agent, pay any necessary expenses for stationery, postage, telegrams (or any similar means of communication) and other petty expenses, to a total amount not exceeding that named in the authority, and any excess above the total amount so named is to be paid by the election agent.

A statement of the particulars of payments made by any person so authorised is to be sent to the election agent within the stipulated time for sending claims, and must be vouched for by a bill containing that person's receipt.

No expenses must, with a view to promoting or procuring the election of a candidate at an election, be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account –

- (a) of holding public meetings or organising any public display; or
- (b) of issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate.

If a person –

- (a) incurs, or aids, abets, counsels or procures any other person to incur, any expenses in contravention of the Act (RPA 1983), or
- (b) knowingly makes a false declaration as to the expenditure to the appropriate officer, he is guilty of a corrupt practice.<sup>56</sup>

### **7.03 Limitation of Election Expenses**

A candidate at an election or his election agent, whether before, during or after an election, on account of or in respect of the conduct or management of the election, must not exceed the maximum amount specified from time to time, and a candidate or election agent knowingly acting in contravention of this requirement is guilty of an illegal practice.

The maximum amount may be varied by the Secretary of State and a resolution to that effect must be approved by each House of Parliament.

(The latest variation at the time of writing came into force in 1994 as follows –

- (a) for a candidate at a parliamentary general election, being an election,
  - (i) in a county constituency, £4,642 together with an additional 5.2p for every entry in the register of electors to be used at the election, and
  - (ii) in a borough constituency, £4,642 together with an additional 3.9p for every entry in the register of electors to be used at the election;
- (aa) for a candidate at a parliamentary by-election –

- (i) in a county constituency, £18,572 together with an additional 20.8p for every entry in the register of electors to be used at the election;
- (ii) in a borough constituency, £18,572 together with an additional 15.8p for every entry in the register of electors to be used at the election.<sup>57)</sup>

The maximum amount for a candidate at a parliamentary election is not required to cover the candidate's personal expenses.

#### **7.04 Time for Paying Claims**

Every claim against a candidate or his election agent in respect of election expenses which is not sent in to the election agent within 21 days after the day on which the result of the election is declared shall be barred and not paid. All election expenses must be paid within 28 days after that day.

An election agent who pays a claim or any other payment in contravention of the law is guilty of an illegal practice; but where the election court reports that it has been proved to the court by the candidate that any payment was made by an election agent without the sanction or connivance of the candidate –

- (a) the candidate's election is not void; and
- (b) he is not to be subject to any incapacity by reason only of that payment having been made in contravention of the law.

The claimant or the candidate or his election agent may apply to the High Court or to a county court for leave to pay a claim for any election expenses, although sent in after that period of 21 days or although sent in to the candidate and not to the election agent, and the court on cause shown to their satisfaction may by order grant leave.

#### **7.05 Disputed Claims**

If the election agent disputes any claim sent in to him within the period of 21 days, or refuses or fails to pay the claim within the period of 28 days, the claim is deemed to be disputed.

The claimant may bring an action for a disputed claim in any competent court, and any sum paid by the candidate or his agent in pursuance of the judgment or order of the court is deemed not to be in contravention of the law.

#### **7.06 Return as to Election Expenses**

Within 35 days after the day on which the result of the election is declared, the election agent of every candidate at the election must deliver to the appropriate officer a true return in the prescribed form containing a statement of all payments made by the election agent together with all the bills and receipts.

The return must include –

- 
- (a) an account of the remuneration or expenses of speakers at public meetings;
  - (b) a statement of the amount of personal expenses, if any, paid by the candidate;
  - (c) a statement of all disputed claims of which the election agent is aware;
  - (d) a statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court or county court;
  - (e) a statement of all money, securities and equivalent of money received by the election agent from the candidate or any other person for the purposes of election expenses incurred or to be incurred, with a statement of the name of every person from whom they may have been received.

The return must be accompanied by a declaration made by the election agent, and a separate declaration by the candidate at the same time as the election agent's or seven days after, both declarations to be in the prescribed form. Where the candidate is his own election agent, the election agent's declaration will not be needed.<sup>58</sup>

### **7.07 Penalty for Failure to Submit Return**

Unless relief is granted by a competent court (the High Court, an election court or a county court) upon showing good cause, a candidate or election agent who fails to deliver a true return and declaration in proper form is guilty of an illegal practice.

If, in the case of any candidate, the return and declarations as to election expenses are not delivered before the expiry of the time limited for the purpose, that candidate shall not after the expiry of that time, sit or vote in the House of Commons as member for the constituency for which the election was held until –

- (a) either that return and those declarations have been delivered, or
  - (b) the date of the allowance of any authorised excuse for the failure to deliver that return and those declarations,
- and if he sits or votes in the House he forfeits £100 for every day on which he so sits or votes.

Provision is made in the RPA 1983 for publication of returns and declarations at a specified time and place and for inspection for a period of two years by any person on payment of a fee.<sup>59</sup>

### **7.08 Publicity**

A candidate is (subject to Post Office regulations) entitled to send free of charge for postage either –

- (a) one unaddressed postal communication, containing matter relating to the election only and not exceeding 60 (sixty) grammes in weight, to each place in the constituency which, in accordance with those regulations, constitutes a delivery point; or
- (b) one such postal communication addressed to each elector.

He is also entitled to send free of any charge for postage to each person entered in the list of proxies for the election one such communication as mentioned above for each appointment in respect of which that person is so entered.<sup>60</sup>

— *Section 8* —

**ELECTION OFFENCES / CORRUPT AND ILLEGAL PRACTICES**

**8.01 Treating**

A person is guilty of a corrupt practice if he is guilty of treating.

A person is guilty of treating if he corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly, gives or provides, or pays wholly or in part the expenses of giving or providing, any meat, drink, entertainment or provision to or for any person –

- (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
- (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.

Every elector or his proxy who corruptly accepts or takes any such meat, drink, entertainment or provision is guilty of treating.<sup>61</sup>

**8.02 Undue Influence**

A person is guilty of a corrupt practice if he is guilty of undue influence.

A person is guilty of undue influence –

- (a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person on his behalf, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting or on account of that person having voted or refrained from voting; or
- (b) if, by abduction, duress or any fraudulent device or contrivance, he impedes, or prevents the free exercise of the franchise of an elector or proxy for an elector, or so induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting.<sup>62</sup>

**8.03 Bribery**

A person is guilty of a corrupt practice if he is guilty of bribery.

A person is guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf –

- (a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting, or
- (b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting, or
- (c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter,

or if upon or in consequence of any such gift or procurement as mentioned above he procures or engages, promises or endeavours to procure the return of any person at an election or the vote of any voter.

A person is guilty of bribery if he advances or pays or causes to be paid any money to or for the use of any other person with the intent that that money or any part of it shall be expended in bribery at any election or knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

A person is guilty of bribery if before or during an election he directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.<sup>63</sup>

#### **8.04 Personation**

A person is guilty of a corrupt practice if he commits, or aids, abets, counsels or procures the commission of, the offence of personation.

A person is guilty of personation at a parliamentary election if he –

- (a) votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person; or
- (b) votes in person or as proxy –
  - (i) for a person whom he knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or
  - (ii) when he knows or has reasonable grounds for supposing that his appointment as proxy is no longer in force.<sup>64</sup>

#### **8.05 False Declaration**

If a candidate or election agent knowingly makes a false declaration (under section 82 of RPA 1983) he is guilty of a corrupt practice.

## **8.06 Unauthorised Expenses**

If a person –

- (a) incurs, aids, abets, counsels or procures any other person to incur, any expenses in contravention of section 75 of RPA 1983, or
- (b) knowingly makes a false declaration under the said section of the Act, that person is guilty of a corrupt practice.

## **8.07 Punishment for Corrupt Practices**

A corrupt practice may be tried as a summary or indictable offence. A person convicted on indictment of a corrupt practice (other than personation which may attract a two year sentence) is liable to imprisonment for up to a year or to an unlimited fine, or both. On summary conviction of a corrupt practice a person is liable to six months imprisonment or to a fine or both.

A candidate at a parliamentary election reported by an election court personally guilty of a corrupt practice is incapable of being elected to and sitting in the House of Commons for the constituency for which the election was held, or any constituency including the whole or any part of that area as constituted for the election, for ten years from the date of the report. If so reported by his agents of a corrupt practice the period of incapacity is seven years.

A candidate or any other person reported by an election court personally guilty of a corrupt practice is incapable of being registered as an elector for five years from the date of the report. He is also barred from voting at any parliamentary election or from being elected to and sitting in the House of Commons and of holding any public or judicial office for the same period. If he is already elected or holding any office it is vacated from the date of the report.<sup>65</sup>

## **8.08 Illegal Practices**

### **8.08.1 Illegal Payments (under the RPA 1983)**

Any person who knowingly makes payment or contract for payment for the purpose of promoting or procuring the election of a candidate at an election to an elector or his proxy on account of the exhibition of, or the use of any house, land, building or premises for the exhibition of any address, bill or notice, is guilty of an illegal practice, unless –

- (a) it is the ordinary business of the elector or proxy as an advertising agent to exhibit for payment bills and advertisement; and
- (b) the payment or contract is made in the ordinary course of that business (section 109).

Where a person knowingly provides money –

- (a) for any payment which is contrary to the provisions of the RPA 1983, or

- 
- (b) for any expenses incurred in excess of the maximum amount allowed under the Act,  
or
  - (c) for replacing any money expended in any such payment or expenses,  
that person is guilty of an illegal payment (section 112).

To knowingly make any payment or contract for payment either before, during or after an election, for the purpose of promoting or procuring the election of a candidate on account of the conveyance of electors or their proxies to or from the poll, whether for hire of carriages, or for railway fares, or otherwise –

- (a) the person making the payment or contract, and
  - (b) if he knows it to be in contravention of the RPA 1983, any person receiving the payment or being a party to the contract,
- is guilty of an illegal practice (section 102).

A person who corruptly induces or procures any other person to withdraw from being a candidate at an election, in consideration of any payment or promise of payment, and any person withdrawing in pursuance of the inducement or procurement, is guilty of an illegal payment (section 107).

### **8.08.2 Illegal Employment**

If a person is, either before, during or after an election, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting or procuring a candidate's election –

- (a) the person so engaging or employing him, and
  - (b) the person so engaged or employed,
- is guilty of illegal employment (section 111).

### **8.08.3 Illegal Hiring**

If a person –

- (a) hires or uses any premises to which this section applies, or any part of them, for a committee room for the purpose of promoting or procuring the election of a candidate, or
  - (b) lets any premises or any part of them knowing that it was intended to use them or that part as a committee room,
- he is guilty of illegal hiring (section 108).

### **8.08.4 Improper Conduct of Campaign**

It is an illegal practice to knowingly publish either before or during an election a false statement, of a candidate's withdrawal at the election for the purpose of promoting or procuring the election of another candidate (section 106(5)).

A person who, or any director of any body or association corporate which –

- (a) before or during an election,
- (b) for the purpose of affecting the return of any candidate at the election, makes or publishes any false statement of fact in relation to the candidate's personal character or conduct is guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true (section 106(1)).

It is an illegal practice for any person, with interests to influence persons to give or refrain from giving their votes at a parliamentary election, to use, or aid, abet, counsel or procure the use of, any television or other wireless transmitting station outside the United Kingdom for the transmission of any matter having reference to the election otherwise than in pursuance of –

- (a) arrangements made with the British Broadcasting Corporation for it to be received and re-transmitted by that Corporation, or
- (b) arrangements made with the Independent Broadcasting Authority or a programme contractor (within the meaning of the Broadcasting Act 1981) for it to be received by the Authority or contractor and re-transmitted by the Authority (section 92).

It is an illegal practice under section 97 of the RPA 1983 for a person at a lawful public meeting to which the section applies to act, or incite others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called.

It is an illegal practice for any person, for the purpose of promoting or procuring the election of a candidate at a parliamentary election, to issue any poll card or document so closely resembling an official poll card as to be calculated to deceive (section 94).

### **8.08.5 Voting Offences**

A person is guilty of an offence if –

- (a) he votes in person or by post, whether as an elector or as proxy, or applies to vote by proxy or by post as an elector at a parliamentary election knowing that he is subject to a legal incapacity to vote at the election, or
- (b) he applies for the appointment of a proxy to vote for him at any parliamentary election knowing that he or the person to be appointed is subject to a legal incapacity to vote at the election, or
- (c) he votes, whether in person or by post, as proxy for some other person at a parliamentary election, knowing that that person is subject to a legal incapacity to vote.<sup>66</sup>

### **8.08.6 Punishment for Illegal Practice**

A person who is guilty of an illegal practice is liable to a fine. On report by an election court that a candidate is personally guilty or guilty by his agents of an illegal practice at a parliamentary election, his election is void.

A candidate at a parliamentary election who is reported guilty of an illegal practice by his agents is incapable from the date of the report of being elected to and sitting in the House of Commons for the constituency for which the election was held or any constituency which includes the whole or part of the area of the first-mentioned constituency as constituted for the purposes of the election during the Parliament for which the election was held.<sup>67</sup>

A candidate or other person reported by an election court personally guilty of an illegal practice or convicted of an illegal practice is, for five years from the date of the report or conviction, incapable of being registered as an elector or voting at any parliamentary election or at any election to public office held within the constituency for which the election was held when the offence was committed.<sup>68</sup>

If an elected candidate is reported by an election court personally guilty or guilty by his agents of any illegal practice his election is void.

## — Section 9 —

### OTHER ELECTION OFFENCES

#### 9.01 Election Literature

It is an offence for any person to print, publish or cause to be printed or published, any bill, placard or poster for the purpose of promoting or procuring the election of a candidate, unless the bill, placard, poster or document bears upon its face the name and address of the printer and publisher. Distributing, posting of such bill, placard, or poster is also an offence.<sup>69</sup>

#### 9.02 Tampering with Nomination Papers, etc

A person is guilty of an offence, if at a parliamentary election, he –

- (a) fraudulently defaces or fraudulently destroys any nomination paper; or
- (b) fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any declaration of identity or official envelope used in connection with voting by post; or
- (c) without due authority supplies any ballot paper to any person; or
- (d) fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or
- (e) fraudulently takes out of the polling station any ballot paper; or
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

In Scotland, a person is guilty of an offence if –

- (a) at a parliamentary election, he forges any nomination paper, delivers to the returning officer any nomination paper knowing it to be forged, or forges or counterfeits any ballot paper or the official mark on any ballot paper; or
- (b) he fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.<sup>70</sup>

### **9.03 Breaches of Secrecy**

The following persons –

- (a) every returning officer and every presiding officer or clerk attending at a polling station,
  - (b) every candidate or election agent or polling agent so attending,
- shall maintain and aid in maintaining the secrecy of voting and must not, except where authorised by law, communicate to any person before the poll is closed any information as to –
- (i) the name of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station;
  - (ii) the number on the register of electors of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station; or
  - (iii) the official mark.

Every person attending at the counting of the votes must maintain and aid in maintaining the secrecy of voting and must not –

- (a) ascertain or attempt to ascertain at the counting of the votes the number on the back of any ballot paper;
- (b) communicate any information obtained at the counting of the votes as to the candidate for whom any vote is given on any particular ballot paper.

No person shall –

- (a) interfere with or attempt to interfere with a voter when recording his vote;
- (b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted;
- (c) communicate at any time to any person information obtained in a polling station as to the candidate for whom a voter in the station is about to vote or as to the number on the back of the ballot paper given to a voter at that station;
- (d) directly or indirectly induce a voter to display his ballot paper after he has marked it so as to make known to any person the name of the candidate for whom he has or has not voted.

Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post must maintain and aid in maintaining the secrecy of the voting and shall not –

- 
- (a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark; or
  - (b) except for some purpose authorised by law, communicate, to any person at any time any information obtained at those proceedings as to the number on the back of the ballot paper sent to any person; or
  - (c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on the back of any ballot paper; or
  - (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot paper the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

No person who undertakes to assist a blind voter to vote shall communicate at any time to any person any information as to the candidate for whom that voter intends to vote or has voted, or as to the number on the back of the ballot paper given for the use of the voter.

Any person who acts in contravention of these provisions is guilty of an offence.<sup>71</sup>

#### **9.04 Offences as to Declarations**

A person who –

- (a) makes a patient's declaration or a service declaration –
  - (i) when he is not authorised to do so, or
  - (ii) except as permitted by the RPA 1983, when he knows that he is subject to a legal incapacity to vote, or
  - (iii) when he knows that it contains a statement which is false, or
- (b) attests a patient's declaration or a service declaration, when he knows –
  - (i) that he is not authorised to do so, or
  - (ii) that it contains a false statement as to any particulars,

is guilty of an offence.<sup>72</sup>

#### **9.05 False Information**

Regulation 29 (which deals with registration) of RPR 1986 makes it an offence to give false information to a registration officer.

#### **9.06 Interference with Notices, etc**

Any person, who without lawful authority destroys, mutilates, defaces or removes any notice published by the registration officer in connection with registration duties, commits an offence.<sup>73</sup>

There is liability on summary conviction to a fine of £400.

### **9.07 Breach of Official Duty**

A person who commits a breach of official duties in relation to parliamentary elections is guilty of an offence.

The persons to whom this provision applies are –

- (a) the Clerk of the Crown,
- (b) any sheriff, clerk, registration officer, returning officer or presiding officer,
- (c) any postmaster, and
- (d) any deputy of a person mentioned above.<sup>74</sup>

### **9.08 Acting for Candidate**

If –

- (a) any returning officer at a parliamentary election,
  - (b) any officer or clerk appointed under the parliamentary election rules, or
  - (c) any partner or clerk of any such person,
- acts as a candidate's agent in the conduct or management of the election he is guilty of an offence.<sup>75</sup>

### **9.09 Illegal Canvassing**

Any member of a police force, who by word, message, writing or in any manner, endeavours to persuade any person to give or dissuade any person from giving, his vote, whether as an elector or as proxy at any parliamentary election for a constituency wholly or partly within the police area, is guilty of an offence.<sup>76</sup>

### **9.10 Candidate Sitting or Voting Without Transmittal of Return or Declarations**

Any candidate who, without transmitting the return and declarations as to election expenses within the stipulated time limit, sits or votes in the House of Commons as member for the constituency for which the election was held, is guilty of an offence and is liable to forfeit £100 for every day on which he so sits or votes.<sup>77</sup>

### **9.11 Corrupt Withdrawal of Election Petition**

If a person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of any election petition, and such agreement, terms or undertaking –

- (a) is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat or office should at any time be vacated, or in consideration of the withdrawal of any other election petition, or
  - (b) is or are (whether lawful or unlawfully) not mentioned in the affidavits,
- that person is liable, on conviction on indictment, to imprisonment for a term of up to a year or to a fine or both; on conviction on summary offence to imprisonment for up to six months or to a fine or both.<sup>78</sup>

## NOTES

1. Representation of the People Act (RPA) 1983, see section 201
2. *Ibid.*, see section 24
3. *Ibid.*, see section 25
4. *Ibid.*, see section 26
5. *Ibid.*, see section 27
6. *Ibid.*, see section 28
7. *Ibid.*, see section 28
8. See section 28 of RPA 1983 and paragraph 6(b) of Schedule 4 of RPA 1985
9. Section 28 of RPA 1983 as amended by 6(b) of Schedule 4, RPA 1985
10. RPA 1983, see section 25
11. See rule 26 of the Parliamentary Election Rules, Schedule 1 of RPA 1983
12. RPA 1983, see section 29(3)
13. The Returning Officers' Charges Order came into force on 8 April 1994
14. RPA 1983, see section 29(7)
15. Parliamentary Constituencies Act (PCA) 1986, see section 2
16. See Schedule 1 to PCA 1986
17. Boundary Commission Act 1992, see section 2(2)
18. *Ibid.*, see section 2(3)
19. See Schedule 2 to PCA 1986
20. PCA 1986, see sections 5 and 6
21. RPA 1983, see section 1
22. *Ibid.*, see section 12
23. *Ibid.*, see section 8
24. *Ibid.*, see sections 14-17
25. See section 1 of RPA 1985 and 1989
26. RPA 1985, see section 2
27. Representation of the People Regulations (RPR) 1986, see regulations 31-37
28. *Ibid.*, see regulations 38-41
29. See section 56 of RPA 1983 and regulations 42-44 of RPR 1986
30. RPR 1986, see regulations 47-51
31. *Ibid.*, see regulations 53-55
32. *Ibid.*, see regulations 57-62
33. RPA 1985, see sections 6 and 7
34. See Schedule 1, rule 3 and Appendix of RPA 1983
35. Rule 3 – Schedule 1, RPA 1983
36. Rule 5 – Schedule 1, RPA 1983
37. See rules 6-12 of Parliamentary Election Rules (PER), Schedule 1 of RPA 1983
38. PER 1983, see rules 18-29
39. *Ibid.*, see rule 30
40. *Ibid.*, see rules 32-35
41. *Ibid.*, see rules 36-37
42. *Ibid.*, see rules 38-39
43. *Ibid.*, see rules 40-41
44. *Ibid.*, see rule 43
45. *Ibid.*, see rules 44-49
46. *Ibid.*, see rules 50-52
47. *Ibid.*, see rule 53
48. *Ibid.*, see rules 54-57
49. RPA 1983, see sections 120-122
50. *Ibid.*, see section 136
51. *Ibid.*, see sections 137-143
52. *Ibid.*, see section 144
53. *Ibid.*, see sections 147-153
54. *Ibid.*, see section 154
55. *Ibid.*, see sections 72-73
56. *Ibid.*, see sections 74-75
57. See section 76 of RPA 1983 and the Representation of the People (Variation of Limits of Candidates' Election Expenses) Order 1994
58. RPA 1983, see sections 81-82
59. *Ibid.*, see sections 84-89
60. *Ibid.*, see section 91
61. *Ibid.*, see section 114
62. *Ibid.*, see section 115
63. *Ibid.*, see section 113
64. *Ibid.*, see section 60
65. *Ibid.*, see sections 159, 160 and 168
66. *Ibid.*, see section 61
67. *Ibid.*, see section 159
68. *Ibid.*, see section 160(5)
69. *Ibid.*, see section 110
70. *Ibid.*, see section 65
71. *Ibid.*, see section 66
72. *Ibid.*, see section 62
73. RPR 1986, see regulation 13
74. RPA 1983, see section 63
75. *Ibid.*, see section 99
76. *Ibid.*, see section 100
77. *Ibid.*, see section 85
78. *Ibid.*, see section 149



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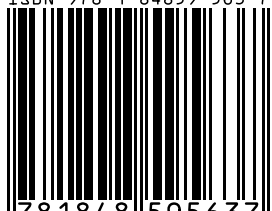
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