

**CHAPTER 2:13**  
**ELECTORAL ACT**

*Act 25/2004*

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**To provide for the procedure and conditions of service of members of the Electoral Supervisory Commission and its functions with respect to monitors and observers; to provide for the duties of the**

**Zimbabwe Electoral Commission towards the Electoral Supervisory Commission; to provide for a Registrar-General of Voters and constituency registrars; to make provision for the registration of voters and for the lodging of objections thereto; to provide for the preparation, compilation and maintenance of voters rolls; to prescribe the residence qualifications of voters and the procedure for the nomination and election of candidates to and the filling of vacancies in Parliament; to provide for the conduct of elections and the proceedings which may be taken against undue elections; to provide for elections to the office of President; to provide for local authority elections; to provide for offences and penalties, and for the prevention of corrupt or illegal practices in connection with elections; to establish the Electoral Court and provide for its functions; to make provision for the hearing and determination of election petitions; to repeal the Electoral Act [Chapter 2:01]; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement : 1st February, 2005]

PART I  
PRELIMINARY

**1 Short title and date of commencement**

This Act may be cited as the Electoral Act [Chapter 2:13].

**2 Application**

This Act shall apply to—

- (a) the election of members of Parliament and elections to the office of President for the purposes of the Constitution; and
- (b) elections to the governing bodies of councils for the purposes of the Rural District Councils Act [Chapter 29:13] and the Urban Councils Act [Chapter 29:15].

**3 General principles of democratic elections**

Subject to the Constitution and this Act, every election shall be conducted in way that is consistent with the following principles—

- (a) the authority to govern derives from the will of the people demonstrated through elections that are conducted efficiently, freely, fairly, transparently and properly on the basis of universal and equal suffrage exercised through a secret ballot; and
  - (b) every citizen has the right—
    - (i) to participate in government directly or through freely chosen representatives, and is entitled, without distinction on the ground of race, ethnicity, gender, language, political or religious belief, education, physical appearance or disability or economic or social condition, to stand for office and cast a vote freely;
    - (ii) to join or participate in the activities of and to recruit members of a political party of his or her choice;
    - (iii) to participate in peaceful political activity intended to influence the composition and policies of Government;
    - (iv) to participate, through civic organisations, in peaceful activities to influence and challenge the policies of Government;
- and
- (c) every political party has the right—
    - (i) to operate freely within the law;
    - (ii) to put up or sponsor one or more candidates in every election;
    - (iii) to campaign freely within the law;
    - (iv) to have reasonable access to the media.

**4 Interpretation**

(1) In this Act—

“Chief” has the meaning given thereto in the Traditional Leaders Act [Chapter 29:17];

“chief election agent” means the person appointed in terms of section *ninety-four* as an election agent;

“Chief Elections Officer” means the Chief Elections Officer appointed in terms of section 11 of the Zimbabwe Electoral Commission Act [Chapter 2:12], or any officer of the Commission acting on his or her behalf;

“claim” means a claim to be registered as a voter in a constituency;

“claim form” means the prescribed form of claim for registration as a voter under Part V;

“claimant” means a person who presents himself or herself for registration as a voter in terms of subsection (1) of section *twenty-four*;

“Commission” means the Zimbabwe Electoral Commission established in terms of section 3 of the Zimbabwe Electoral Commission Act [*Chapter 2:12*];

“Commissioner” means a member of the Commission, and includes the Chairperson of the Commission;

“competent witness”, in relation to voting by post, means the Registrar-General of Voters or, subject to subsection (2), any person who—

- (a) is a member of Parliament, a Provincial Governor, the principal diplomatic representative of Zimbabwe in any country or the deputy of such representative, or a member of the staff of such representative appointed by him or her, or the trade commissioner or any consular official for Zimbabwe in any country; or
- (b) inside Zimbabwe, holds the position of a hospital matron, Government mining engineer, Government inspector of mines, mine manager, constituency registrar, deputy constituency registrar, assistant constituency registrar, or chairperson or secretary of a town council or rural district council; or
- (c) inside or outside Zimbabwe, is or holds the office of or an appointment as a chartered accountant, corporate member of an engineering institute, land surveyor, corporate member of an institute or association of architects, postmaster, legal practitioner, advocate, barrister, attorney, solicitor, magistrate, bank manager, commissioned officer in the Defence Forces, justice of the peace, commissioner of oaths, mayor, medical practitioner, town clerk, assistant town clerk, veterinary surgeon or commissioned police officer; or
- (d) is a member of a class of persons prescribed as competent witnesses;

“constituency” means any of the constituencies into which Zimbabwe is divided in terms of subsection (2) of section 60 of the Constitution;

“constituency centre” means any place within a constituency notified by a constituency elections officer in terms of subsection (1) of section *sixty-five* as a place where the collating of votes from the polling stations in that constituency will take place in accordance with Part XIII;

“constituency elections officer” means a person who is appointed in terms of subsection (1) of section *seventeen* to be a constituency elections officer;

“constituency registrar” means a person who is appointed in terms of subsection (1) of section *nineteen* to be a constituency registrar;

“constituency return” means a return in the prescribed form recording the result of a collation of the votes for a Presidential election at a constituency centre in terms of the Second Schedule;

“corrupt practice” means any of the following offences referred to in Part XIX, namely—

- (a) undue influence;
- (b) bribery;
- (c) personation;
- (d) attempting to commit or inciting the commission of an offence specified in paragraph (a), (b) or (c);

“covering envelope” means the envelope referred to in paragraph (c) of subsection (4) of section *seventy-two*;

“designated magistrate” means a magistrate designated for the purposes of Part VI by the Minister to whom the administration of the Magistrates Court Act [*Chapter 7:10*] has been assigned;

“disciplined force” means any branch of the Defence Forces or the Police Force;

“election” means—

- (a) the election of a member of Parliament; or
- (b) an election to the office of President; or
- (c) an election for the purposes of the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*];

as the case may be;

“election agent” means a person appointed in terms of section *ninety-five* as an election agent;

“election expenses”, in relation to a candidate at an election, means all moneys expended or expenses incurred on account of or in respect of the conduct or management of that election by that candidate or on his or her behalf or in his or her interests, but does not include the sum deposited with the candidate’s nomination paper in terms of subsection (1) of section *forty-seven* or subsection (1) of section *one hundred and five* or any moneys expended or expenses incurred by or in the interests of a political party of which the candidate is a member if they do not relate directly to him or her;

“election petition” means a petition referred to in section *one hundred and sixty-seven*;

“Electoral Court” means the Electoral Court established by section *one hundred and sixty-one*;

“electoral officer” means the Chief Elections Officer, a constituency elections officer, presiding officer or polling officer, or any official referred to in subsection (1) of section *eighteen* or *nineteen*;

“Electoral Supervisory Commission” means the Electoral Supervisory Commission appointed in terms of section 61 of the Constitution;

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date of commencement of this Act;

“list of votes marked by the presiding officer” means a list referred to in subsection (2) of sections *fifty-nine* and section *sixty*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“money” includes any pecuniary reward;

“monitor” means a person appointed and accredited as a monitor in terms of section *thirteen*;

“nomination day”, in relation to—

- (a) the election of a member of Parliament, other than a Chief, means any day fixed in terms of paragraph (a) of subsection (2) of section *thirty-eight*;
- (b) an election to the office of President, means the day fixed in terms of paragraph (a) of subsection (1) of section *one hundred and three*;

“observer” means a person accredited as an observer in terms of section *fourteen*;

“office hours”, in relation to the office of a constituency registrar, means the hours on a week-day during which that office is open to members of the public;

“payment” includes any pecuniary or other reward;

“pecuniary reward” includes any office, place or employment, any valuable security or other equivalent for money and any valuable consideration;

“personal expenses”, in relation to a candidate at an election, means the reasonable travelling expenses of that candidate and of his or her chief election agent, if any, and the reasonable expenses of their living at hotels or elsewhere for the purposes of and in relation to that election;

“political party” means any political organisation;

“polling day”, in relation to—

- (a) an election to Parliament, means the day or days fixed in terms of paragraph (b) of subsection (2) of section *thirty-eight*;
- (b) an election to the office of President, means any day or days fixed in terms of paragraph (b) of subsection (1) of section *one hundred and three*;

“polling officer” means any person appointed in terms of subsection (2) of section *fifty-two* to be a polling officer;

“polling station” means a polling station referred to in subsection (1) of section *fifty-one*;

“polling-station return” means a return in the prescribed form recording the result of a counting of the votes at a polling station in terms of section *sixty-four*;

“prescribed” means prescribed by the Commission by regulations made in terms of section *one hundred and ninety-two*;

“presiding officer” means any person appointed in terms of subsection (2) of section *fifty-two* to be a presiding officer;

“prohibited symbol” means a symbol or representation declared to be a prohibited symbol in terms of subsection (1) of section *one hundred and forty-six*;

“proof of identity” means a valid Zimbabwe passport, or a notice or identity document issued in terms of section 7 of the National Registration Act [*Chapter 10:17*], or a valid driver’s licence containing an identity number assigned to the holder thereof under the National Registration Act [*Chapter 10:17*];

“proof of residence”, in relation to a constituency, means proof by way of—

- (a) a receipt or demand for payment of any rate in terms of the Urban Councils Act [*Chapter 29:15*], rate or levy in terms Rural District Councils Act [*Chapter 29:13*], or charge for the provision of electricity, in the name of the owner of the property concerned (or in the case of an occupier other than the owner, such a receipt or demand in the name of the owner accompanied by a written statement of the owner confirming the occupation of the property by the occupier); or
- (b) a sworn statement by the employer of the voter or claimant confirming the voter’s or claimant’s address; or
- (c) a bank statement, hospital bill or envelope with a post marking, bearing the name of the voter or claimant and the voter’s or claimant’s address; or
- (d) a sworn oral or written statement by the Chief, headman or village head of the area or village where the voter or claimant resides, confirming that the voter or claimant resides in the area or village concerned;

“qualified”, in relation to a person claiming or entitled to be registered as a voter for a constituency, means qualified to be a voter in that constituency in accordance with paragraph 3 of Schedule 3 to the Constitution and section *twenty-three*, and “disqualification” shall be construed accordingly;

“registered”, in relation to a voter, means registered in terms of Part V for the purpose of voting at an election;

“Registrar-General of Voters” means the Registrar-General of Voters referred to in section *eighteen*;

“registration office” means the office of the Registrar-General of Voters or any office of a constituency registrar;

“Service Commissions” means—

- (a) the Defence Forces Service Commission; and
- (b) the Police Service Commission; and
- (c) the Prison Service Commission; and
- (d) the Public Service Commission;

“Speaker” means the Speaker of Parliament;

“voter” means a person who is entitled to vote and is registered on a voters roll;

“voters registration certificate” means a certificate of registration as a voter issued in terms of section *twenty-four*;

“voters roll” means—

- (a) the voters roll for any constituency; or
- (b) the voters roll for the area of any local authority or for any ward of such an area;

“ward or council centre” means any place within a ward or council area notified by the Chief Elections Officer in terms of subsection (2) of section *one hundred and twenty-eight* as a place where the counting of votes at a local authority election will take place in accordance with Part XVIII.

(2) Notwithstanding anything contained in the definition of “competent witness” in subsection (1), a candidate in an election or an agent of such a candidate shall not be a competent witness in respect of voting by post in that election.

## PART II

### ELECTORAL SUPERVISORY COMMISSION: PROCEDURE AND CONDITIONS OF SERVICE OF MEMBERS

#### 5 Interpretation in Part II

In this Part—

“member” means a member of the Electoral Supervisory Commission.

#### 6 Conditions of office of members

(1) Subject to this Part, a member shall be appointed for a term of five years and be eligible for re-appointment:

Provided that a person who has served as a member for two consecutive terms shall not be eligible for re-appointment.

(2) On the expiry of the period for which a member has been appointed, he or she shall continue to hold office until he or she has been re-appointed or his or her successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for a period exceeding six months.

(3) Subject to section *twelve*, a member shall hold office on such conditions as the President may fix for members generally.

(4) When fixing the conditions of service of a member, the President may direct that any enactment relating to the conditions of service of members of the Public Service shall apply to the conditions of service of the member, subject to such modifications, exceptions or conditions as the President may specify, and thereupon the enactment concerned shall so apply to the conditions of service of the member concerned.

#### 7 Disqualification for appointment as member

Without derogation from subsection (2) of section 61 of the Constitution, the President shall not appoint a person as a member, and no person shall be qualified to hold office as a member, who—

- (a) is not a citizen of Zimbabwe permanently resident in Zimbabwe; or
- (b) has, in terms of a law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to or arrangement or composition with his or her creditors which has not been rescinded or set aside;

or

- (c) has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—
- (i) in Zimbabwe of a criminal offence; or
  - (ii) outside Zimbabwe of an offence, by whatever name called, which, if committed in Zimbabwe, would have been a criminal offence;
- and sentenced to a term of imprisonment without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon.

## **8 Vacation of office by member**

A member shall vacate his or her office and his or her office shall become vacant one month after the date the member gives notice in writing to the President of his or her intention to resign the office or after the expiry of such shorter period as he or she and the President may agree.

## **9 Removal of members from office**

- (1) A member shall not be removed from office except in terms of this section.
- (2) The President may remove a member from office on the grounds of—
  - (a) inability to discharge the functions of his or her office, whether arising from infirmity of mind or body or any other cause; or
  - (b) misbehaviour; or
  - (c) failure to comply with any of the conditions of his or her office fixed by the President in terms of section six.

## **10 Staff of Electoral Supervisory Commission**

- (1) There shall be—
  - (a) subject to the law governing the Public Service, such persons employed in the Electoral Supervisory Commission as may be necessary to perform secretarial functions; and
  - (b) at the request of the Electoral Supervisory Commission, such other persons as may be seconded to it by the chairpersons of the Service Commissions to assist it in discharging its functions.
- (2) The person for the time being performing the functions of secretary of the Electoral Supervisory Commission may attend meetings of the Electoral Supervisory Commission but shall not vote on any question before the Electoral Supervisory Commission.

## **11 Meetings and procedure of Electoral Supervisory Commission**

(1) Subject to this section and sections 61 and 144 of the Constitution, the Electoral Supervisory Commission shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit.

(2) The chairperson of the Electoral Supervisory Commission may himself or herself at any time and shall, at the request in writing of not fewer than two members, convene a special meeting of the Electoral Supervisory Commission.

(3) If, at a meeting of the Electoral Supervisory Commission, the chairperson is absent, the members present may elect one of their number to preside at that meeting as chairperson.

(4) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same effect as a resolution passed at a duly constituted meeting of the Electoral Supervisory Commission and shall be incorporated in the minutes of the next succeeding meeting of the Electoral Supervisory Commission:

Provided that, if a member requires such a proposal to be placed before a meeting of the Electoral Supervisory Commission, this subsection shall not apply to such proposal.

(5) Where the chairperson of the Electoral Supervisory Commission considers that a person has special knowledge of or experience in any matter being considered by the Electoral Supervisory Commission, he or she may invite that person to attend a meeting of the Electoral Supervisory Commission at which the matter is to be discussed, and that person may then attend the meeting but shall not vote on any question before the Electoral Supervisory Commission.

## **12 Remuneration and expenses of members**

A member of the Electoral Supervisory Commission shall be paid—

- (a) such remuneration as the Minister may fix with the approval of the Minister responsible for finance; and
- (b) such allowances as the Minister may fix to meet any reasonable expenses incurred by the member in connection with the business of the Electoral Supervisory Commission.

## **13 Functions of Electoral Supervisory Commission regarding monitors**

(1) In this section—

“monitor”, in relation to any election, means, subject to such conditions as may be prescribed—

- (a) monitor the conduct of the polling and counting of the votes at any polling station or the collating of the votes at any constituency centre for the purpose of detecting any irregularity in the conduct of the poll or the counting or collating of the votes; and

- (b) be present at the counting or collating of votes cast at the election and the verification of polling-station returns by presiding officers in terms of sections *sixty-three*, *sixty-four* and *sixty-five*; and
- (c) bring any irregularity or apparent irregularity in the conduct of the poll or the counting or collating of the votes to the attention of the presiding officer or constituency elections officer and request that appropriate corrective action to redress that irregularity, if any, be taken; and
- (d) report on any irregularity or apparent irregularity in the conduct of the poll or the counting or collating of the votes to the Electoral Supervisory Commission and the Commission and on any corrective measures taken to redress the irregularity by the presiding officer or constituency elections officer;

and the noun “monitor” shall be construed accordingly.

(2) Subject to this section, the Electoral Supervisory Commission shall appoint and deploy in each polling station members of the Public Service to act as monitors.

(3) The Electoral Supervisory Commission shall forthwith inform the Commission in writing of the names of the monitors it has appointed in terms of this section.

(4) No individual may monitor any election, or be permitted to enter and remain at any polling station or constituency centre as a monitor, unless such person is accredited by the Electoral Supervisory Commission before the commencement of the poll as a monitor, for which purpose such individual shall report to the Electoral Supervisory Commission at the time and place notified by the Electoral Supervisory Commission and—

- (a) be furnished with a copy of, or made aware of the contents of, the code of conduct prescribed in the First Schedule; and
- (b) if so required by the Electoral Supervisory Commission, attend a course on electoral law and procedure approved or provided by the Electoral Supervisory Commission.

(5) Upon satisfaction of the requirements of subsection (4) the Electoral Supervisory Commission shall issue the individual concerned with an accreditation certificate confirming that the applicable requirements have been satisfied by that individual and specifying the period during which such individual is accredited as a monitor.

(6) Every monitor shall exhibit his or her accreditation certificate to any officer of the Commission or electoral officer who demands to see it.

(7) Not more than the prescribed number of monitors shall be permitted—

- (a) to enter or remain at any polling station;
- (b) to be present for the counting or collating of votes at a polling station or constituency centre.

#### **14 Functions of Electoral Supervisory Commission regarding observers**

(1) In this section—

“observe”, in relation to any election, means, subject to such conditions as may be prescribed—

- (a) observe the conduct of the polling at the election; and
- (b) be present at the counting or collating of votes cast at the election and the verification of polling-station returns by presiding officers in terms of sections *sixty-three*, *sixty-four* and *sixty-five*; and
- (c) bring any irregularity or apparent irregularity in the conduct of the poll or the counting or collating of the votes to the attention of the monitor on duty or the Electoral Supervisory Commission;

and the noun “observer” shall be construed accordingly.

(2) The Electoral Supervisory Commission shall, for the purpose of subsection (5), establish a committee, called “the Observers’ Accreditation Committee”, consisting of—

- (a) the chairperson or vice-chairperson of the Electoral Supervisory Commission, who shall be the chairperson of the Committee; and
- (b) one person nominated by the Office of the President and Cabinet; and
- (c) one person nominated by the Minister; and
- (d) one person nominated by the Minister responsible for foreign affairs; and
- (e) one person nominated by the Minister responsible for information.

(3) A decision of the Observers’ Accreditation Committee shall, unless the Electoral Supervisory Commission amends or rescinds the decision, be deemed to be a decision of the Electoral Supervisory Commission.

(4) Each member of the Observers’ Accreditation Committee may appoint a person as an alternate member of the Committee, and any such alternate member may act as a member during any period that a substantive member is unable to exercise his or her functions.

(5) The function of the Observers’ Accreditation Committee shall be to accredit as observers—

- (a) individuals representing foreign countries or international or regional organisations that have been invited by the Minister responsible for foreign affairs to observe any election; and

- (b) individuals representing bodies in the region that exercise functions similar to those of the Electoral Supervisory Commission and that have been invited by the Electoral Supervisory Commission to observe any election; and
- (c) eminent persons from outside Zimbabwe who have been invited by the Minister responsible for foreign affairs to observe any election; and
- (d) individuals representing local organisations that have been invited by the Minister to observe any election; and
- (e) eminent persons from within Zimbabwe who have been invited by the Minister to observe any election.

(6) No individual, other than an election agent, polling agent or monitor, may observe any election, or be permitted to enter and remain at any polling station or constituency centre as an observer, unless such person is accredited as an observer by the Observers' Accreditation Committee before the commencement of the poll, for which purpose such individual shall—

- (a) report to the Committee at the time and place notified by the Committee; and
- (b) furnish the Committee with proof of the appropriate invitation referred to in subsection (5); and
- (c) be furnished with a copy of, or made aware of the contents of, the code of conduct prescribed in the First Schedule; and
- (d) pay the prescribed accreditation fee.

(7) Upon satisfaction of the requirements of subsection (6) the Observers' Accreditation Committee shall issue the individual concerned with an accreditation certificate confirming that the applicable requirements have been satisfied by that individual and specifying the period during which such individual is accredited as an observer.

(8) Every observer shall exhibit his or her accreditation certificate to any officer of the Commission or electoral officer who demands to see it.

(9) Not more than the prescribed number of observers shall be permitted—

- (a) to enter or remain at any polling station;
- (b) to be present for the counting or collating of votes at a polling station or constituency centre.

## **15 Reports of Electoral Supervisory Commission concerning elections**

(1) As soon as practicable after every election the Electoral Supervisory Commission shall—

- (a) in the case of any election other than an election to the office of President, make a report to the President; or
- (b) in the case of an election to the office of President make a report to the Minister;

on the conduct of that election and state in that report its opinion as to whether or not the result of the election represents the will of the electorate.

(2) The Minister shall, within the next fourteen days on which Parliament sits after the President or the Minister has received a report of the Electoral Supervisory Commission in terms of subsection (1), lay it before Parliament.

## **16 Duties of Commission towards Electoral Supervisory Commission**

The Commission—

- (a) shall provide the Electoral Supervisory Commission with such reports relating to the registration of voters and the conduct of elections as the Electoral Supervisory Commission may from time to time require;
- (b) shall generally keep the Electoral Supervisory Commission informed on all matters relating to the exercise of its functions in terms of this Act;
- (c) may refer to the Electoral Supervisory Commission for its advice any matters relating to the registration of voters and the conduct of elections;
- (d) may, at the invitation of the Electoral Supervisory Commission, delegate any Commissioner or the Chief Elections Officer to attend meetings of the Electoral Supervisory Commission:

Provided that such delegate shall not vote on any question before the Electoral Supervisory Commission.

## **PART III**

### **STAFF OF COMMISSION DURING ELECTIONS**

## **17 Staff of Commission during elections**

(1) At the request of the Commission the chairpersons of the Service Commissions shall second such persons in the employment of the State to be constituency elections officers, deputy constituency elections officers, assistant constituency elections officers and polling officers as may be necessary to perform the functions of the Commission during an election.

(2) For the period of an election every person seconded to the Commission under subsection (1) shall be under its direction and control in every respect as if such person was an employee of the Commission.

**18 Registrar-General of Voters**

(1) There shall be a Registrar-General of Voters whose office shall be a public office and shall form part of the Public Service.

(2) The Registrar-General of Voters shall exercise such functions as are imposed or conferred upon the Registrar-General of Voters by or under this Act and, in the exercise of his or her functions, the Registrar-General of Voters shall be subject to the direction and control of the Commission, and shall have regard to any report or recommendation of the Electoral Supervisory Commission.

(3) Notwithstanding any other provision of this Act, the Registrar-General of Voters may—

- (a) assume and exercise any function which in terms of this Act is vested in a constituency registrar;
- (b) with the consent of the Minister, delegate any of his or her functions in terms of this Act to any other member of the Public Service;
- (c) assign or authorise the delegation of all or any of the functions which in terms of this Act are vested in a constituency registrar to any other such member of the Public Service;
- (d) in relation to an election to which Part XIX applies, delegate any of his or her functions in terms of this Act, the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*] to a member of the Public Service;

and shall do so if so directed by the Commission.

**19 Constituency registrars and other officers**

(1) For each constituency there shall 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.

(2) A deputy constituency registrar or assistant constituency registrar shall, subject to subsection (3), exercise such of the functions that are imposed or conferred by or under this Act on the constituency registrar of the constituency for which he or she has been appointed as may be delegated to him or her from time to time by that constituency registrar.

(3) Constituency registrars, deputy constituency registrars and assistant constituency registrars shall exercise the functions conferred upon them by or under this Act under the general supervision and direction of the Registrar-General of Voters.

**20 Voters rolls to be kept by constituency registrars**

(1) The Commission shall ensure that the Registrar-General of Voters compiles and maintains the voters rolls.

(2) Each constituency registrar shall have charge and custody of the voters roll for his or her constituency.

(3) The voters roll shall be kept in such form as may be prescribed.

(4) For the purposes of keeping his or her voters roll in terms of this Act, the constituency registrar may use the claim forms or forms for the transfer of registration completed by him or her.

**21 Voters rolls open to inspection and printing of rolls**

(1) The voters roll for every constituency shall be open to inspection by the public, free of charge, at the office of the constituency registrar during office hours.

(2) A person inspecting the voters roll for a constituency may, without removing the voters roll, make any written notes of anything contained therein during office hours.

(3) The Commission shall, when instructed to do so by the Electoral Supervisory Commission, require the Registrar-General of Voters to provide the Electoral Supervisory Commission with a copy of the voters roll for any constituency.

(4) Any person may, on payment of the prescribed fee, request the Commission to provide him or her with a printed copy of the voters roll for any constituency, and the Commission shall thereupon cause the roll to be printed and provided to that person within a reasonable time.

(5) Where the voters roll for any constituency has been printed in terms of subsection (4) it shall as far as possible contain all the names of the voters who would be entitled to vote at that constituency if an election were held on the date of the request referred to in subsection (4):

Provided that if a request is for the voters roll of a constituency in respect of which a proclamation under section *thirty-eight* or a notice under section *thirty-nine* or *one hundred and three* is published, the voters roll to be published and provided by the Commission shall be the one as at the date specified in that proclamation or notice for the closure of the voters roll in that constituency.

## 22 Powers to demand information

In the performance of his or her duties under this Act, a constituency registrar shall at all times have the power—

- (a) to demand from any claimant any information necessary to enable the constituency registrar to ascertain whether the claimant is qualified to be registered as a voter or to ascertain his or her place of residence;
- (b) to demand from any person any information necessary to enable the constituency registrar to ascertain whether a voter or a claimant is qualified to be registered as a voter or to ascertain the place of residence of any voter or claimant or whether any voter or claimant is dead;
- (c) to require any voter or claimant to answer such questions as will enable the constituency registrar to complete a prescribed form of claim in accordance with section *twenty-four*.

## PART V

### RESIDENCE QUALIFICATIONS OF VOTERS AND REGISTRATION OF VOTERS

## 23 Residence qualifications of voters

(1) 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 or her claim:

Provided that if a claimant satisfies the Registrar-General of Voters that he or she is or intends to be a candidate for election as a member of Parliament for a particular constituency in which he or she is not resident, the claimant may be registered as a voter in that constituency.

(2) For the purposes of subsection (1), a claimant shall be deemed to be residing in a constituency while he or she is absent therefrom for a temporary purpose.

(3) A voter who is registered on the voters roll for a constituency, other than a voter who has been registered in that constituency in terms of the proviso to subsection (1), shall not be entitled to have his or her name retained on such roll if, for a continuous period of twelve months, he or she has ceased to reside in that constituency:

Provided that nothing in this subsection shall prevent his or her name from being struck off such voters roll—

- (a) on his or her being registered in another constituency; or
- (b) if he or she becomes disqualified for registration as a voter.

(4) The Chief Elections Officer, Registrar-General of Voters, any constituency registrar or any officer of the Commission may demand from any voter who is registered on the voters roll for a constituency proof of identity or proof of residence in that constituency or both of the foregoing.

## 24 Claims for registration

(1) Any person who wishes to be registered as a voter on the voters roll for any constituency shall present himself or herself at the appropriate registration office in order for the appropriate prescribed claim form to be completed on his or her behalf by the constituency registrar, deputy constituency registrar or assistant constituency registrar:

Provided that a claimant who, in accordance with the proviso to subsection (1) of section *twenty-three*, seeks registration in a constituency in which he or she is not resident shall lodge a claim form with the Registrar-General of Voters.

(2) Where a claimant seeks registration in a constituency in which he or she is not resident, he or she shall provide the Registrar-General of Voters with an address in that constituency where he or she shall be deemed to be resident for the purposes of any delimitation of constituencies in terms of the Constitution.

(3) If the constituency registrar is satisfied that a claimant who seeks registration in a constituency in which he or she is resident is entitled to be registered as a voter on the voters roll for that constituency, the constituency registrar shall, pursuant to the claim form and subject to this Part, enter the claimant's name and the particulars relating to him or her on that voters roll.

(4) If, on receipt of a claim form in which the claimant seeks registration in a constituency in which he or she is not resident, the Registrar-General of Voters is satisfied that it is appropriate for the claimant to be registered in that constituency, the Registrar-General of Voters shall direct the appropriate constituency registrar to enter the claimant's name and particulars relating to him or her on the voters roll for his or her constituency.

(5) If a constituency registrar considers that a claimant should be registered on the voters roll for some other constituency, the constituency registrar shall forward the claim to the constituency registrar for that other constituency and shall advise the claimant accordingly.

(6) The Chief Elections Officer, Registrar-General of Voters, any constituency registrar or any officer of the Commission may demand from any claimant proof of identity or proof of residence in that constituency or both of the foregoing.

(7) Any applicant aggrieved by any decision of the Registrar-General of Voters or constituency registrar made under this section may lodge a complaint with the Commission in terms of section *one hundred and ninety*.

## 25 Claims for transfer of registration

- (1) 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 the reason referred to in the proviso to subsection (1) of section *twenty-four*, to be registered in another constituency in which he or she is not resident;

may present himself or herself at the appropriate registration office in order for the appropriate prescribed form to be completed on his or her behalf by the constituency registrar, deputy constituency registrar or assistant constituency registrar, and shall submit to such officer the voters registration certificate, if any, issued to him or her:

Provided that where an applicant seeks transfer of registration because he or she is or intends to be a candidate for election as a member of Parliament in a constituency in which he or she is not resident, the applicant shall send the appropriate prescribed form to the Registrar-General of Voters for his or her approval.

(2) Where an applicant seeks transfer to a constituency in which he or she is not resident, the applicant shall provide the Registrar-General of Voters with an address in that constituency where he or she shall be deemed to be resident for the purposes of any delimitation of constituencies in terms of the Constitution.

(3) If the constituency registrar is satisfied that an applicant who seeks transfer of registration to a constituency in which he or she is resident is entitled to the transfer, the constituency registrar shall—

- (a) remove the applicant's name from the voters roll for his or her 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.

(4) On receipt of an applicant's name and particulars forwarded to him or her in terms of subsection (3) a constituency registrar, if satisfied that the application is in order, shall register the applicant on the voters roll for his or her constituency and, as soon as he or she has done so, notify the voter thereof.

(5) If, on receipt of an application in terms of the proviso to subsection (1) in which the applicant seeks transfer to a constituency in which he or she is not resident, the Registrar-General of Voters is satisfied that it is appropriate for the applicant to be registered in that constituency, he or she 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 or her 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 or her in terms of paragraph (a), to register the applicant on the voters roll for his or her constituency and, as soon as he or she has done so, to notify the voter thereof;

and the constituency registrars concerned shall comply with any such direction.

(6) Any applicant aggrieved by any decision of the Registrar-General of Voters or constituency registrar made under this section may lodge a complaint with the Commission in terms of section *one hundred and ninety*.

## 26 Voters registration certificates

(1) Subject to subsection (3), on the registration of a voter in terms of this Part the constituency registrar shall issue him or her with a voters registration certificate in the prescribed form.

(2) Subject to subsection (3), on the transfer of the registration of a voter in terms of section *twenty-five* the voter shall be issued with a voters registration certificate by the constituency registrar of the constituency to which he or she has been transferred.

(3) If a voter has applied for registration in terms of the National Registration Act [*Chapter 10:17*] and been issued with—

- (a) a notice in writing in terms of subsection (1) of section 7 of that Act; or
- (b) an identity document in terms of subsection (2) of section 7 of that Act;

he or she need not be furnished or issued with a voters registration certificate in terms of this section.

## PART VI

### OBJECTIONS TO REGISTRATION OF VOTERS

## 27 Objections by constituency registrar

- (1) Subject to subsection (7), 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 or she has claimed to be registered; or
  - (c) a voter registered on a voters roll is not qualified for registration on that voters roll;

the constituency registrar shall send to the claimant or voter, as the case may be, written notice of objection to which a form of notice of appeal shall be annexed:

Provided that no such objection shall be taken or notice sent during the period between the issue of a proclamation referred to in section *thirty-eight* or publication of a notice referred to in section *thirty-nine* and the close of polling at the election to which such proclamation or notice relates.

- (2) A notice of objection in terms of subsection (1) shall be in the prescribed form and shall set forth—
  - (a) the grounds 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 representations made by the person to whom the objection relates, withdraws his or her 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.
- (3) If—
  - (a) notice of appeal is not duly given or is withdrawn and the constituency registrar does not withdraw his or her 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 or she withdraws his or her 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 place for the hearing, the day so appointed being not more than thirty days after the date of receipt of the notice of appeal from the constituency registrar.
- (4) The constituency registrar shall give written notice to the appellant of the day and place appointed for the hearing.
- (5) A notice of appeal shall be accompanied by the prescribed fee.
- (6) The appellant may withdraw his or her appeal on written notice to the constituency registrar, and, if the objection has been set down in terms of subsection (3) for hearing, the constituency registrar shall notify the designated magistrate of such withdrawal.
- (7) Notwithstanding this section, where a claimant or voter has ceased to be a citizen of Zimbabwe and thereby ceases to be entitled to vote in terms of subparagraph (3) of paragraph 3 of Schedule 3 to the Constitution, it shall not be necessary to send a notice of objection to a claimant or voter before rejecting his or her claim for registration or striking his or her name off the voters roll, as the case may be, if the constituency registrar—
  - (a) publishes a notice of such striking-off in the *Gazette* or in a newspaper circulating in the area of the constituency concerned; and
  - (b) gives written notice to the claimant or voter concerned that his or her claim for registration is incompetent or his or her name has been or is to be struck off the voters roll because he or she has ceased to be a citizen of Zimbabwe.

## **28 Objections by voters**

- (1) A voter may object to the retention of any name on the voters roll of the constituency in which the objecting voter is registered.
- (2) An objection in terms of subsection (1) shall 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 fee.
- (3) If an objection in terms of subsection (1) is lodged and—
  - (a) the constituency registrar upholds the objection, he or she shall give written notice accordingly to—
    - (i) the voter who has objected; and
    - (ii) the person to whom the objection relates, where the effect of upholding the objection is to strike his or her name off the voters roll or to place it on another voters roll;and strike the name of the person to whom the objection relates off the voters roll or place it on another voters roll, as the case may be, within fourteen days of the date when the constituency registrar gives notice in accordance with this paragraph, unless, within that period—
    - A. the voter who has objected submits to the constituency registrar a written notice to the effect that he or she wishes the objection to be heard (notwithstanding that the objection is upheld); or
    - B. the person to whom the objection relates submits to the constituency registrar a written notice to the effect that he or she wishes the objection to be heard;in which event paragraph (b) shall apply as if the constituency registrar did not uphold the objection;
  - (b) the constituency registrar does not uphold the objection, he or she shall (after affording the objector an opportunity to withdraw the objection in any case where it was based on an obvious error or misunderstanding on the part of the objector)—

- (i) 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
  - (ii) 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.
- (4) 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.

(5) Notwithstanding anything in this section, if the constituency registrar receives an objection in terms of subsection (1) 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 or she shall take no action on such objection until after the close of the polling day or last polling day, as the case may be.

(6) A voter who has objected in terms of this section may, at any time after the objection is set down for hearing in terms of subparagraph (i) of paragraph (b) of subsection (3), withdraw the objection on written notice to the constituency registrar and the constituency registrar shall notify the person to whom the objection relates and the designated magistrate of such withdrawal, and no further proceedings shall be taken in relation to that objection.

## **29 Hearing and determination of objections by designated magistrate**

(1) On the hearing of an objection in terms of section *twenty-seven* or *twenty-eight* by a designated magistrate the following provisions shall apply—

- (a) the objector may appear either in person or by an agent appointed in writing under his or her hand;
- (b) the person to whom the objection relates may—
  - (i) appear either in person or by an agent appointed in writing under his or her hand; or
  - (ii) forward by post addressed to the designated magistrate a statement in writing, signed by him or her and witnessed by another voter of the same constituency, setting forth the reasons for his or her claim or for remaining on the voters roll, as the case may be;
- (c) if objector does not appear as provided in paragraph (a), 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 or her name off the voters roll or to place it on the correct voters roll;
- (e) if the objector appears as provided in paragraph (a), 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 or her name on the voters roll, to place it on the correct voters roll or to strike it off the voters roll;
 as he or she may think fit;
- (f) no grounds of objection shall be entertained except such as are 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 or she considers it necessary, adjourn the hearing for the attendance of that party in person and may make an order requiring his or her attendance accordingly.

(2) The designated magistrate may make such order as to costs as he or she thinks fit if—

- (a) in the case of an appeal against an objection by a constituency registrar in terms of section *twenty-seven*—
  - (i) the appellant or his or her 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 or she has disallowed the appeal and held that the grounds of appeal were frivolous or vexatious;
- (b) in the case of the hearing of an objection by a voter in terms of section *twenty-eight*—
  - (i) the objector does not appear as provided in paragraph (a) of subsection (1) and the person to whom the objection relates has not in writing admitted the validity of the objection; or
  - (ii) he or she has held that the grounds of objection were frivolous or vexatious.

### 30 Statement of case for opinion of judge in chambers

- (1) If, on the hearing of an objection in terms of section *twenty-seven* or *twenty-eight*—
- (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 or she may draw up a statement of the facts and state a question for decision and shall 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.

(2) Where a case is laid before a judge in terms of subsection (1), the objector 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.

(3) The judge before whom a case is laid in terms of subsection (1)—

- (a) may call for further information, if he or she thinks fit, from the designated magistrate who transmitted it; and
  - (b) shall give such decision thereon as appears to him or her right and proper;
- and there shall be no appeal from the decision of the judge.

(4) Where a case has been transmitted at the request of a party in terms of paragraph (b) of subsection (1), the judge may make such order as to costs as he or she thinks fit.

### 31 Posting of names of persons objected to

The name of every person whose registration is objected to shall be publicly exhibited outside the court of the designated magistrate who is to hear and determine the objection and at such other place or places as the constituency registrar may direct and shall be maintained there until the objection is so heard and determined.

## PART VII

### MISCELLANEOUS PROVISIONS RELATING TO REGISTRATION OF VOTERS

### 32 Removal of duplications

- (1) The various constituency registrars shall ensure 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 rolls for more than one constituency.
- (2) Subject to subsection (3), if a constituency registrar is satisfied that a voter is registered—
- (a) more than once on the voters roll for his or her constituency, the constituency registrar shall remove the name where it occurs on the second or any subsequent occasion;
  - (b) on the voters roll for his or her constituency and on the voters roll for any other constituency, the constituency registrar shall remove the name of the voter from his or her voters roll unless he or she is satisfied that the voter is entitled to be registered on his or her voters roll rather than on the other voters roll.

(3) A constituency registrar shall not remove the name of a voter in terms of subsection (2) unless section *twenty-seven* is complied with, and that section and sections *twenty-nine* and *thirty* shall apply, with any changes that may be necessary, as though the constituency registrar were taking an objection in terms of subsection (1) of section *twenty-seven*.

### 33 Removal from voters roll on disqualification, death or absence

(1) Subject to subsection (5), if a constituency registrar has reason to believe that a voter whose name is registered on a voters roll has become disqualified for registration as a voter, or is dead, the constituency registrar shall remove his or her name therefrom.

(2) Subject to subsection (5), if a constituency registrar is satisfied that a voter registered on a voters roll—

- (a) has been absent from his or her constituency for a period of twelve months or longer and is not a voter who was registered with the approval of the Registrar-General of Voters in a constituency in which he or she was not resident; or
  - (b) has left Zimbabwe with the intention of residing permanently outside Zimbabwe;
- the constituency registrar shall remove such voter's name therefrom.

(3) In determining the period of absence of any person for the purposes of subsection (2), no account shall be taken of any period during which the person—

- (a) resides outside his or her constituency while he or she is a Vice-President, Minister, Provincial Governor or Deputy Minister; or
- (b) is occupied in the discharge of his or her duties outside Zimbabwe while in the service of the State; or
- (c) resides temporarily outside Zimbabwe by reason of—

- (i) his or her service with an international organisation of which Zimbabwe is or was at the time a member; or
  - (ii) his or her employment by—
    - A. a person resident in Zimbabwe; or
    - B. a society, body of persons or company, the control and management of which are in Zimbabwe; or
    - C. a body incorporated directly by an enactment in force in Zimbabwe;
- or
- (iii) his or her attendance at a university or other educational institution;
- or
- (d) resides outside Zimbabwe on account of ill-health or disability; or
  - (e) is absent from his or her constituency for the purpose of being with his or her spouse if such spouse is a person referred to in paragraph (a), (b), (c) or (d).

(4) A constituency registrar shall not remove the name of a voter in terms of subsection (1) or (2) unless he or she has sent to the voter's last known address a written notice of objection addressed to the voter, to which a form of notice of appeal has been annexed.

(5) The proviso to subsection (1) of, and subsections (2) to (7) of, section *twenty-seven* and sections *twenty-nine* and *thirty* shall apply, with any changes that may be necessary, in relation to the exercise by a constituency registrar of his or her powers in terms of subsection (1) or (2) as though the constituency registrar were taking an objection in terms of subsection (1) of section *twenty-seven*.

### **34 Registration of voter no longer disqualified**

A person whose name has been removed from a voters roll terms of section *thirty-three* on the grounds of disqualification may, when no longer disqualified, claim to be registered as a voter.

### **35 Additional powers to alter voters rolls**

- (1) In addition to other powers of alteration conferred by this Part, a voters roll may be altered—
  - (a) by the Registrar-General of Voters at any time to correct any error or omission or to change (whether on the oral or written application of a voter or not) the original name or address of the voter to an altered name or address;
  - (b) by the constituency registrar at any time by correcting any obvious mistake or omission, or by changing, on the written application of a voter, the original name or address of the voter to an altered name or address;
  - (c) by the constituency registrar at any time except during the period between the issue of a proclamation referred to in section *thirty-eight* or publication of a notice referred to in section *thirty-nine* and the close of polling at the election fixed by any such proclamation or notice, by striking out the name of any person, on proof that he or she has become qualified for and has secured registration on another voters roll.

(2) In the case of an alteration in terms of subsection (1) made otherwise than on the oral or written application of a voter, a notice of the alteration shall be published in the *Gazette* by the Registrar-General of Voters or constituency registrar, as the case may be.

(3) Any voter aggrieved by any decision of the Registrar-General of Voters or constituency registrar made under this section may lodge a complaint with the Commission in terms of section *one hundred and ninety*.

### **36 How alterations to be made**

All alterations made in terms of this Part 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.

## PART VIII

### OFFENCES IN RELATION TO REGISTRATION OF VOTERS

### **37 Offences in relation to registration of voters**

- (1) Any person who—
    - (a) receives a claim form and without just cause fails or neglects to do anything in connection with such claim form which he or she is required by this Act to do; or
    - (b) having obtained possession of a claim form signed by any other person for the purpose of being delivered to the constituency registrar, fails so to deliver it within a period of seven days calculated from the day on which he or she obtained possession thereof;
- shall be guilty of an offence and liable to a fine not exceeding level four.
- (2) Any person who—
    - (a) makes a false statement of fact in any claim or application for registration knowing the statement to be false or not knowing or believing it to be true; or

- (b) after demand made of him or her in terms of paragraph (a), (b) or (c) of section *twenty-two*—
    - (i) without just cause, fails to give any such information as he or she possesses or unreasonably delays in giving the same; or
    - (ii) furnishes information which he or she knows to be false or does not know or believe to be true;
 or
  - (c) fails to comply with any requirement made in terms of section *twenty-two*; or
  - (d) in the name of any other person, whether living, dead or fictitious, signs a claim form to have such other person registered as a voter; or
  - (e) transmits or is concerned in transmitting to any person as genuine a declaration false in any material particular, knowing the same to be false or not knowing or believing it to be true; or
  - (f) by himself or herself or any other person procures the registration of himself or herself or any other person on a voters roll for a constituency, knowing that he or she or such other person is not entitled to be registered on that voters roll or is already registered thereon; or
  - (g) by himself or herself or any other person procures the registration of a fictitious person;
- shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Any person who—

- (a) by intimidation, fraud or misrepresentation causes or induces or attempts to cause or induce any person or any group of persons generally to refrain from registering or taking steps to register as a voter or voters, as the case may be; or
- (b) takes, destroys or damages any document belonging or relating to another person in order to prevent the registration of that person as a voter;

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

## PART IX

### PROCLAMATION OF GENERAL ELECTIONS AND NOTIFICATION OF BY-ELECTIONS

#### **38 General elections**

(1) In a proclamation in terms of subsection (1) of section 58 of the Constitution fixing a day or days for the holding of a general election for the purpose of electing members of Parliament, the President shall provide for the matters required by this section.

(2) 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 referred to in subsection (1), on which a nomination court shall sit in terms of section *forty-six* 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 in terms of paragraph (a), on which a poll shall be taken if a poll becomes necessary in terms of paragraph (c) of subsection (17) of section *forty-six* 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 referred to in subsection (1).

(3) 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 in terms of paragraph (a) of subsection (2) and not later than fourteen days after the polling day or last polling day, as the case may be, fixed in terms of paragraph (b) of subsection (2), on which electoral colleges shall meet in terms of Part X.

(4) Subject to section 58 of the Constitution, the President may, by further proclamation in the *Gazette*, alter any day, time or place fixed in terms of subsection (1), (2) or (3) and the day, time or place as so altered shall be deemed to have been fixed in terms of the appropriate subsection.

#### **39 Vacancies and by-elections**

(1) A vacancy in the membership of Parliament which exists otherwise than by reason of a dissolution of Parliament shall, subject to this section, be notified to the President and the Commission in writing by the Speaker as soon as possible after the Speaker becomes aware of the vacancy.

(2) The President shall, within a period of fourteen days after—

- (a) he or she has been notified in terms of this section of a vacancy in the membership of Parliament; or
- (b) a declaration is made by the Chief Elections Officer in terms of section *fifty*; or
- (c) a nomination day or the last nomination day, as the case may be, where no person has been duly nominated for election;

publish a notice in the *Gazette* ordering a new election to fill the vacancy in the same manner, with any changes that may be necessary, as is provided in section *thirty-eight* in regard to a general election, and the provisions of this Act shall apply accordingly:

Provided that the President shall not be required to act in terms of this subsection in respect of any vacancy in the membership of Parliament which arises within a period of twenty-one days before the making of a proclamation in terms of subsection (1) of section 58 of the Constitution fixing a day or days for the holding of a general election.

## PART X

### ELECTION OF CHIEFS TO PARLIAMENT

#### 40 Electoral colleges

For the purpose of electing Chiefs to Parliament in terms of paragraph (c) of subsection (1) of section 38 of the Constitution—

- (a) the Council of Chiefs referred to in section 37 of the Traditional Leaders Act [*Chapter 29:17*] shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President in terms of subsection (3) of section *thirty-eight* for the purpose of electing two chiefs to be members of Parliament; and
- (b) each provincial assembly of Chiefs referred to in section 35 of the Traditional Leaders Act [*Chapter 29:17*] shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President in terms of subsection (3) of section *thirty-eight* for the purpose of electing one Chief to be a member of Parliament to represent the province for which the provincial assembly is established.

#### 41 Presiding officers

For the purposes of the nomination and election of Chiefs to Parliament, the Commission shall appoint one of its officers to be the presiding officer of each electoral college referred to in section *forty*.

#### 42 Quorum of electoral colleges

One-half of the total membership of each electoral college shall constitute a quorum of that electoral college.

#### 43 Nomination of Chiefs as candidates

(1) 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.

(2) Every candidate for election to Parliament as a Chief in terms of this Part 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.

(3) No nomination in terms of subsection (2) shall be valid unless the candidate has signified his or her acceptance of it.

(4) 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 Commission 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 in accordance with this Part.

(5) If at a meeting of an 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 Commission and cause to be published in the *Gazette* notice of the name of such candidate and the day with effect from which he or she was declared so elected;
- (b) more than one candidate has been duly nominated to represent the province concerned, a poll shall take place in accordance with this Part.

#### 44 Conduct of poll for election of Chiefs

(1) This section shall apply in relation to any poll that becomes necessary in terms of paragraph (b) of subsection (4) or (5) of section *forty-three*.

(2) Subject to subsection (3), after the close of nominations the presiding officer shall adjourn the meeting of the electoral college for three hours.

(3) Unless requested by the electoral college to return earlier, the presiding officer shall, on the expiry of three hours, reconvene the meeting of the electoral college for the purpose of conducting the poll.

(4) The presiding officer shall make, before the meeting of the electoral college is reconvened in terms of subsection (3), a declaration of secrecy before a commissioner of oaths.

(5) 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.

(6) When the meeting of the electoral college is reconvened in terms of subsection (3)—

- (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, subject to paragraph (f), 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, receives 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 or she 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.

(7) Any declaration by the presiding officer under this section shall be final and subject to reversal only on petition in terms of Part XXIII to the Electoral Court that such declaration be set aside.

(8) After the holding of a poll in terms of this section the presiding officer shall notify the Commission 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.

## PART XI

### APPOINTED MEMBERS OF PARLIAMENT

#### 45 Notification of appointment of members of Parliament

Whenever the President appoints members of Parliament in terms of paragraph (d) of subsection (1) of section 38 of the Constitution, the President shall notify the Clerk of Parliament and cause to be published in the *Gazette* the names of the persons so appointed and the day on which they were appointed.

## PART XII

### NOMINATION OF CANDIDATES FOR ELECTION AS MEMBERS OF PARLIAMENT

#### 46 Nomination of candidates

(1) 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 or her chief election agent; and
- (b) may specify a distinctive symbol which the candidate wishes to appear on the ballot paper in conjunction with his or her name; and
- (c) may, if the candidate is to stand for or be sponsored by any political party, specify that fact, together with the name of the political party and an abbreviation of such name which the candidate wishes to appear on the ballot paper; and
- (d) shall be accompanied by a passport-sized black and white photograph of the candidate; and

(e) shall contain such particulars as may be prescribed.

(2) Where a nomination paper specifies the matters referred to in paragraph (c) of subsection (1), the nomination paper shall be countersigned by a person purporting to be an office-bearer of the political party concerned with authority to certify that the candidate is to stand for or be sponsored by that political party.

(3) Nomination papers in respect of candidates for election as members of Parliament may be lodged with the constituency elections officers for the constituencies concerned at any time after the publication of the proclamation referred to in subsection (1) of section *thirty-eight* but before the time on nomination day or the last nomination day, as the case may be, specified in subsection (5).

(4) At the same time as a nomination paper is lodged in terms of subsection (3), the candidate or his or her agent shall provide the constituency elections officers with an address, including where possible a telephone number, where the candidate may be contacted during the period between nomination day and polling day or the last polling day, as the case may be, in the election concerned.

(5) On the day and at the place fixed in terms of paragraph (a) of subsection (2) of section *thirty-eight*, the constituency elections officer 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 or she is the constituency elections officer.

(6) The constituency elections officer shall in open court—

- (a) announce whether any candidate has lodged his or her 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 or she is the constituency elections officer.

(7) No nomination paper shall be received by the constituency elections officer in terms of subsection (6) 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 or her chief election agent is present in the court and ready to submit a nomination paper in respect of the candidate, the constituency elections officer shall give him or her an opportunity to do so.

(8) The constituency elections officer shall examine every nomination paper lodged with him or her which has not been previously examined by him or her in order to ascertain whether it is in order and shall give any candidate or his or her chief 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.

(9) If, on examining a nomination paper which specifies that the candidate concerned is to stand for or be sponsored by a political party, the constituency elections officer is doubtful that such fact is true, the constituency elections officer may require the candidate or his or her chief 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.

(10) Subject to subsections (8) and (9), the constituency elections officer in open court shall reject any nomination paper lodged with him or her at any time—

- (a) if he or she considers that any symbol or abbreviation specified therein in terms of paragraph (b) or (c) of subsection (1)—
  - (i) is indecent or obscene; or
  - (ii) is too complex or elaborate to be reproduced on a ballot paper; or
  - (iii) so closely resembles—
    - A. the symbol of any other candidate contesting the election in the constituency concerned; or
    - B. the recognised symbol or abbreviation of any political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him or her; as to be likely to cause confusion;
- or
- (b) if any symbol specified therein in terms of paragraph (b) of subsection (1) is a prohibited symbol; or
- (c) if the nomination paper states that the candidate concerned is to stand for or be sponsored by a political party and the constituency elections officer has reason to believe that that fact is not true; or
- (d) if in his or her opinion the nomination paper is for any other reason not in order;

and subsection (19) shall apply.

(11) Without derogation from section *one hundred and eighty-nine*, the constituency elections officer 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 elections officer 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 elections officer is satisfied that there has been substantial compliance with this section.
- (12) The constituency elections officer shall in open court announce the name of every candidate who has been duly nominated.
- (13) The sitting of the nomination court in terms of this section shall end immediately after the announcement in terms of subsection (12) and after the close of the sitting no candidate shall be entitled or permitted to lodge a nomination paper.
- (14) The question whether any, and if so what, advice has been given by the constituency elections officer in relation to a nomination paper shall not be inquired into by any court.
- (15) A candidate shall not be regarded as duly nominated for a constituency if—
- (a) his or her nomination was not lodged in terms of this section with the constituency elections officer for the constituency in which the candidate seeks election; or
  - (b) his or her nomination paper has not been signed and countersigned in accordance with subsection (1) or is otherwise not properly completed; or
  - (c) the deposit referred to in subsection (1) of section *forty-seven* was not lodged with his or her nomination paper; or
  - (d) he or she is not qualified for election at that election; or
  - (e) he or she has been duly nominated for election for another constituency for which the poll has not taken place.
- (16) 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 or her nomination for all the constituencies for which he or she has been duly nominated shall be void.
- (17) If, at the close of the sitting of the nomination court—
- (a) no person has been duly nominated for election for the constituency, the constituency elections officer shall report the fact to the Chief Elections Officer and to the Clerk of Parliament;
  - (b) only one person has been duly nominated for election for the constituency, the constituency elections officer 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, fixed in terms of paragraph (b) of subsection (2) of section *thirty-eight*, and shall notify the Chief Elections Officer, whereupon the Chief Elections Officer shall 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 or she was declared so elected:
- Provided that if, by virtue of an appeal in terms of subsection (19), an additional candidate is to be regarded as duly nominated, the constituency elections officer shall revoke his or her declaration in terms of this paragraph and shall notify the Chief Elections Officer, whereupon the Chief Elections Officer shall cause to be published in the *Gazette* notice thereof and paragraph (c) shall apply;
- (c) more than one person has been duly nominated for election for a constituency, a poll shall take place in accordance with this Part and Part XIII.
- (18) Any voter registered on any voters roll may—
- (a) before the sitting of the nomination court, at the office of the constituency elections officer and during office hours, inspect any nomination paper lodged with the constituency elections officer;
  - (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.
- (19) If a nomination paper has been rejected in terms of subsection (10) or been regarded as void by virtue of subsection (16)—
- (a) the constituency elections officer shall forthwith notify the candidate or his or her chief election agent, giving reasons for his or her decision; and
  - (b) the candidate shall have the right of appeal from such decision to a judge of the Electoral Court in chambers and such judge may confirm, vary or reverse the decision of the constituency elections officer and there shall be no appeal from the decision of that judge; and
  - (c) if no appeal in terms of paragraph (b) is lodged within four days after the receipt of notice of the decision of the constituency elections officer, the right of appeal of the candidate shall lapse and the decision of the constituency elections officer shall be final; and
  - (d) if an appeal in terms of paragraph (b) is lodged, the judge concerned may—
    - (i) direct that any further proceedings under this section in relation to that election shall be suspended, if necessary, pending determination of the appeal; and
    - (ii) specify a day or days on which any poll in terms of this Part and Part XIII shall be held;

and if he or she does so, the Chief Elections Officer shall cause notice thereof to be published in the *Gazette*.

(20) Any person who—

- (a) as a candidate or otherwise, forges any signature purporting to be that of a nominator; or
- (b) as a candidate or otherwise, lodges a nomination paper knowing that any signature therein purporting to be that of a nominator is forged; or
- (c) being a candidate, permits the lodging of a nomination paper on his or her behalf knowing that any signature therein purporting to be that of a nominator is forged;

shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment and, in the case of a candidate, shall be disqualified from being nominated as a candidate for, or from election as, a member of Parliament for a period of five years from the date of conviction.

#### **47 Deposit on nomination**

(1) At the same time as the nomination paper is lodged in terms of section *forty-six* there shall be deposited with the constituency elections officer, by or on behalf of the person nominated, such sum as may be prescribed.

(2) 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 form part of the funds of the Commission.

#### **48 Procedure when poll to be held**

If a poll becomes necessary in terms of paragraph (c) of subsection (17) of section *forty-six*, the constituency elections officer shall notify the Chief Elections Officer, who shall, 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 or she thinks fit the situation of and hours specified in terms of section *fifty-three* for the opening and closing of each polling station for the constituency.

#### **49 Withdrawal of candidate**

(1) Subject to this section, a duly nominated candidate for election for a constituency may withdraw his or her nomination at any time before polling or the first polling day, as the case may be, in the election concerned.

(2) A withdrawal of a candidate in terms of subsection (1) shall be effected by means of a written notification to the constituency elections officer, signed by the candidate personally.

(3) Where a candidate has withdrawn his or her nomination in terms of this section, the sum deposited by him or her or on his or her behalf in terms of section *forty-seven* shall be forfeited and form part of the funds of the Commission.

(4) If, as a result of the withdrawal of a candidate in terms of this section, only one candidate remains duly nominated for election for the constituency concerned, the constituency elections officer 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, fixed in terms of paragraph (b) of subsection (2) of section *thirty-eight* and shall notify the Chief Elections Officer accordingly, whereupon the Chief Elections Officer shall 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 or she was declared so elected:

Provided that, if by virtue of an appeal in terms of subsection (19) of section *forty-six*, an additional candidate is to be regarded as duly nominated, the constituency elections officer shall revoke his or her declaration in terms of this paragraph and shall notify the Chief Elections Officer accordingly, whereupon the Chief Elections Officer shall cause to be published in the *Gazette* notice thereof, and a poll shall take place in accordance with this Part and Part XIII.

(5) If, after the withdrawal of a candidate in terms of subsection (1), two or more candidates remain duly nominated for election for the constituency concerned, the constituency elections officer 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.

#### **50 Death of candidate**

(1) If—

- (a) the Chief Elections Officer 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 in terms of subsection (2);

the Chief Elections Officer 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 or her chief election agent notifies the constituency elections officer in writing of his or her intention to remain a candidate.

(2) If a constituency elections officer is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he or she shall stop all proceedings relating to that election and forthwith notify the Chief Elections Officer.

## PART XIII

### PREPARATION FOR AND VOTING AT POLL

#### **51 Polling stations**

(1) A constituency elections officer shall establish, at such convenient places as he or she may determine, as many polling stations as he or she may consider to be necessary for the purposes of conveniently taking a poll of the voters of his or her constituency.

(2) A polling station may, in addition to the polling stations established within the boundaries of the constituency concerned, be established in terms of subsection (1) at a place which is outside the boundaries of the constituency concerned:

Provided that no polling station shall be established as a polling station for more than one constituency.

(3) A constituency elections officer shall cause a notice of—

(a) the places at which polling stations are to be established; and

(b) the hours during which the polling stations will be open;

to be published at least two weeks before polling day and again on polling day, in a newspaper circulating in the constituency concerned and in such other manner as he or she thinks fit.

#### **52 Provision of requisites and officers for purpose of poll**

(1) For any election the constituency elections officer 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 or she may consider 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 funds of the Commission, or, to the extent of any insufficiency of the funds of the Commission for this purpose, the Consolidated Revenue Fund.

(2) The constituency elections officer—

(a) shall appoint sufficient presiding officers and polling 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.

#### **53 Hours polling stations to be open**

(1) A polling station shall be open continuously from 7.00 a.m. to 7.00 p.m. on a polling day:

Provided that if for good cause the constituency elections officer determines that it is not possible to open a polling station at 7.00 a.m., he or she shall fix such later opening time as will enable him or her to keep the polling station open for at least twelve hours continuously on a polling day.

(2) For the purpose of fixing the hours in terms of subsection (1), the constituency elections officer may designate some polling stations as urban stations and others as rural stations and may fix different hours for each such station.

(3) The presiding officer shall permit every voter who, at the time fixed in terms of this section for the closing of the polling station concerned, is in the queue of persons waiting to cast their votes, to record his or her vote before closing the polling station.

#### **54 The ballot box**

(1) Not more than thirty minutes before the commencement of the poll at any polling station, or before the commencement of the poll on the first polling day where voting is to take place over two or more days, the presiding officer shall—

(a) satisfy himself or herself 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 in terms of paragraph (b) of subsection (1) of section *fifty-five* 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 Commission.

(2) If for any reason it becomes necessary at any time during the polling period to use an additional ballot box at any polling station, subsection (1) shall apply, with any changes that may be necessary, before that ballot box is so used.

(3) A ballot box closed and sealed as provided in subsection (1) or (2) shall not be opened and the seal shall not be broken except in accordance with section *sixty-two*.

(4) The presiding officer at a polling station shall—

(a) at the close of the poll, or at the close of the poll on each polling day, as the case may be, close and seal the aperture in the ballot box used at the polling station; and

(b) break the seal and open the aperture only for the purpose of counting the votes, or at the commencement of the poll on the next succeeding polling day, as the case may be;

in accordance with instructions issued by the Commission and in the presence of such persons entitled in terms of paragraph (b) of subsection (2) of section *fifty-five* to attend at the polling station as are present.

(5) 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 or her at all times during the continuance of the poll.

(6) The presiding officer shall be responsible for the safe-keeping of any ballot box used at his or her polling station until it is delivered to the appropriate constituency elections officer.

## **55 Conduct of poll**

(1) There shall in each polling station be at least three voting compartments, each containing at least one ballot box, allocated for the use of voters whose surnames begin with the letters A to L, M and N to Z respectively.

(2) 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 persons other than the Chief Elections Officer, the constituency elections officer, a deputy constituency elections officer or assistant constituency elections officer, any official referred to in subsection (1) of section *eighteen* or *nineteen*, the candidates or their chief election agents, the police on duty and such other classes of persons as may be prescribed.

(3) Save as is provided in subsection (2), the presiding officer may require any person, other than a person actually recording his or her vote, to leave the polling station and—

(a) any person who fails to leave the polling station when so required may be arrested on the order of the presiding officer and shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment;

(b) any person empowered by law to make arrests shall carry out an order of the presiding officer in terms of paragraph (a).

(4) The powers conferred by subsections (2) and (3) shall not be exercised so as to prevent any voter who is entitled to vote at a polling station from having an opportunity of voting at that polling station.

(5) The presiding officer may order the arrest of any person who is suspected by him or her on reasonable grounds of having committed the offence of personation as defined in section *one hundred and thirty-seven* and any person empowered by law to make arrests shall carry out such an order.

## **56 Number of votes and identification of voters**

(1) 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) subject to sections *fifty-seven* and *fifty-eight*, a voter shall not be entitled to vote more than once for a candidate who has been duly nominated for that constituency.

(2) The presiding officer may put to an applicant for a ballot paper such questions as he or she considers necessary to ascertain whether or not the applicant is registered as a voter on the voters roll for the constituency.

(3) Unless otherwise directed by the Commission, the presiding officer shall require an applicant for a ballot paper to produce his or her voters registration certificate or proof of identity, and if—

(a) the applicant is registered as a voter on the voters roll for the constituency; and

(b) there is no indication that the applicant has previously received a ballot paper or postal ballot paper for the election;

the presiding officer shall mark or otherwise deal with that certificate or proof of identity in a manner directed by the Chief Elections Officer and shall hand the applicant a ballot paper.

(4) A presiding officer, if so directed by the Commission—

(a) before handing an applicant a ballot paper in terms of subsection (3), shall require the applicant to submit to an examination specified by the Chief Elections Officer to ascertain whether or not he or she has previously received a ballot paper at that election, and if the applicant refuses to submit to such examination or if such examination shows that the applicant has previously received such a ballot paper, the presiding officer shall not hand him or her a ballot paper;

(b) after handing an applicant a ballot paper in terms of subsection (3), shall mark him or her in the manner specified by the Commission.

(5) The mark referred to in paragraph (b) of subsection (4) shall be made with indelible ink of a type approved by the Commission, and in such a way that the mark is readily visible in daylight to the naked eye.

### **57 Manner of voting**

The voting at an election shall be by ballot which shall be conducted in substance and as nearly as possible 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 in terms of paragraph (b) of subsection (1) of section *forty-six*, 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 abbreviation of every political party for which a duly nominated candidate at the election is standing or which is sponsoring such a candidate, where the candidate concerned specified the abbreviation in his or her nomination paper in terms of paragraph (c) of subsection (1) of section *forty-six*; and
  - (iv) a passport-sized black and white photograph of the candidate; and
  - (v) 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 or she shall—
- (i) take the paper to the compartment provided for the purpose; and
  - (ii) then signify the candidate for whom he or she 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 or her 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 or she has spoiled the ballot paper, he or she may return it to the presiding officer in terms of section *fifty-eight* and shall deal with the second ballot paper given to him or her in accordance with this paragraph.

### **58 Spoilt ballot papers**

If a voter inadvertently spoils a ballot paper, he or she may return it to the presiding officer who shall, if satisfied of the inadvertence, give the voter another ballot paper and retain the spoilt paper, and the spoilt paper shall be immediately cancelled and the fact of the cancellation shall be noted upon the counterfoil.

### **59 Voting by illiterate voters**

(1) At the request in person of a voter who cannot read or write, the presiding officer, in the presence of a monitor and a police officer on duty at the polling station, shall assist the voter to there and then mark the ballot paper in accordance with the voter's wishes and place the ballot paper in the ballot box, and if the wishes of the voter as to the manner in which the vote is to be marked on the ballot paper are not sufficiently clear to enable the vote to be so marked, the presiding officer may cause such questions to be put to the voter as, in his or her opinion, are necessary to clarify the voter's wishes.

(2) The name of every person whose ballot paper is marked in terms of subsection (1) and the reason why it is so marked shall be entered on a list.

### **60 Voting by physically incapacitated voters**

(1) At the request in person of a voter who is incapacitated by blindness or other physical cause from voting in the manner provided in section *fifty-seven*, the presiding officer, in the presence of a monitor and a police officer on duty at the polling station, 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 the 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 or her opinion, are necessary to elicit such further directions.

(2) The name of every person whose ballot paper is marked in terms of subsection (1) and the reason why it is so marked shall be entered on a list.

## 61 Procedure at close of poll

The presiding officer shall, immediately after the close of the poll, in the presence of such candidates and their chief election agents or election agents as are present—

- (a) close and seal the aperture in the ballot box and affix his or her seal thereto and permit any such candidates and election agents to affix their signatures or thumb-prints upon the presiding officer's seal or to affix their seals to the aperture of the ballot box; and
- (b) make up into separate packets sealed with his or her 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 votes marked by the presiding officer in terms of sections *fifty-nine* and *sixty*.

## 62 Procedure after sealing of ballot boxes

(1) The presiding officer shall, as soon as the last packet is sealed in terms of paragraph (b) of section *sixty-one*, open and unseal the ballot boxes and count the votes.

(2) At the counting of the votes the following persons and no others may be present—

- (a) the presiding officer and such polling officers as he or she may consider necessary and not more than the prescribed number of monitors and observers; and
- (b) the candidates and one chief election agent or election agent for each candidate:

Provided that a candidate or his or her chief election agent or election agent may not be present at the counting of the votes at an election for which that candidate was not nominated.

(3) At the time for the counting of the votes referred to in subsection (1) and in the presence of such persons referred to in paragraph (a) of subsection (2) and candidates and their chief election agents or election agents as are present, the presiding officer shall adopt the following procedure in relation to each ballot box and the sealed packets in his or her custody—

- (a) he or she shall open the ballot box;
- (b) he or she shall then open each sealed packet containing the unused and spoilt ballot papers and the list of votes marked by the presiding officer.

## 63 Counting and rejection of votes

(1) At the time notified by the presiding officer the votes shall be counted in the manner provided by this section.

(2) The ballot papers in each ballot box referred to in subsection (1) of section *fifty-five* shall be counted separately.

(3) Subject to subsections (4) and (5), the presiding officer shall reject and not count any ballot paper—

- (a) which does not bear his or her official mark; or
- (b) which is not marked by the voter; or
- (c) which does not indicate with certainty the candidate for whom the voter intended to vote.

(4) At the counting of the votes the presiding officer shall not reject any ballot paper where the voter has indicated with certainty the candidate for whom he or she intended to vote merely by reason of the fact that the voter has so indicated otherwise than by means of a cross.

(5) If the aggregate of the ballot papers which do not bear the official mark of the presiding officer—

- (a) does not exceed five *per centum* of the votes cast at that polling station; and
- (b) together with all the other ballot papers referred to in subsection (2) does not exceed the total number of ballot papers issued by the presiding officer for that polling station;

the presiding officer shall not reject any ballot paper merely by reason of the fact that it does not bear his or her official mark.

(6) Where the presiding officer would be required by subsection (5) to reject the ballot papers there mentioned for the sole reason that they exceed five *per centum* of the votes cast at that polling station, he or she shall afford all the election agents at the polling station a reasonable opportunity to agree not to reject them, and if there is no such agreement, every ballot paper that does not bear his or her official mark shall be rejected.

(7) If the presiding officer—

- (a) in terms of this section rejects as invalid a ballot paper, he or she shall endorse "Rejected" on the ballot paper and shall add to the endorsement "Rejection Objected To" if an objection to his or her decision is made by a candidate or his or her chief election agent or 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 or she shall endorse "Acceptance Objected To" on the ballot paper if an objection to his or her decision is made by a candidate or his or her chief election agent or election agent, and all such ballot papers shall be placed together in an envelope within the packet containing the accepted ballot papers.

## 64 Recording and notification of result of count

- (1) After the counting is completed the presiding officer shall without delay—
  - (a) record on the polling-station return the votes obtained by each candidate and the number of rejected ballot papers in such a manner that the results of the count for each ballot box referred to in subsection (1) of section *fifty-five* are shown on the return; and
  - (b) display the completed polling-station return to those present and afford each candidate or his or her election agent the opportunity to subscribe their signatures thereto; and
  - (c) personally transmit to the constituency elections officer the polling-station return certified by himself or herself to be correct:

Provided that if, by reason of death, injury or illness, the presiding officer is unable personally to transmit the polling-station return under this paragraph, a polling officer who was on duty at the polling station concerned shall personally transmit the polling-station return (whether certified by the presiding officer or by the polling officer transmitting the return) under this paragraph.

- (2) Immediately after arranging for the polling-station return to be transmitted in terms of paragraph (c) of subsection (1), the presiding officer shall affix a copy of the polling-station return on the outside of the polling station so that it is visible to the public.

## 65 Procedure on receipt of polling-station returns

- (1) The constituency elections officer shall give reasonable notice in writing to each candidate or his or her chief election agent of the time and place where the constituency elections officer will verify and collate all the polling-station returns.

- (2) At the time and place notified for the verification and collation of the polling-station returns referred to in subsection (1) and in the presence of such candidates, their chief election agents, monitors and observers as are present, the constituency elections officer shall display each polling-station return to those present and shall, on request, allow a candidate or chief election agent of a candidate to make notes of the contents of each polling-station return.

- (3) When the constituency elections officer has—

- (a) completed the verification of the polling-station returns under subsection (2); and
- (b) verified the postal ballot papers as provided in Part XIV;

the constituency elections officer shall, in the presence of such persons referred to in subsection (2) as are present—

- (i) add together the number of votes received by each candidate as shown in each polling-station return; and
- (ii) unseal the postal ballot box and count the ballot papers contained therein.

- (4) Section *sixty-three* shall apply, with such changes as may be necessary, to the counting of the postal ballots under subparagraph (ii) of subsection (3).

## 66 Determination and declaration of result of poll

- (1) Subject to subsection (2), after the number of votes received by each candidate as shown in each polling-station return has been added together in terms of subparagraph (i) of subsection (3) of section *sixty-five* and the resulting figure added to the number of postal votes received by each candidate, the constituency elections officer 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.

- (2) When 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 elections officer shall at once communicate the fact to the Chief Elections Officer 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 Chief Elections Officer in the presence of a judge of the Electoral 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.

- (3) At any determination in terms of subsection (2), in addition to the judge and the Chief Elections Officer, the following persons and no others may be present—

- (a) the candidates who have received an equality of votes; and
- (b) one chief election agent for each candidate referred to in paragraph (a) who is not himself or herself able to be present.

- (4) A declaration by the constituency elections officer or the Chief Elections Officer under this section shall be final, subject to reversal on petition to the Electoral Court that such declaration be set aside or to the proceedings relating to that election being declared void under subsection (1) of section *fifty*.

## 67 Notification of result of election

(1) As soon as the constituency elections officer has declared a candidate to be duly elected, he or she shall, without delay, transmit by telegram, telefacsimile or electronic mail in the prescribed form to the Chief Elections Officer, the names of the person declared duly elected, the day with effect from which he or she was declared elected, the number of votes received by the respective candidates and the number of rejected ballot papers.

(2) The information referred to in subsection (1) shall be confirmed by notice in writing which is signed by the constituency elections officer and sent to the Chief Elections Officer by the first postal delivery after the transmission of the telegram, telefacsimile or electronic mail.

(3) The Chief Elections Officer shall without delay transmit to the Clerk to Parliament the information referred to in subsection (1).

## 68 Chief Elections Officer to cause names of candidates elected to be published

As soon as the names of the persons declared duly elected for the several constituencies have been received by the Chief Elections Officer, he or she shall cause a notice to be published in the *Gazette* giving the full names of the members returned, together with the constituencies which they severally represent and the days with effect from which they were so elected.

## 69 Procedure after counting at polling station and collating at constituency centre

(1) The presiding officer shall, immediately after the counting of the votes is completed under section *sixty-three*, 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 or her seal thereto and permit any such candidates and election agents to affix their signatures or thumb-prints upon the presiding officer's seal or to affix their seals to the aperture of the ballot box;
- (b) make up into separate packets sealed with his or her 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 votes marked by the presiding officer;

and transmit them to the constituency elections officer for the constituency to which the polling station belongs.

(2) The ballot box and packets referred to in subsection (1) shall be accompanied by a statement made by the presiding officer showing the number of ballot papers entrusted to him or her and accounting for them under the heads of used ballot papers, excluding spoilt ballot papers, unused ballot papers and spoilt ballot papers.

(3) As soon as may be after the polling-station returns have been collated and the postal ballots have been counted, the constituency elections officer shall—

- (a) close and seal the aperture in the postal ballot box and affix his or her seal thereto and permit any such candidates and election agents to affix their signatures or thumb-prints upon the constituency elections officer's seal or to affix their seals to the aperture of the postal ballot box; and
- (b) enclose in two separate sealed packets the polling-station returns and the counted and rejected postal ballot papers.

## 70 Custody and disposal of ballot and other papers

(1) A constituency elections officer shall not open any—

- (a) closed and sealed ballot box or sealed packet that has been delivered to him or her in terms of subsection (1) of section *sixty-nine*; or
- (b) sealed packet containing documents referred to in subsection (1) or (2) of section *eighty*; or
- (c) closed and sealed postal ballot box or sealed packet referred to in subsection (1) of section *sixty-nine*;

while such ballot boxes and packets remain in his or her custody.

(2) As soon as may be after the constituency elections officer has sealed or received into his or her custody all the ballot boxes and packets referred to in subsection (1), he or she shall transmit them to the Chief Elections Officer and shall endorse on each packet a description of its contents and the date of the election to which it relates.

(3) The Chief Elections Officer shall retain for six months all the documents referred to in subsection (1) and then, unless otherwise directed by an order of the Electoral Court, shall cause them to be destroyed.

(4) No person shall open any packet referred to in subsection (1) or permit any such packet to be opened, except in terms of an order of the Electoral Court, which may be granted by the Electoral Court on its being satisfied that the inspection or production of the contents of such packet is required for the purpose of instituting or maintaining a prosecution for an offence in relation to an election or return or for the purpose of a petition questioning an election or return.

(5) An order of the Electoral Court referred to in subsection (4) may be made subject to such conditions as the Electoral Court may think fit to impose:

Provided that an order which authorises the opening of any sealed packet containing counterfoils or counted ballot papers shall be made subject to such conditions as are necessary to ensure that the way in which any

particular voter has voted shall not be discovered until it is proved that he or she has voted and his or her vote has been declared by the Electoral Court to be invalid.

(6) Every person who carries into effect any order of the Electoral Court referred to in subsection (4) which authorises the opening of any sealed packet containing counterfoils shall take care to ensure that the way in which any particular voter has voted shall not be discovered until it is proved that he or she has voted and his or her vote has been declared by the Electoral Court to be invalid.

(7) Where an order is made for the production by the Chief Elections Officer of any document in his or her possession relating to a specified election, the production by him or her of the document ordered, in such manner as may be directed by such order or by a rule of court, shall be conclusive evidence that such document relates to the specified election, and any endorsement appearing on a packet of ballot papers produced by the Chief Elections Officer shall be evidence of such papers being what they are stated to be by the endorsement.

(8) Any power given to the Electoral Court by this section may be exercised by a judge of the Electoral Court in chambers.

#### PART XIV VOTING BY POST

### 71 Applications for postal ballot papers

(1) 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 preceding the polling day or first polling day, as the case may be, fixed in relation to that constituency resident therein and has good reason to believe that he or she will be absent from the constituency or unable to attend at the polling station by reason of being—

- (a) on duty as a member of a disciplined force or as an electoral officer or monitor; or
- (b) absent from Zimbabwe in the service of the Government of Zimbabwe; or
- (c) a spouse of a person referred to in paragraph (a) or (b);

may apply to the Chief Elections Officer for a postal ballot paper.

Provided that applications for postal ballot papers by members of a disciplined force may be made to the Chief Elections Officer through their commanding officer.

(2) An application in terms of subsection (1) shall be—

- (a) in the prescribed form; and
- (b) signed by the applicant in the presence of a competent witness and accompanied by the voters registration certificate or proof of identity of the applicant or a copy of such certificate or proof of identity certified by a competent witness; and
- (c) delivered by hand or by registered post so as to reach the Chief Elections Officer not later than noon on the tenth day before the polling day or first polling day, as the case may be, fixed in relation to the constituency concerned:

Provided that failure to register an application sent by post shall not invalidate the application.

(3) A competent witness shall not witness the signature of an applicant to an application for a postal ballot paper unless he or she—

- (a) has satisfied himself or herself as to the identity of the applicant; and
- (b) has seen the applicant sign the application in his or her own handwriting; and
- (c) knows that the statements contained in the application are true or has satisfied himself or herself by inquiry from the applicant or otherwise that such statements are true;

and shall sign the application in his or her own handwriting and shall add the title under which he or she acts as a competent witness.

(4) The Chief Elections Officer shall number in consecutive order all applications for postal ballot papers received by him or her and all such applications shall be kept by the Chief Elections Officer and shall be open for public inspection, without fee, until the declaration of the result of the poll, when they shall be dealt with in terms of subsection (3) of section *seventy*.

### 72 Issue of postal ballot papers

(1) If the Chief Elections Officer is satisfied, in regard to an application received by him or her not later than noon on the tenth 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;

the Chief Elections Officer shall issue to him or her a postal ballot paper in the manner provided in this section.

(2) A postal ballot paper shall be in the same form as and indistinguishable from the ballot papers delivered to voters at the polling stations.

(3) The Chief Elections Officer 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.

(4) The Chief Elections Officer shall then place in an envelope addressed to the applicant at the address to which he or she has, in his or her 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 elections officer; and
- (d) a smaller envelope marked “Ballot Paper Envelope” bearing the number of the ballot paper.

(5) The Chief Elections Officer 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 Chief Elections Officer shall keep the receipt signed by the applicant or the receipt for such registration, as the case may be:

Provided that, where the applicant is a member of a disciplined force and is prevented from voting at a polling station on any polling day by reason of his or her duties as such a member, the Chief Elections Officer may send or deliver the envelope addressed to the applicant to the commanding officer of the applicant or his or her deputy.

### **73 Refusal of application for postal ballot paper**

If the Chief Elections Officer is not satisfied in accordance with subsection (1) of section *seventy-two* in regard to an application received by him or her, he or she shall send the applicant notice that he or she is not so satisfied and that the applicant must attend personally at a polling station to record his or her vote.

### **74 Recipients of postal ballot papers not entitled to vote at polling stations**

(1) A voter to whom a postal ballot paper has been issued shall only vote by means of such ballot and shall not be entitled to vote at a polling station in the constituency in which he or she is registered.

(2) The Chief Elections Officer may, if he or she considers it desirable, before the 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.

### **75 Voting by post**

(1) 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 or her showing the number thereon; and
  - (ii) the declaration of identity; and
  - (iii) the envelope in which he or she 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 or her own handwriting and add the title under which he or she acts as a competent witness;
- (c) the voter shall signify the candidate for whom he or she wishes to vote by secretly placing on the ballot paper a cross in accordance with subparagraph (ii) of paragraph (c) of section *fifty-seven*, and no other person except the competent witness shall be present and the voter shall not allow the competent witness to see how he or she has voted;
- (d) immediately after voting the voter shall, in the presence of the competent witness but without disclosing how he or she 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 elections officer who, when it is so handed to him or her, shall issue a receipt for it:

Provided that—

- (i) the failure to register any such envelope shall not invalidate the vote;
- (ii) where the voter is a member of a disciplined force and has received his or her ballot paper in the manner specified in the proviso to subsection (5) of section *seventy-two*, he or she may transmit the envelope to the constituency elections officer through his or her commanding officer and such commanding officer shall convey or cause to be conveyed the covering envelope to the returning officer by the most expeditious means consistent with safety;
- (iii) 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 provided in this subsection, the competent witness may mark the vote of the voter on the ballot paper in the manner directed by the voter.

(2) Where a competent witness has been requested to mark a vote on a ballot paper in terms of proviso (iii) to subsection (1), he or she may put to the voter such questions as, in his or her opinion, are necessary to elicit sufficient directions to enable him or her to mark the vote in the manner desired by the voter.

(3) A competent witness who has marked a vote on a ballot paper in terms of proviso (iii) to subsection (1) shall ensure that a written statement of what he or she has done and the reasons for his or her doing so, specifying the nature of the inability or incapacity suffered by the voter, is enclosed in the covering envelope together with the ballot paper envelope and the declaration of identity.

## **76 Postal ballot boxes**

(1) The constituency elections officer shall provide a postal ballot box for the reception of the covering envelopes when returned by the voters.

(2) The constituency elections officer shall, not later than three days after nomination day, give to each candidate or his or her chief election agent notice of the time and place at which he or she will seal the postal ballot box.

(3) At the time and place notified the constituency elections officer shall show the postal ballot box open and empty to such candidates and chief election agents as are present and it shall then be sealed with the seal of the constituency elections officer 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, and the constituency elections officer shall make provision for the safe custody of such ballot box.

(4) The constituency elections officer shall, immediately on receipt, place unopened in the postal ballot box all covering envelopes received by him or her before the close of the poll.

## **77 Opening of postal ballot boxes**

(1) After the close of the poll and before the time fixed for the counting of the votes, the constituency elections officer shall open the postal ballot box in the presence of such candidates and their chief election agents as are present.

(2) The constituency elections officer shall give to each candidate or his or her chief election agent at least twenty-four hours' notice in writing of the time and place at which the constituency elections officer will open the postal ballot box and the envelopes contained therein, which time and place shall be the same as the time and place for the collation of the polling-station returns under section *sixty-five*.

(3) At the opening of the postal ballot box the following persons and no others may be present—

- (a) the Chief Elections Officer, constituency elections officer and such polling officers as the constituency elections officer may consider necessary; and
- (b) the candidates and one chief election agent for each candidate and such other persons as may be prescribed:

Provided that a candidate or his or her chief election agent may not be present at the opening of the postal ballot box of votes at an election for which that candidate was not nominated.

(4) When the postal ballot box has been opened, the constituency elections officer 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.

(5) If the numbers agree and the declaration of identity is found to be duly signed and witnessed, the constituency elections officer shall place the declaration of identity and the ballot paper envelope unopened in separate receptacles.

(6) If the constituency elections officer is not satisfied that the declaration of identity has been duly signed and witnessed, he or she 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.

(7) If the constituency elections officer 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 or she shall open the envelope and, if the number of the ballot paper agrees with the number on the declaration of identity, he or she shall mark the ballot paper with the official mark and place the ballot paper in the ballot box referred to in section *seventy-nine*.

(8) In every case in which the number on the ballot paper does not agree with the number on the declaration of identity, the constituency elections officer 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".

(9) Where a declaration of identity does not appear to accompany the ballot paper envelope, the constituency elections officer shall open the envelope and, if it is found to contain the declaration of identity, he or she shall deal with such declaration and ballot paper in accordance with the procedure set out in subsections (4) to (8).

(10) 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".

(11) Where a ballot paper and a declaration of identity are received together and the numbers thereon agree, the ballot paper shall not be rejected solely on the ground of non-compliance with paragraph (d) of subsection (1) of section *seventy-five*.

(12) Where a ballot paper envelope or a ballot paper is found in terms of this section to be accompanied by a written statement of a competent witness in terms of subsection (3) of section *seventy-five*, and the constituency

elections officer is not satisfied from the statement that the competent witness was entitled in terms of that section to mark the ballot paper, the constituency elections officer shall endorse the declaration of identity “Vote Rejected” and shall attach thereto—

- (a) the written statement concerned; and
- (b) the unopened ballot paper envelope or the ballot paper, as the case may be.

### **78 Rejected declarations of identity**

(1) The constituency elections officer shall show to the candidates and their chief election agents present every—

- (a) declaration of identity which he or she proposes to reject on the ground that it has not been properly signed and witnessed; and
- (b) written statement of a competent witness in terms of subsection (3) of section *seventy-five*, where the constituency elections officer 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 agent objects to his or her decision, the returning officer shall add to the endorsement on the relevant declaration of identity the words “Rejection Objected To”.

(2) The constituency elections officer shall keep all rejected declarations, with the attached envelopes or ballot papers, as the case may be, separate from other documents.

### **79 Postal ballot papers to be placed in ballot box**

(1) When all the covering envelopes in a postal ballot box have been opened and their contents dealt with in accordance with sections *seventy-seven* and *seventy-eight*, the constituency elections officer shall open each unopened ballot paper envelope and compare the number on the envelope with the number on the ballot paper therein.

- (2) If the number on the ballot paper envelope—
  - (a) agrees with that on the ballot paper, the constituency elections officer shall, subject to subsection (3), mark the ballot paper with the official mark and place the ballot paper in a ballot box previously shown open and empty to the candidates and their election agents present and sealed with the seal of the constituency elections officer;
  - (b) does not agree with that on the ballot paper, the constituency elections officer shall endorse “Rejected” on the ballot paper and shall attach the ballot paper to the envelope.

(3) If a written statement by a competent witness in terms of subsection (3) of section *seventy-five* accompanies a ballot paper in a ballot paper envelope and the constituency elections officer is not satisfied from such statement that the competent witness was entitled in terms of that section to mark the ballot paper, the constituency elections officer shall, subject to subsection (4), endorse “Rejected” on the ballot paper and shall attach the ballot paper to the ballot paper envelope and the written statement.

(4) The constituency elections officer shall show to the candidates and their election agents present every written statement of a competent witness in terms of subsection (3) of section *seventy-five*, where the constituency elections officer 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 election agent objects to his or her decision, the constituency elections officer shall add to the endorsement on the relevant ballot paper the words “Rejection Objected To”.

### **80 Safe-keeping of documents**

(1) The constituency elections officer shall, immediately after the declaration of the result of the poll, seal in a packet or container—

- (a) all original applications for postal ballot papers;
- (b) the counterfoils of ballot papers issued in terms of section *seventy-two*;
- (c) ballot papers referred to in section *seventy-two* which are unused;
- (d) the declarations of identity not dealt with under paragraph (e) or (f);
- (e) the declarations of identity rejected in terms of subsection (6), (10) or (12) of section *seventy-seven* with the ballot paper envelopes and ballot papers, if any, attached thereto;
- (f) the ballot papers rejected in terms of subsection (8) or (10) of section *seventy-seven* with the ballot paper envelopes and declarations of identity, if any, attached thereto;
- (g) the ballot papers rejected in terms of paragraph (b) of subsection (2) or subsection (3) of section *seventy-nine* with the ballot paper envelopes attached thereto.

(2) Where—

- (a) a covering envelope is received by the constituency elections officer after the close of the poll; or
- (b) an envelope addressed to an applicant for a postal ballot paper is returned as undelivered;

the constituency elections officer shall not open such envelope but shall seal all such envelopes in a packet.

## 81 Offences in relation to postal votes

(1) A person who attempts to induce any other person to obtain a postal ballot paper with the intention of influencing him or her by bribery or intimidation to record his or her vote in favour of a particular candidate shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment and, in addition to any such punishment, may, if he or she is convicted of that offence by the High Court, be declared by the High Court to be disqualified from voting at an election for a period not exceeding five years.

(2) Any person who—

(a) makes or induces any other person to make a false statement in an application for a postal ballot paper or in a written statement in terms of subsection (3) of section *seventy-five*; or

(b) fails to deliver or post forthwith an envelope containing or purporting to contain a ballot paper entrusted to him or her by a voter for the purpose of delivering or posting it to a constituency elections officer;

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

(3) Any person who, having marked a postal ballot paper in terms of proviso (iii) to subsection (1) of section *seventy-five*, fails to ensure that a written statement is enclosed with the ballot paper in terms of subsection (3) of that section, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

## PART XV

### GENERAL PROVISIONS RELATING TO POLLS

## 82 Constituency elections officers and other persons to make declaration of secrecy

Every electoral officer, monitor, candidate or agent of a candidate authorised to attend at the counting or collating of votes at a polling station or constituency centre shall, before the opening of the poll, make a declaration of secrecy—

(a) if he or she is a constituency elections officer, before a commissioner of oaths; or

(b) in any other case, before a commissioner of oaths or the constituency elections officer.

## 83 Conduct of chief election agents, election agents, monitors and observers at elections

(1) Every chief election agent, election agent, monitor and observer appointed or accredited for the purpose of any election shall be bound by the code of conduct set out in the First Schedule.

(2) Any chief election agent, election agent, monitor or observer who contravenes any provision of the code of conduct set out in the First Schedule shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Additionally or alternatively to any prosecution for an offence in terms of subsection (2), the contravention by a chief election agent, election agent, monitor or observer of any provision of the code of conduct set out in the First Schedule shall, notwithstanding anything contained in this Act, constitute grounds for an electoral officer to exclude the election agent, polling agent, monitor or observer concerned from any polling station or constituency centre.

## 84 Absence of election agents, etc. at opening and closing of ballot boxes, etc.

For the avoidance of doubt it is declared that the failure by any person (other than an electoral officer) entitled in terms of paragraph (b) of subsection (1) of section *fifty-five* to be present on time—

(a) at the sealing or opening of the ballot boxes in terms of subsection (4) of section *fifty-four*; or

(b) at the sealing of the ballot boxes in terms of paragraph (a) of section *sixty-one* or of the packets referred to in paragraph (b) of that section; or

(c) at the counting of votes in terms of section *sixty-two*;

shall not prevent the electoral officer concerned from proceeding in the absence of any such person.

## 85 Offences in relation to ballot papers and ballot boxes

(1) Any person who—

(a) forges or counterfeits or fraudulently destroys a ballot paper or the official mark on a ballot paper; or

(b) without due authority supplies any ballot paper to any person; or

(c) without due authority puts into a ballot box any paper or thing other than the ballot paper which he or she is authorised by this Act to put in the ballot box; or

(d) without due authority takes out of the polling station a ballot paper; or

(e) without due authority destroys, takes, opens or otherwise interferes with a ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of an offence and liable to imprisonment for a period not exceeding three years.

(2) In an indictment, summons or charge for an offence in relation to ballot boxes, ballot papers or official marking instruments at an election, the property in such papers, boxes or instruments, as well as the property in

the counterfoils, may be stated to be vested in the constituency elections officer at such election or, if the constituency elections officer is indicted or charged, in the Chief Elections Officer.

### **86 Maintenance of secrecy and non-interference with voters and ballot papers**

(1) Every electoral officer, monitor, candidate and chief election agent or election agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at that station and shall not communicate, except for some purpose authorised by law, to any person any information likely to defeat the secrecy of the voting.

(2) No person, except as provided in this Act, shall—

- (a) interfere with or attempt to interfere with a voter when marking his or her vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom a voter in that station is about to vote or has voted; or
- (b) communicate at any time to any person any information obtained in a polling station as to the candidate for whom a voter in such station is about to vote or has voted or as to the number on the ballot paper given to a voter at such station.

(3) No person shall, directly or indirectly, induce a voter to display his or her ballot paper after he or she has marked the same in such a manner as to make known to any person the name of the candidate for whom the voter has so marked his or her vote.

(4) No person shall place upon a ballot paper any mark or writing whereby a person who gives his or her vote on that ballot paper may be identified.

(5) Subject to sections *fifty-nine* and *sixty* and proviso (iii) to subsection (1) of section *seventy-five*, no person shall attempt to ascertain or, directly or indirectly, aid in ascertaining for which candidate a voter has given his or her vote.

(6) Any person who contravenes any provision of this section shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### **87 Persons wilfully failing in their duties guilty of offence**

Any electoral officer or other person who wilfully fails to perform any of the duties which by this Act he or she is required to perform shall be guilty of an offence and liable to a fine not exceeding level ten.

### **88 Obstruction of election officials**

Any person who, knowingly and without just cause, hinders or obstructs—

- (a) a member of the Electoral Supervisory Commission; or
- (b) any Commissioner; or
- (c) an electoral officer or employee of the Commission; or
- (d) a monitor or observer;

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

### **89 Disorderly conduct in polling station**

(1) Any person who, without lawful excuse—

- (a) on polling day in any election, enters a polling station without permission from an electoral officer; or
- (b) wilfully disrupts peaceful voting at a polling station; or
- (c) wilfully interferes with a voter who is marking his or her ballot paper;

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

(2) Any person who on polling day in any election, and in a polling station or in the immediate vicinity of a polling station, is intoxicated by liquor or drugs or violent or disorderly shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **90 Refusal to leave polling station**

Any person who, without lawful excuse, refuses or fails to leave a polling station when lawfully required to do so by the presiding officer shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

### **91 Destruction or damaging of voters roll or data relating thereto**

(1) Any person who, with the intention of disrupting or preventing the holding of an election, destroys, damages or conceals—

- (a) any voters roll or portion of a voters roll;
- (b) any data or information relating to a voters roll;

whether the voters roll, data or information is in electronic or printed form, shall be guilty of an offence and liable to imprisonment for a period not exceeding ten years.

(2) If in a prosecution for an offence under subsection (1) it is proved that the accused person destroyed, damaged or concealed anything referred to in paragraph (a) or (b) of that subsection and thereby prevented any voter from voting in an election, it shall be presumed, unless the contrary is shown, that the accused person intended to disrupt or prevent the holding of the election.

## **92 Employer to allow employees to vote**

(1) Every employer of a person who is entitled to vote in an election shall allow the employee leave of absence from his or her work for the whole of either the morning or the afternoon of the polling day or of one of the polling days, as the case may be, to afford the employee an opportunity to vote in the election.

(2) An employee shall not be required to suffer any deduction from his or her wages or salary by reason of any leave of absence taken in terms of subsection (1).

(3) Any employer who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level ten.

## **PART XVI**

### **ELECTION EXPENSES AND ELECTION AGENTS**

## **93 What expenses permissible**

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 the expenses of publishing, issuing and distributing, addresses and notices;
- (c) stationery, messages, postage, telegrams, telefacsimiles, electronic mails and the use of telephones;
- (d) public meetings and hiring of halls or premises therefor;
- (e) one chief election agent for the candidate and no more;
- (f) a number of election agents within the constituency concerned not exceeding such number as may be prescribed;
- (g) a number of clerks not exceeding such number as may be prescribed and the same number of messengers;
- (h) miscellaneous expenses not exceeding in the whole such sum as may be prescribed, and not being expenses incurred in respect of any matter or in any manner constituting an offence under this Act or any other law, or in respect of any matter or thing payment for which is prohibited by this Act or any other law;
- (i) personal expenses;
- (j) the supply to unpaid helpers of the candidate of a reasonable amount of fuel for the purpose of bringing voters to and returning them from the polling station:

Provided that the total sum expended in terms of this paragraph shall not exceed such sum as may be prescribed.

## **94 Chief election agents**

(1) 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 or her chief election agent and shall forthwith notify in writing the full names and address of his or her chief election agent to the constituency elections officer, and the constituency elections officer shall forthwith give public notice of the full names and address of the chief election agent so appointed.

(2) If a candidate revokes the appointment of his or her chief election agent or the chief election agent dies—

- (a) the candidate may appoint another chief election agent and shall forthwith notify in writing the full names and address of such chief election agent to the constituency elections officer:

Provided that a candidate may not appoint a chief election agent in terms of this paragraph unless he or she notifies the constituency elections officer not later than three days before the polling day or earliest polling day, as the case may be, of such appointment; and

- (b) if the candidate appoints a chief election agent in terms of paragraph (a) he or she shall forthwith give public notice, by an advertisement in a newspaper circulating in the constituency, of the full names and address of the chief election agent so appointed.

(3) If a candidate—

- (a) fails to give the notification required in terms of subsection (1) or (2); or
- (b) on the revocation of the appointment or the death of his or her chief election agent does not appoint another chief election agent;

the candidate shall be deemed to be his or her own chief election agent and thereupon shall, so far as circumstances permit, be subject to the provisions of this Act both as a candidate and as a chief election agent.

## 95 Election agents

(1) Not later than three days before the polling day or first polling day, as the case may be, a chief election agent may appoint one or more persons, not exceeding such number as may be prescribed, to be his or her election agents and shall forthwith—

- (a) notify in writing the full names and address of every election agent so appointed to the constituency elections officer; and
- (b) give public notice, by an advertisement in a newspaper circulating in the constituency, of the full names and address of every election agent so appointed.

(2) Anything done for the purposes of the election by or to an election agent shall be deemed to be done by or to the chief election agent and any act or default of an election agent which, if he or she were the chief election agent, would be a corrupt practice or illegal practice or other offence in terms of Part XIX, XX or XXI shall be a corrupt practice or illegal practice or other offence, as the case may be, in terms of the Part concerned committed by the election agent, and—

- (a) the election agent shall be liable to punishment accordingly; and
- (b) the candidate shall, save as provided in subsection (3) of section *one hundred and forty-eight*, incur the same consequences as if the act or default had been the act or default of the chief election agent.

(3) The appointment of an election agent shall not terminate by virtue of the chief election agent who appointed him or her ceasing to be a chief election agent.

(4) If a chief election agent revokes the appointment of an election agent or an election agent dies, the chief election agent may appoint another election agent and if he or she does so shall forthwith—

- (a) notify in writing the full names and address of the election agent to the constituency elections officer; and
- (b) 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.

## 96 Appointments made and expenses incurred by candidates or agents

(1) The chief election agent of a candidate, by himself or herself or through an election agent, shall appoint every person employed for hire or reward on behalf of the candidate at an election.

(2) 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 herself or by his or her chief election agent, either by himself or herself or through an election agent:

Provided that the inability under this section 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 or her agent.

(3) A chief election agent shall, where a poll is to be held, send to the constituency elections officer 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 address of every person employed by him or her for hire or reward on behalf of the candidate in connection with an election, and if any such person is enrolled on the voters roll, his or her number on such roll.

(4) A chief election agent who fails to comply with subsection (3) shall be guilty of an offence and liable to a fine not exceeding level four.

## 97 Payments of expenses and disclosure of expenditure

(1) Except as permitted by or in terms of this Act, no payment and no advance or deposit shall be made or promised by a candidate at an election 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 chief election agent of the candidate, whether acting in person or by an election agent.

(2) All moneys 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 or her chief election agent and not otherwise.

(3) This section shall not be construed as applying to any money deposited with a constituency elections officer in terms of section *forty-seven*.

## 98 Receipts for election expenses

Every payment in respect of any election expenses shall, except where it is less than such sum as may be prescribed in all in any account, be vouched for by a bill stating the particulars, and by a receipt or some other evidence of payment.

## 99 Claims for election expenses

(1) Every claim against a candidate at an election or his or her chief election agent in respect of any election expenses which is not sent in to the chief election agent within the time limited by this Part shall be barred and shall not be paid and, subject to such exceptions as may be allowed under this Part, a chief election agent who

pays a claim in contravention of this subsection shall be guilty of an illegal practice and liable to a fine not exceeding level six.

(2) Except as permitted by this section, the time limited for sending in claims referred to in subsection (1) shall be sixty days after the day on which the candidate who was returned was declared elected.

(3) All election expenses in respect of a candidate shall be paid within the time limited by this section and not otherwise and, subject to such exceptions as may be allowed under this section, a chief election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice and liable to a fine not exceeding level six.

(4) Except as permitted by this section, the time limit for the payment of election expenses referred to in subsection (3) shall be seventy-two days after the day on which the candidate who was returned was declared elected.

(5) If a chief election agent, in the case of any claim sent in to him or her within the time limited by this section, disputes it or refuses or fails to pay it within the period of seventy-two days referred to in subsection (4), the claim shall be deemed to be a disputed claim.

(6) The person making the claim referred to in subsection (1) may, if he or she thinks fit, bring an action for a disputed claim in any competent court and any sum paid by the candidate or his or her 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 this Part requiring claims to be paid by the chief election agent.

(7) The court, on application by the person making the claim referred to in subsection (1) or by the candidate or his or her chief election agent, may, if cause is shown to its satisfaction, by order, give leave for the payment by a candidate or his or her chief election agent of a disputed claim or of a claim for any election expenses, although sent in after the expiry of the time limit referred to in subsection (2) for sending in claims, or although the claim was sent in to the candidate and not to the chief election agent, and any payment made in pursuance of such order shall be deemed to be made within the time limited by this section.

(8) Where the court reports that it has been proved to it by a candidate that any payment made by a chief election agent in contravention of this section was made without the sanction or connivance of such candidate, the election of such candidate shall not be void nor shall he or she be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

#### **100 Limit of personal expenses that candidates may incur**

(1) The candidate at an election may pay any personal expenses incurred by him or her on account of or in connection with or incidental to that election, to a prescribed amount, but any further expenses so incurred shall be paid by or through his or her chief election agent.

(2) 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.

(3) A candidate shall send to his or her chief election agent within the time limited by section *ninety-nine* for sending in claims a written statement of the amount of personal expenses paid by him or her under this section, giving the principal details of expenditure.

(4) Any person, if so authorised in writing by the chief election agent of the candidate, may pay any necessary stationery, postage, telegrams, telefacsimiles, electronic mails and other petty expenses to a total amount not exceeding that specified in the authority, but any excess above the total amount so specified shall be paid by the chief election agent.

(5) A person who has made any payment in terms of subsection (4) shall send to the chief election agent, within the time limited by section *ninety-nine* for the sending in of claims, a statement giving particulars of such payments, supported by documentary evidence thereof.

(6) Any person who—

(a) fails to send a statement in terms of subsection (3) or (5); or

(b) makes a statement that is false in a material particular in any statement sent in terms of subsection (3) or (5);

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

#### **101 Claims by chief election agents**

This Part shall apply to a claim by a chief election agent for his or her remuneration and to the payment thereof in the same manner as if he or she were any other creditor, and if any difference arises respecting the amount of such claim, the claim shall be a disputed claim within the meaning of this Part, and be dealt with accordingly.

## PART XVII

### PROVISIONS RELATING TO ELECTIONS TO OFFICE OF PRESIDENT

#### 102 When election to office of President to be held

(1) Pursuant to subsection (3) of section 28 of the Constitution, an election to the office of President shall be held within ninety days—

- (a) before the term of office of the President expires in terms of section 29 of the Constitution; or
- (b) after the office of President becomes vacant by reason of his or her death or resignation or removal from office in terms of the Constitution.

(2) In an election to the office of President, every registered voter shall be entitled to vote.

#### 103 Notice of election to office of President

(1) Not later than ten days after the commencement of the period referred to in paragraph (a) or (b) of subsection (1) of section *one hundred and two*, the Chief Elections Officer shall publish in the *Gazette* a notice announcing—

- (a) a place or places at which, and a day or days, not less than fourteen and not more than twenty-one days after the day of publication of the notice, on which a nomination court shall sit for the purpose of receiving nominations of candidates for election to the office of President; and
- (b) a day or days, not less than twenty-one and not more than forty-five days after the nomination day or last nomination day, as the case may be, fixed in terms of paragraph (a), on which a poll shall be taken if a poll becomes necessary in terms of subsection (2) of section *one hundred and ten*; 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 date of publication of the notice.

(2) The Chief Elections Officer may, by further notice published in the *Gazette*, alter any day, time or place fixed in terms of subsection (1) and the day, time or place as so altered shall be deemed to have been fixed in terms of subsection (1).

#### 104 Nomination of candidates for election to office of President

(1) A candidate for election to the office of President shall be nominated by means of a nomination paper in the prescribed form which—

- (a) shall be signed, in respect of each province into which Zimbabwe is for the time being divided, by not fewer than ten persons who are registered on the voters rolls for constituencies within the province concerned; and
- (b) shall be countersigned with the acceptance of the candidate; and
- (c) may specify a distinctive symbol which the candidate wishes to appear on the ballot paper in conjunction with his or her name; and
- (d) may, if the candidate is to stand for or to be sponsored by any political party, specify that fact, together with the name of the political party and an abbreviation of such name which the candidate wishes to appear on the ballot paper; and
- (e) shall be accompanied by a passport-sized black and white photograph of the candidate.

(2) Where a nomination paper specifies matters referred to in paragraph (d) of subsection (1), the nomination paper shall be countersigned by a person who is an office-bearer of the political party concerned with authority to certify that the candidate is to stand for or to be sponsored by that political party.

(3) Subject to this section, section *forty-six* shall apply, with any changes that may be necessary, in relation to the nomination of candidates for election to the office of President.

#### 105 Deposit on nomination

(1) At the same time as a nomination paper is lodged by or on behalf of a candidate for election as President, there shall be deposited with the Chief Elections Officer, by or on behalf of the person nominated, such sum as may be prescribed.

(2) 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 form part of the funds of the Commission.

#### 106 Publication of names of Presidential candidates

As soon as practicable after the day fixed for the sitting of a nomination court in terms of paragraph (a) of subsection (1) of section *one hundred and three*, the Chief Elections Officer shall cause to be published in the *Gazette* and in all newspapers of mass circulation in Zimbabwe the names of all candidates who have been validly nominated for election to the office of President.

### **107 Withdrawal of candidature**

(1) A nominated candidate for election as President may, by notice in writing addressed to the Chief Elections Officer, withdraw his or her candidature at any time before twenty-one days from the day or first day, as the case may be, on which the poll in an election to the office of President is to be taken.

(2) On receipt of a notice of withdrawal in terms of subsection (1), the Chief Elections Officer shall cause the withdrawal to be published in the *Gazette* and in all newspapers of mass circulation in Zimbabwe.

(3) Where a candidate for election as President has withdrawn his or her candidature in terms of this section, the sum deposited by or on his behalf in terms of subsection (1) of section *one hundred and five* shall be forfeited and form part of the funds of the Commission.

### **108 When fresh nominations to be held**

Where—

- (a) no candidate for election as President has been validly nominated at the expiry of the time fixed for lodging nomination papers with the Chief Elections Officer; or
- (b) no candidate nominated for election as President is qualified in terms of subsection (1) of section 28 of the Constitution for election as President; or
- (c) a candidate nominated for election as President dies on or before the day on which the poll in the election is to be taken; or
- (d) a candidate nominated for election as President who would otherwise have been entitled to be declared duly elected as President dies after the poll has begun in the election to the office of President, but before he or she has been declared duly elected as President;

the Chief Elections Officer shall forthwith publish in the *Gazette* a notice announcing in the same manner, with any changes that may be necessary, as is provided in section *one hundred and three* the sitting of a new nomination court, and thereafter the provisions of this Part shall apply accordingly.

### **109 Procedure when poll to be taken**

If a poll becomes necessary in terms of subsection (2) of section *one hundred and ten*, the Chief Elections Officer shall, as soon as practicable after the day fixed for the sitting of the nomination court in terms of paragraph (a) of subsection (1) of section *one hundred and three*—

- (a) by notice published in the *Gazette*, notify—
  - (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 or she thinks fit the situation of and the hours specified for the opening and closing of each polling station in each constituency.

### **110 Determination and declaration of result of election to office of President**

(1) Where only one candidate for President is validly nominated at the close of the day on which a nomination court sits in terms of paragraph (a) of subsection (1) of section *one hundred and three*, the Chief Elections Officer shall declare such candidate to be duly elected as President without the necessity of a poll.

(2) Where two or more candidates for President are validly nominated, a poll shall be taken in each constituency for the election of a President.

(3) Where two or more candidates for President are nominated, and after a poll taken in terms of subsection (2) no candidate receives a majority of the total number of valid votes cast, a second election shall be held within twenty-one days after the previous election in accordance with this Act.

(4) In a second election held in terms of subsection (3) only the two candidates who received the highest and next highest numbers of valid votes cast at the previous election shall be eligible to contest the election.

(5) If, after a second election held in terms of subsection (3), the two candidates referred to in subsection (4), receive an equal number of votes, Parliament shall, as soon as practicable after the declaration of the result of that election, meet as an electoral college and elect one of the two candidates as President by secret ballot and without prior debate.

(6) The result of an election to the office of President held in terms of subsection (2) or (3) shall be declared by the Chief Elections Officer who shall forthwith publish such result in the *Gazette* and in such other manner as he or she considers necessary to give sufficient publicity to the result.

(7) Notwithstanding subsection (5) of section 23 of the Constitution, a person elected as President in terms of subsection (5) shall assume office on the day upon which he or she is declared so elected by the Chief Elections Officer.

(8) The procedure for an election in terms of subsection (5) shall be as prescribed.

### **111 Election petitions in respect of election to office of President**

(1) An election petition complaining of an undue return or an undue election of a person to the office of President by reason of irregularity or any other cause whatsoever, may be presented to the Electoral Court within

thirty days of the declaration of the result of the election in respect of which the petition is presented, by any person—

- (a) claiming to have had a right to be elected at that election; or
- (b) alleging himself or herself to have been a candidate at such election.

(2) If, on the trial of an election petition presented in terms of subsection (1), the Electoral Court makes an order declaring—

- (a) that the President was duly elected, such election shall be and remain valid as if no election petition had been presented against his or her election; or
- (b) that the President was not duly elected, the registrar of the Electoral Court shall forthwith give notice of that fact to the Chief Elections Officer who shall publish a notice in the *Gazette* stating the effect of the order of the Electoral Court.

(3) A declaration by the Electoral Court in terms of paragraph (b) of subsection (2) shall not invalidate anything done by the President before that declaration.

(4) Part XXIII, other than sections *one hundred and sixty-six*, *one hundred and sixty-seven*, subsections (3), (4), (5), (6), (7) and (8) of section *one hundred and seventy-one*, sections *one hundred and seventy-three*, *one hundred and seventy-six*, *one hundred and seventy-eight*, subsection (2) of section *one hundred and seventy-nine* and *one hundred and eighty* shall apply, with any changes that may be necessary, to an election petition presented in terms of subsection (1).

## 112 Application of Parts XIII, XIV and XV

Subject to this Part, the provisions of Parts XIII (other than sections *sixty-six*, *sixty-seven* and *sixty-eight*, for which the provisions of the Second Schedule are substituted), XIV and XV, shall apply, with any changes that may be necessary, to an election to the office of President.

## PART XVIII

### PROVISIONS RELATING TO LOCAL AUTHORITY ELECTIONS

#### *Preliminary*

## 113 Application of Part XVIII

This Part shall apply in respect of—

- (a) elections of councillors in terms of the Rural District Councils Act [*Chapter 29:13*] and the Urban Councils Act [*Chapter 29:15*]; and
- (b) elections to the office of mayor in terms of the Urban Councils Act [*Chapter 29:15*];

and to the preparation and maintenance of voters rolls in connection with such elections.

## 114 Interpretation in Part XVIII

(1) Subject to section *four*, any word or expression to which a meaning has been assigned in—

- (a) the Rural District Councils Act [*Chapter 29:13*], shall bear the same meaning when used in this Part in relation to a rural district council;
- (b) the Urban Councils Act [*Chapter 29:15*], shall bear the same meaning when used in this Part in relation to a city or municipal council, a town council or a local board.

(2) Where a council area is divided into wards, any reference in this Part to the council area shall be construed, where appropriate, as a reference to that ward.

(3) Any reference in this Part to an office of the Registrar-General of Voters shall be construed as a reference to such office or premises in the council area concerned as he or she may determine.

#### *Qualifications of voters and preparation of voters rolls*

## 115 Qualifications of voters in local authority elections

(1) Subject to this Part, every person who—

- (a) is qualified in terms of paragraph 3 of Schedule 3 to the Constitution for registration as a voter on the common roll; and
- (b) is resident within a council area;

shall be entitled to be enrolled on a voter's roll prepared for the council area.

(2) Subject to section *twenty-three*, a person shall be regarded as resident in a council area if—

- (a) in relation to any Communal Land within the council area, he or she is entitled in terms of the Communal Land Act [*Chapter 20:04*] to reside in that Communal Land or any part thereof; or
- (b) in relation to any other land, he or she is ordinarily resident therein or thereon.

(3) If a claimant satisfies the Registrar-General of Voters that, for reasons related to his or her place of origin or otherwise, it is appropriate for him or her to be registered as a voter in a council area in which he or she is not resident, the claimant may be registered as a voter in that council area:

Provided that no person shall be registered as a voter in more than one council area at any one time.

## 116 First voters roll

(1) Subject to this Part, before the date fixed for the coming into being of a council, the Registrar-General of Voters shall draw up—

- (a) in the case of a municipal council, the first voters roll to be used in elections of councillors and elections to the office of mayor; and
- (b) in the case of any other council, the first voters roll to be used in elections for councillors.

(2) For the purpose of preparing a voters roll in terms of subsection (1), the Registrar-General of Voters may—

- (a) cause to be transferred to that roll the names of persons—
  - (i) who are registered on the common roll of a constituency falling wholly or partly within the council area concerned; and
  - (ii) who the Registrar-General of Voters knows or has reason to believe are entitled to be enrolled on the voters roll;

or

- (b) direct that the common roll of a constituency falling wholly or partly within the council area concerned, or any part of that common roll, shall constitute the voters roll for the council area, where the Registrar-General of Voters knows or has reason to believe that the voters concerned are entitled to vote in elections held in that area, and thereupon that common roll or part thereof, as the case may be, shall constitute the voters roll concerned; or
- (c) may enrol any person or class of persons who—
  - (i) is or are registered in terms of the National Registration Act [*Chapter 10:17*]; and
  - (ii) the Registrar-General of Voters is satisfied is or are entitled to be enrolled on that roll in terms of this Act.

(3) The expenses incurred in compiling the first voters roll shall be paid by the council concerned.

## 117 Preparation of subsequent voters rolls

(1) Subject to this section—

- (a) in each year in which a general election of councillors or an election to the office of mayor is to be held, the Registrar-General of Voters shall prepare a voters roll containing the names of persons entitled to be enrolled thereon on the date fixed in terms of paragraph (d) of subsection (1) of section *one hundred and twenty-four* for the closing of the roll concerned;
- (b) as soon as possible after an area has been added to the council area concerned, the Registrar-General of Voters shall prepare a voters roll containing the names of persons entitled to be enrolled thereon in terms of section *one hundred and fifteen*.

(2) Instead of preparing a voters roll in terms of subsection (1), the Registrar-General of Voters may—

- (a) prepare—
  - (i) a supplementary voters roll containing the names, in alphabetical order of surnames, of persons who are entitled to be enrolled on the voters roll concerned but who are not enrolled thereon; and
  - (ii) a removals list containing the names, in alphabetical order of surnames, of all persons whose names appear on the existing voters roll for the area concerned but who are no longer qualified to be enrolled thereon;

or

- (b) ensure that the existing voters roll for the area concerned is continuously kept up to date by the addition of the names of persons who are entitled to be enrolled thereon but who are not so enrolled and the deletion of the names of persons who are no longer entitled to be so enrolled.

(3) Nothing in this section shall be construed as precluding the Registrar-General of Voters from preparing an additional voters roll, supplementary voters roll or removals list for the purpose of any by-election to fill a casual vacancy or special vacancy on any council, and if he or she does so such roll or list shall have effect for the purpose of the by-election as if it had been prepared in terms of subsection (1) or (2).

(4) Subsections (2) and (3) of section *one hundred and sixteen* shall apply, with any changes that may be necessary, in relation to any roll or list prepared or updated in terms of this section.

## 118 Inspection of voters rolls

(1) A voters roll prepared in terms of section *one hundred and sixteen* or *one hundred and seventeen* shall be open to inspection by the public, free of charge, during office hours at the Registrar-General of Voters' office.

(2) Immediately after preparing a voters roll in terms of section *one hundred and sixteen*, or *one hundred and seventeen*, the Registrar-General of Voters shall, by notice published in two issues of a newspaper and posted at his or her office—

- (a) notify that a copy of the voters roll is open for inspection in terms of subsection (1); and
- (b) call upon any person who—

- (i) claims that he or she should be enrolled on the voters roll, to apply for enrolment in terms of section *twenty-four* or to apply to the Registrar-General of Voters for the rectification of the voters roll as soon as possible; or
- (ii) has any objection to the enrolment of a person whose name appears on the voters roll, to lodge his or her objection as soon as possible in terms of Part VI.

*Qualifications for election*

**119 Qualifications and disqualifications for election as councillor**

- (1) Any person who—
- (a) is a citizen of Zimbabwe; and
  - (b) has attained the age of twenty-one years; and
  - (c) is enrolled on the voters roll for the council area concerned; and
  - (d) is not disqualified in terms of subsection (2);
- shall be qualified to be elected as a councillor.
- (2) A person shall be disqualified from being nominated as a candidate for or from election as a councillor if—
- (a) he or she is a member of another local authority, other than a local authority which—
    - (i) will be abolished on or before the date he or she would assume office if elected; or
    - (ii) forms part of a system of local government for which provision has been made in terms of section 5 of the Urban Councils Act [*Chapter 29:15*];
 or
  - (b) he or she is a member of Parliament; or
  - (c) in terms of the law in force in any country, he or she has—
    - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
    - (ii) made an assignment or arrangement or composition with his or her creditors which has not been rescinded or set aside;
 or
  - (d) during the five years immediately preceding the date of his or her proposed nomination as a candidate, he or she has been convicted of contravening section 48 of the Rural District Councils Act [*Chapter 29:13*], section 107, 108 or 109 of the Urban Councils Act [*Chapter 29:15*] or an equivalent provision of any Act repealed by the latter Act; or
  - (e) he or she has been convicted of an offence involving dishonesty; or
  - (f) subject to subsection (3), he or she holds an office of profit under or in the gift of a local authority, not being a local authority that will be abolished on or before the date he or she would assume office if elected; or
  - (g) subject to subsections (4) and (5), he or she holds an office of profit under the State; or
  - (h) on—
    - (i) the nomination day in question; or
    - (ii) the day of the election in question;
 as the case may be, he or she is in default with the payment of any levy, rate, charge or tax due and payable to the council concerned, and has been in such default for more than one hundred and twenty days; or
  - (i) he or she is suspended in terms of section 157 of the Rural District Councils Act [*Chapter 29:13*] or section 114 of the Urban Councils Act [*Chapter 29:15*], as the case may be, from exercising all his or her functions as a councillor or, having been dismissed in terms of either of those sections, he or she is disqualified under the section concerned from nomination or election as a councillor.
- (3) A person shall not be regarded as holding an office of profit under or in the gift of a local authority by virtue of his or her receiving—
- (a) any payment or allowance paid to a councillor in terms of the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*] arising out of the performance of his or her duties as a councillor, whether such duties are of a special or general nature; or
  - (b) any remuneration payable to a member of an executive committee in terms of section 95 of the Urban Councils Act [*Chapter 29:15*]; or
  - (c) any allowance at a rate not exceeding such amount as may be prescribed under the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*], as the case may be, which is paid to a person for services on any board, committee or similar body established by or under any enactment, where that person receives no other payment for such services; or
  - (d) any pension payable in terms of the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*].

(4) For the purposes of paragraph (g) of subsection (2), a person shall not be regarded as holding an office of profit under the State—

- (a) unless he or she is in the continuous and regular employment of the State in respect of which he or she receives a wage or salary;
- (b) by virtue of the fact that—
  - (i) he or she is in receipt of a pension which is payable by the State; or
  - (ii) he or she is an officer or member of the Defence Forces whose services in peace-time are not wholly in the employment of the State; or
  - (iii) he or she is an officer or member of the Reserve Force of the Police Force whose services are not wholly in the employment of the State; or
  - (iv) he or she is a consultant whose services are not wholly retained by the State; or
  - (v) he or she is a person nominated by or with the approval of the council to serve as a member of a commission, board or similar body established under any enactment; or
  - (vi) he or she is a commissioner appointed in terms of the Commissions of Inquiry Act [*Chapter 10:07*].

(5) A member of the Public Service shall be eligible for nomination as a candidate and for election as a councillor if the Secretary of the Ministry in which he or she is employed, with the concurrence of the Public Service Commission, has certified in the prescribed form that any of his or her duties as a councillor, should he or she be elected, would not conflict with his or her duties as an employee of the State.

(6) A councillor or former councillor may be re-elected to the council if he or she is qualified to continue as a councillor.

## **120 Qualifications and disqualifications for election as mayor**

(1) Any person who—

- (a) is a citizen of Zimbabwe; and
  - (b) has attained the age of forty years; and
  - (c) is, and has been for the three years immediately preceding the election, ordinarily resident in the council area concerned; and
  - (d) holds academic or professional qualifications to at least the following levels—
    - (i) a general certificate of education with passes in at least five subjects, including English, at Ordinary Level; or
    - (ii) a pass in any post-Ordinary Level certificate or qualification;
- and
- (e) is not disqualified in terms of subsection (2) or (3);

shall be qualified for election as mayor of a municipality.

(2) A person shall be disqualified from being nominated as a candidate for or from election as mayor if he or she would be disqualified in terms of subsection (2) of section *one hundred and nineteen* from nomination or election as a councillor.

(3) A person shall be disqualified from taking office as a mayor or from continuing in office as a mayor if he or she is in the full-time employment of any person whatsoever:

Provided that, if he or she is in such employment when he or she is declared or deemed to have been elected mayor, he or she may retain such employment for not more than fourteen days after taking office as mayor.

(4) A mayor shall be eligible for re-election for a further term of office following his or her current term:

Provided that no person shall continue in office as mayor after serving two consecutive terms of office as such.

### *When elections to be held*

## **121 When election of councillors to be held**

(1) Subject to section 13 of the Rural District Councils Act [*Chapter 29:13*] and section 12 of the Urban Councils Act [*Chapter 29:15*], the first election for any council or ward shall be held on such date as may be fixed by the Commission in terms of section *one hundred and twenty-four*:

Provided that the first election for a council shall be held before the date fixed for the coming into being of the council.

(2) Subject to this Part, a general election of councillors shall be held in every fourth year on any day in the month of August fixed by the Commission in terms of section *one hundred and twenty-four*.

(3) No general election of councillors shall be held within four years after—

- (a) the first election of councillors to the council; or
- (b) an initial election of councillors held immediately before the area of another local authority was incorporated into the council area; or
- (c) a by-election held to fill vacancies in the seats of all the councillors of the council concerned.

- (4) A by-election to fill—
  - (a) a casual vacancy or special vacancy on a council; or
  - (b) a vacancy arising from—
    - (i) any area added to a council area being constituted an additional ward; or
    - (ii) the number of councillors of a council area or ward being increased;

shall be held on a date fixed by the Commission in terms of section *one hundred and twenty-four*, which date shall be not less than thirty-five days nor more than ninety days after the date on which the vacancy occurred:

Provided that, except where the number of vacancies exceeds one-half of the total number of councillors, no by-election shall be held to fill such a vacancy which occurs within one hundred and eighty days before the date fixed in terms of subsection (2) for a general election for the council concerned.

### **122 When election to office of mayor to be held**

Subject to this Part, an election to the office of mayor shall be held on a date fixed by the Commission in terms of section *one hundred and twenty-four*, which date shall not be later than sixty days—

- (a) before the term of office of the mayor expires in terms of section 51 of the Urban Councils Act [*Chapter 29:15*]; or
- (b) after the office of mayor becomes vacant for any reason:

Provided that, if the office of mayor becomes vacant less than twelve months before the expiry of the mayor's term of office, no election shall be held until the date on which it would have been held had the mayor continued in office until the end of his or her term.

### **123 Postponement of elections**

Notwithstanding any other provision of this Part, if the Commission considers that it is necessary to postpone any election—

- (a) to enable a voters roll to be prepared or updated; or
- (b) for any other reason, to enable the election to be held properly in accordance with this Act;

the Commission may, by notice in the *Gazette*, postpone the election to such later date as it may specify in the notice:

Provided that—

- (i) the date to which the election is postponed shall not be later than one year after the last date on which the election was due to be held in terms of section *one hundred and twenty-one* or *one hundred and twenty-two*, as the case may be;
- (ii) in the case of an election to the office of mayor, the postponement shall not be for longer than three months after the office of mayor of the municipality concerned has for any reason fallen vacant.

### *Conduct of elections*

### **124 Notice of election and nomination day**

(1) Not more than sixty-six or less than twenty-eight days before the day appointed for any election, the Commission shall, by notice published in a newspaper and posted at its office—

- (a) in the case of a by-election to fill a casual vacancy or a special vacancy, state the number of vacancies to be filled and, where appropriate, the wards in which the vacancies have occurred; and
- (b) fix a place or places within the council area at which, and a day or days, not less than seven or more than twenty-one days after the publication of the notice in the newspaper, on which a nomination court will sit in terms of section *forty-six* to receive nominations of candidates for election as councillor or mayor, as the case may be; and
- (c) fix a day or days, not less than fourteen or more than forty-five days after the nomination day or last nomination day, as the case may be, fixed in terms of paragraph (b), on which a poll shall be taken if a poll becomes necessary; and
- (d) fix a day on which the voters roll shall be regarded as closed for the purpose of accepting the enrolment of voters who may vote at the election, which day may be on or after the day of publication of the notice or not more than thirty-one days before that day.

(2) Subject to this Part, the Commission may, by further notice, alter any place or day fixed in terms of subsection (1), and the place or day as so altered shall be deemed to have been fixed in terms of that subsection.

### **125 Nomination of candidates**

(1) A candidate for election in terms of this Part shall be nominated by means of a separate nomination paper in the form prescribed, which—

- (a) shall be signed by no fewer than five persons whose names are enrolled on the voters roll for the council area concerned or, where the council area is divided into wards, on the voters roll for the ward concerned:

Provided that, where the council area is divided into wards the nomination paper of a candidate for election to the office of mayor shall be signed by no fewer than five persons whose names are enrolled on the voters roll for each such ward;

and

- (b) shall be countersigned by the candidate or his or her duly authorised agent indicating his or her consent to the nomination.

(2) Nomination papers may be lodged with the Commission at any time after the publication of the notice in terms of section *one hundred and twenty-four* but before the closing of the nomination court on the day or last day, as the case may be, fixed as nomination day in terms of that section.

- (3) There shall be lodged together with the nomination papers in terms of subsection (2)—

(a) a written certificate of clearance obtained from—

- (i) the Zimbabwe Republic Police, as evidence that the candidate concerned is not disqualified in terms of paragraph (d) or (e); and  
(ii) the relevant council, as evidence that the candidate concerned is not disqualified in terms of paragraph (h);

of subsection (2) of section *one hundred and nineteen*;

- (b) in the case of a candidate for election to the office of mayor, such sum as may be prescribed, which, if a poll takes place and the number of valid votes cast for the candidate is less than one-fifth of the number of valid votes cast for the successful candidate, shall be forfeited and form part of the funds of the Commission.

(4) If, at the closing of the nomination court on nomination day or the last nomination day, as the case may be—

- (a) only one candidate has been duly nominated to fill a single vacancy or, where there is more than one vacancy to be filled, the number of candidates who have been duly nominated is equal to or less than the number of vacancies to be filled at the election, the candidate or candidates concerned shall be deemed to have been duly elected and the Chief Elections Officer shall forthwith give notice in a newspaper and post a notice at his or her offices showing the name or names of the candidate or candidates concerned:

Provided that, where one or more vacancies remain to be filled, a fresh election shall be held to fill them and this Part shall apply, with any changes that may be necessary, as if the vacancy or vacancies had occurred on nomination day;

- (b) the number of candidates who have been duly nominated exceeds the number of vacancies to be filled at the election, the Chief Elections Officer shall forthwith, by notice in a newspaper and posted at his or her office, notify—

- (i) the names of the candidates in respect of whom a poll will be taken; and  
(ii) the date or dates of the poll; and  
(iii) the situation of each polling station and the hours during which it will be open.

(5) Any person who—

- (a) as a candidate or otherwise, forges any signature purporting to be that of a nominator; or  
(b) as a candidate or otherwise, lodges a nomination paper knowing that any signature therein purporting to be that of a nominator is forged, or  
(c) being a candidate—  
(i) permits the lodging of a nomination paper on his or her own behalf knowing that any signature therein purporting to be that of a nominator is forged; or  
(ii) fails to disclose any previous conviction as required in terms of paragraph (d) or (e) of subsection (2) of section *one hundred and nineteen*;

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment and, in the case of a candidate, shall be disqualified from being nominated as a candidate for, or from election as, a councillor for a period of five years from the date of conviction.

## 126 Withdrawal of candidate

(1) Subject to this Act, a person who has been duly nominated as a candidate at an election may, at any time before polling day or the first polling day, as the case may be, in the election concerned, withdraw his or her candidacy by means of written notification to the Chief Elections Officer, signed by the candidate personally.

(2) Where the Chief Elections Officer is notified of a candidate's withdrawal after the posting of a notice in terms of paragraph (b) of subsection (4) of section *one hundred and twenty-five*, and—

- (a) the number of remaining candidates is equal to or less than the number of vacancies to be filled at the election, the Chief Elections Officer shall declare the remaining candidate or candidates to be duly elected and shall forthwith give notice in a newspaper and post a notice at his or her office showing the name of the candidate or candidates concerned:

Provided that—

- (i) if by virtue of an appeal against the rejection of a nomination paper, an additional candidate is to be regarded as duly nominated, the Chief Elections Officer shall revoke his or her declaration

and publish notice in a newspaper of the revocation, and a poll shall take place in accordance with this Part;

- (ii) where as a result of the withdrawal one or more vacancies remain to be filled, a fresh election shall be held to fill them and this Part shall apply, with any changes that may be necessary, as if the vacancy or vacancies had occurred on the date of the withdrawal;
- (b) the number of remaining candidates still exceeds the number of vacancies to be filled at the election, the Chief Elections Officer shall take such steps as are reasonably practicable to ensure that—
  - (i) the withdrawal is brought to the attention of voters in the council area concerned; and
  - (ii) the name of the candidate who has withdrawn is either omitted or deleted from the ballot-paper.

### **127 Death of candidate**

If a duly nominated candidate dies after the close of nominations and before the poll commences or, if the poll has commenced, before its close, the Chief Elections Officer shall, on being satisfied of the fact of the death—

- (a) terminate all proceedings in respect of the election for the council area or ward concerned; and
- (b) declare any proceedings already taken in relation to that election to be void; and
- (c) give notice in a newspaper of the actions taken by him or her;

and all proceedings shall be commenced afresh as if a casual vacancy or special vacancy had occurred on the date of the candidate's death:

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 that candidate or his or her agent notifies the Chief Elections Officer in writing of his or her intention to remain a candidate.

### **128 Entitlement to vote, number of votes a voter may cast, and counting thereof**

(1) Every person whose name appears on the voters roll prepared for the election concerned shall be entitled to vote at an election held under this Part:

Provided that no such person shall be disqualified from voting if he or she satisfies the presiding officer of the polling station concerned as to his or her identity, notwithstanding that there may be a minor variation between his or her name as it appears on the voters roll and on any identity document.

- (2) The number of votes that a person referred to in subsection (1) may cast shall be—
  - (a) in the case of an election to the office of mayor, one vote;
  - (b) in the case of an election of councillors, where the council area is divided into wards, one vote;
  - (c) in the case of an election of councillors, where the council area is not divided into wards, one vote in respect of each vacancy to be filled.
- (3) The Chief Elections Officer shall give reasonable notice in writing to each candidate or his or her chief election agent of the time and place where the counting of votes will take place.

### **129 Drawing of lots to determine result of election**

If after the counting of votes has been completed 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 Chief Elections Officer shall, before two or more of the candidates and their agents, determine the candidate or candidates to whom such one additional vote shall be deemed to have been given by the drawing of lots, and shall thereafter declare the candidate or candidates so determined.

### **130 Declaration and publication of result of election**

(1) After ascertaining the result of the poll and any drawing of lots that may be required by section *one hundred and twenty-nine*, the Chief Elections Officer shall immediately declare the candidate or candidates, as the case may be, for whom the majority of votes have been given to have been duly elected and the number of votes given to each candidate.

(2) As soon as possible after the result of the election has been declared in terms of subsection (1), the Chief Elections Officer shall give notice in a newspaper of the result, stating—

- (a) the candidates, if any, who are deemed in terms of paragraph (a) of subsection (4) of section *one hundred and twenty-five* or paragraph (a) of subsection (2) of section *one hundred and twenty-six* to have been elected; and
- (b) the candidates who have been elected or are deemed to have been elected by a poll and the number of votes given to each such candidate.

### **131 Expenses of elections**

(1) Subject to this section, the necessary expenses of any election in terms of this Part, including any fees payable to any person appointed for the purpose of the election, shall be paid out of the funds of the council concerned or, where the council fails to meet any such expenses, from the Consolidated Revenue Fund (which is hereby appropriated for that purpose), but any moneys so paid shall be recovered in due course from the council.

(2) Any expenses incurred in respect of the first election before the coming into being of the council concerned may, in the first instance, be paid out of moneys appropriated for the purpose by Act of Parliament, but any moneys so paid shall be recovered in due course from the council.

(3) No candidate or councillor, or agent of a candidate or councillor, shall be entitled to claim or receive from the council any expenses he or she has incurred in respect of an election.

#### *General*

### **132 Alteration of dates and qualifying periods**

(1) Where by this Part—

(a) anything is to be done by a particular date; or

(b) any person's qualification or entitlement to be enrolled on a voters roll is determined as at or as from a particular date;

the Commission may direct that, in relation to all councils or any particular council or class of councils, the thing is to be done by a different date or, as the case may be, that the qualification or entitlement is to be determined as at or as from a different date, and the provisions of this Part shall be construed in accordance with any such direction.

(2) The Commission shall give notice of any direction in terms of subsection (1) in the *Gazette* and in a newspaper.

### **133 Application of provisions of this Act to local authority elections**

Subject to this Part, the provisions of this Act relating to the election of members of Parliament shall apply, with any changes that may be necessary, to elections to which this Part applies as if any references therein to a constituency elections officer were references to the Registrar-General of Voters or the Chief Elections Officer, as the case may be.

## **PART XIX**

### **CORRUPT PRACTICES**

### **134 Undue influence**

(1) Any person who, directly or indirectly, by himself or herself 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 herself or by any other person any 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;

shall be guilty of the offence of undue influence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who, directly or indirectly, by himself or herself 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 herself or by any other person any 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;

shall be guilty of the offence of undue influence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Any person who by abduction, duress or threats or by fraudulent device or contrivance—

(a) impedes or prevents the exercise of his or her vote by a voter; or

(b) compels, induces or prevails upon a voter either to vote or to refrain from voting at an election;

shall be guilty of the offence of undue influence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **135 Theft or destruction of voter identification**

Any person who, in order to prevent or discourage another person from voting in an election, takes, destroys or damages any proof of identity, proof of residence, voters registration certificate or other document by which that other person may be identified as a voter, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### 136 Bribery

(1) Subject to subsection (2), any person who, directly or indirectly, by himself or herself or by any other person—

- (a) gives, lends or procures or agrees to give, lend or procure or offers 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 a 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 or 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 the 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 herself 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 or her to be registered as a voter, thereby to influence his or her vote at a future election, or pays any money on behalf of a voter for the purpose of inducing him or her to vote or refrain from voting;

shall be guilty of the offence of bribery and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Nothing in subsection (1) shall be construed as applying to any money paid or agreed to be paid for or on account of any expenditure *bona fide* and lawfully incurred in respect of the conduct or management of an election.

### 137 Personation

Any person who—

- (a) at an election applies for a ballot paper in the name of some other person, living or dead, or 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 in terms of section *seventy-five*, marks a postal ballot paper so as to indicate thereon a vote for a candidate;

shall be guilty of the offence of personation and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### 138 Additional penalties for corrupt practices

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 or her conviction, of—

- (a) being registered as a voter or 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 or she holds any such office, the High Court may declare that that office shall be vacated by him or her as from the date of his or her conviction.

## PART XX

### ILLEGAL PRACTICES AND OTHER OFFENCES

### 139 Certain expenditure an illegal practice

(1) 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 this Act or any other law or in respect of any matter or thing payment for which is prohibited by this Act or such law; 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.

(2) Subparagraph (ii) of paragraph (b) of subsection (1) shall not apply in respect of any payment or contract made in the ordinary course of business to or with a voter whose ordinary business it is as an advertising agent to exhibit bills and advertisements for payment.

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

#### **140 Unauthorised election expenses**

Any person who, without the express or implied authority of a candidate or his or her chief election agent, incurs election expenses in relation to that candidate shall be guilty of an illegal practice and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

#### **141 Penalty for providing money for payments contrary to this Act**

Any person who knowingly provides money—

- (a) for any payment which is contrary to this Act; or
- (b) for any election expenses in excess of the maximum amount allowed by this Act; or
- (c) for replacing any money expended in any such payment or expenses, except where the same is allowed under this Act to be an exception;

shall be guilty of an illegal practice and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

#### **142 Certain employment prohibited**

(1) No person shall, for the purpose of promoting or procuring the election of a candidate at an election, engage or employ any other person for payment or promise of payment for any purpose or in any capacity whatever for which election expenses may not be incurred.

(2) Any person who engages or employs another person in contravention of subsection (1) shall be guilty of an illegal practice, and the person so engaged or employed shall also be guilty of an illegal practice if he or she knew that he or she was engaged or employed in contravention of subsection (1).

(3) Any person guilty of an illegal practice in terms of this section shall be liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

#### **143 Corrupt procurement of candidate**

(1) 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 shall be 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 shall also be guilty of an illegal practice:

Provided that this section shall not apply to any payment or promise of payment of election expenses.

(2) Any person guilty of an illegal practice in terms of subsection (1) shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **144 Betting prohibited**

Any person who stakes any money or undertakes to stake any money on any contingency relating to the nomination of a candidate for election in terms of this Act or the result of a poll taken in terms of this Act shall be guilty of an illegal practice and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

#### **145 Posters to have names of printer and publisher**

(1) For the purposes of this section, an election shall be deemed to commence—

- (a) in the case of a general election, upon the publication in the *Gazette* of a proclamation in terms of section 58 of the Constitution fixing the date of the general election;
- (b) in the case of a by-election in consequence of a vacancy by reason of death, resignation or other cause of a seat in Parliament, upon the publication of a proclamation in terms of section *thirty-nine* relating to that by-election.

(2) For the purposes of subsection (5)—

“electoral matter” includes all matters which, on the face of them, are intended or calculated to affect the result of an election, and any report of the speech of a candidate if the insertion of the report is, or is to be, paid for.

(3) Every bill, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the names and addresses of the printer and publisher thereof.

(4) Any person who prints, publishes or posts, or causes to be printed, published or posted, any printed matter referred to in subsection (3) which does not bear upon the face thereof the names and addresses of the printer and

publisher shall be guilty of an illegal practice and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment, unless he or she proves that such failure was due to inadvertence.

(5) The proprietor and the publisher of a newspaper shall cause the word “advertisement” to be printed as a headline to each article or paragraph in his or her 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.

(6) If a proprietor or publisher fails to comply with subsection (5) he or she shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(7) No candidate shall issue or distribute any document, including any bill, 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 or her vote, unless the candidate has first obtained from the constituency elections officer for the constituency concerned a certificate, in duplicate, stating that, in his or her opinion, such document contains no representation likely to mislead a voter as to his or her rights.

(8) No person shall print any document referred to in subsection (7) unless he or she has been furnished with the original or duplicate of the certificate referred to in that subsection.

(9) Any person who contravenes subsection (7) or (8) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

#### **146 Prohibited symbols**

(1) The Commission may, by statutory instrument, declare that any symbol or representation of an animal, bird or thing shall be a prohibited symbol for the purposes of this section.

(2) No person shall use, possess, display, publish or wear any object or thing which consists of, incorporates or bears a prohibited symbol if the use, possession, display, publishing or wearing of that object or thing furthers or is calculated or likely to further the objects or activities of a candidate or a political party for the purpose of an election.

(3) Without limiting the generality of subsection (2) the prohibition contained therein shall extend to the use, possession, display, publishing or wearing, as the case may be, of—

- (a) banners, flags or badges;
- (b) uniforms, T-shirts, dresses or other articles of clothing of whatever kind;
- (c) letterheads, pamphlets, circulars, manifestos, notices or advertisements;

consisting of, incorporating or bearing a prohibited symbol.

(4) Any person who contravenes subsection (2) shall be guilty of an illegal practice and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(5) In any proceedings in respect of a contravention of subsection (2)—

(a) if it is proved that the person who is alleged to have contravened subsection (2) was, at the time of the contravention—

- (i) a member, official or supporter of a political party; or
- (ii) an agent or supporter of a candidate;

he or she shall be deemed to have contravened the subsection in order to further the objects or activities of the political party or candidate, as the case may be, unless the contrary is proved;

(b) if it is proved that, at any time before an election, an object or thing consisting of, incorporating or bearing a prohibited symbol was used, possessed or worn in the presence of, or displayed or published to, a person who at the time was qualified to be registered as a voter, the object or thing shall be deemed to have been used, possessed, worn, displayed or published, as the case may be, for the purpose of that election unless the contrary is proved.

#### **147 Prohibition of certain activities in vicinity of polling stations**

(1) Without derogation from any other provision of this Act or any other enactment, no person shall, within two hundred metres of any polling station on any polling day—

- (a) convoke or take part in any gathering of more than twelve persons; or
- (b) canvass for votes; or
- (c) utter slogans; or
- (d) distribute leaflets or pamphlets for or on behalf of any candidate or political party; or
- (e) organise or engage in public singing or dancing; or
- (f) use bands or music or loudspeaker vans or apparatus.

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

#### **148 Procuring prohibited persons to vote; false statements re withdrawal of candidates**

(1) Any person who votes or induces or procures any person to vote at an election, knowing that he or she or that person is prohibited by law from voting at that election, shall be guilty of an illegal practice and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who, before or during an election, publishes a false statement of the illness, death or withdrawal 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 knowing or believing it to be true, shall be guilty of an illegal practice and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) A candidate shall not be liable nor shall his or her election be rendered void for any illegal practice under this section committed by the candidate's agent other than his or her chief election agent.

#### **149 Obstruction of voters**

Any person who, at an election, wilfully obstructs a voter, either at the polling station or on his or her way thereto or therefrom, shall be guilty of an illegal practice and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

#### **150 Additional penalties for illegal practices**

Where a person has been convicted by the High Court of an illegal practice and no other incapacity is specially provided for in this 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 or her 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 or she holds any such office, the High Court may declare that that office shall be vacated by him or her as from the date of his or her conviction.

#### **151 Preventing holding of lawful political meeting, etc.**

Any person who prevents the holding of any lawful political meeting, march, procession or demonstration or other lawful political event that was to have been held for the purpose of an election shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **152 Destruction of political posters, etc.**

(1) Subject to subsection (2), from the date on which an election is called until its result is declared, no person shall deface or remove any billboard, placard or poster published, posted or displayed by a political party or candidate contesting the election.

(2) Subsection (1) does not apply to the removal or defacement of a billboard, placard or poster by or at the direction of—

- (a) the person who published, posted or displayed it; or
- (b) the owner or occupier of the land or premises on which it is published, posted or displayed in contravention of section *one hundred and fifty-three*.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **153 Defacing property for political purposes**

(1) Any person who, with the object of supporting or opposing any political party, political cause or candidate, whether or not in reference to any election, places any bill, placard, poster, pamphlet, circular or other document, writing or painting on, or otherwise defaces, any house, building, wall, fence, lamp-post, gate or elevator without the consent of the owner or occupier thereof, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Subject to Part XIX of the Criminal Procedure and Evidence Act [*Chapter 9:07*], a court which has convicted a person of any offence in terms of subsection (1) shall forthwith award compensation, including the costs of restoring the property to its former condition, to any person whose right or interest in property of any description has been lost or diminished as a direct result of the offence.

#### **154 Aggravating circumstances in relation to offences under sections 151, 152 and 153**

It shall be an aggravating circumstance in relation to the commission of an offence under section *one hundred and fifty-one, one hundred and fifty-two or one hundred and fifty-three* if the person convicted of such offence committed it while falsely claiming or representing himself or herself to be acting on behalf of any institution of the State or a political party, with the intention of discrediting such institution or political party.

### **PART XXI**

#### **FURTHER PROVISIONS RELATING TO CORRUPT PRACTICES, ILLEGAL PRACTICES AND OTHER OFFENCES**

#### **155 When election void owing to corrupt or illegal practices**

Subject to sections *one hundred and forty-eight, one hundred and fifty-six and one hundred and fifty-seven*—

- (a) if upon the trial of an election petition the Electoral Court declares that any corrupt practice 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 the candidate returned at that election, or by or with the knowledge and consent or approval of any of his or her agents, and the effect of such practice was, in the opinion of the Electoral Court, such as to have materially affected the outcome of that election, the election of that candidate shall be void, and a fresh election shall thereupon be held;
- (b) if a candidate or his or her chief election agent is found at the said trial to have committed any corrupt practice or illegal practice, that candidate or agent may be declared by the Electoral Court to be incapable, for a period not exceeding five years from the date of the finding, of—
  - (i) being registered as a 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 or she holds any such office, the Electoral Court may declare that that office shall be vacated by him or her as from the date of the finding.

#### **156 When election not void**

When upon the trial of an election petition the Electoral Court finds that a candidate at the election the subject of the petition has been guilty by his or her agent of a corrupt or illegal practice with reference to that election, and the candidate has proved to the satisfaction of the Electoral Court that—

- (a) no corrupt practice or illegal practice was committed at that election by the candidate himself or herself or by his or her chief election agent and that the offences mentioned in the said finding were committed without the sanction or connivance of the candidate or his or her chief election agent; and
  - (b) the candidate and his or her chief election agent took all reasonable precautions for preventing the commission of corrupt practices and illegal practices at that election; and
  - (c) the offences mentioned in the finding 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 chief election agent be subjected to any incapacity under this Act.

#### **157 When Electoral Court may hold certain acts or omissions to be exempt from provisions of this Act**

- (1) When it appears to the Electoral Court, either on application or upon an election petition, that—
  - (a) any act or omission of a candidate at an election or of his or her chief election agent or of another agent or person, which but for this section 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; and
  - (b) by reason of the circumstances it would be just that the candidate or his or her chief election agent or other agent or person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission;

the Electoral Court may make an order allowing the act or omission to be an exception from the provisions of this Act which would otherwise make the act or omission an illegal practice, and thereupon the candidate, agent or person shall not be subject to any of the consequences under this Act of the said act or omission.

(2) Where application is made for relief in terms of subsection (1), the Electoral Court, before hearing the application, shall be satisfied that reasonable notice of the application has been given in the constituency or area in which the election was held.

#### **158 Hearing of person accused of corrupt practice or illegal practice**

Before any 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 found by the Electoral Court to have been guilty of any corrupt practice or illegal practice, the Electoral Court shall cause notice to be given to such person and, if he or she appears in pursuance of the notice, shall give him or her an opportunity of being heard and of calling evidence to show why no such finding should be recorded against him or her.

#### **159 Finding on charge of corrupt practice or illegal practice**

Any person charged with—

- (a) a corrupt practice may, if the circumstances warrant such a finding, be found guilty of an illegal practice; or
- (b) an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

### **160 When creditors not prejudiced in respect of prohibited payment**

(1) The provisions of this Act prohibiting certain payments and contracts for payments and the payment of any sum and the incurring of any expenses in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

(2) Notwithstanding subsection (1), no legal proceedings shall be maintainable by any person licensed to sell intoxicating liquor or by the owner or keeper of any shop or place of entertainment against a candidate or an election agent of a candidate for any liquor, food or refreshment of any kind supplied upon the credit of such candidate or agent during the progress of an election, except in respect of such liquor, food or refreshment as may have been supplied to the candidate or his or her chief election agent for their personal consumption, the payment whereof is under this Act part of the personal expenses allowed to the candidate.

## **PART XXII**

### **ESTABLISHMENT, COMPOSITION AND RULES OF ELECTORAL COURT**

#### **161 Establishment and nature of Electoral Court**

(1) There is hereby established a court, to be known as the Electoral Court, for the purpose of hearing and determining election petitions and other matters in terms of this Act.

(2) The Electoral Court shall have no jurisdiction to try any criminal case.

(3) The Electoral Court shall be a court of record.

#### **162 Judges of Electoral Court and composition thereof**

(1) The Chief Justice shall, after consultation with the Judge President, appoint one or more judges of the High Court to be Judge or Judges, as the case may be, of the Electoral Court.

(2) The Electoral Court's jurisdiction may be exercised by a Judge of the Electoral Court sitting alone or with one or more assessors appointed in terms of section *one hundred and sixty-three*.

#### **163 Assessors**

(1) Subject to this section, a Judge of the Electoral Court may require the Registrar of the Electoral Court to appoint two persons from the appropriate list of persons referred to in subsection (2) to assist him or her as assessors in determining any matter that is required to be determined in any case before the Electoral Court.

(2) The Chief Justice and the Judge President shall prepare a list of the names of at least ten persons who have knowledge or experience to act as assessors and who are otherwise suitable for appointment as such.

(3) The Registrar of the Electoral Court shall, when so directed by a judge of the Electoral Court, choose as assessors at the trial of an election petition two persons whose names appear on a list prepared in terms of subsection (2).

(4) Before an assessor enters upon his duties for the first time, he or she shall take an oath before the Judge of the Electoral Court that he or she will faithfully perform his or her duties as a member of the Electoral Court.

(5) An assessor appointed in terms of subsection (1) shall act in an advisory capacity only and shall not be entitled to a vote in the decision of the Electoral Court.

(6) An assessor shall be paid such remuneration and allowances as the Minister, with the consent of the Minister responsible for finance, may fix.

#### **164 Registrar of Electoral Court**

(1) The Registrar of the High Court shall be the Registrar of the Electoral Court.

(2) The Registrar of the Electoral Court shall perform such functions as may be assigned to him or her by or under this Act or any other enactment.

#### **165 Rules of Electoral Court**

(1) The Chief Justice and the Judge President of the High Court, after consultation with a committee appointed by the Chief Justice, may make rules as to the practice and procedure to be observed in respect of any jurisdiction which under this Act is exercisable or to be exercised by the Electoral Court.

(2) The rules in terms of subsection (1) may make provision for—

- (a) the practice and procedure to be observed in the hearing of election petitions;
- (b) service of an election petition on the respondent;
- (c) priority of set down for the hearing of an election petition.

(3) Rules of court made in terms of subsection (1) shall be referred to the Electoral Supervisory Commission and shall be submitted to the Minister responsible for the administration of the High Court Act [*Chapter 7:06*] for his or her approval and, if so approved, shall be published in the *Gazette*.

(4) Until rules of court for the Electoral Court are made in terms of this section, the rules of the High Court shall apply, with such modifications as appear to the Electoral Court to be necessary, with respect to election petitions and other matters over which the Electoral Court has jurisdiction.

## PART XXIII

### ELECTION PETITIONS

#### 166 Interpretation in Part XXIII

In this Part—

“respondent” means the member of Parliament whose election or qualification for membership is complained of in an election petition.

#### 167 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 Electoral Court by any candidate at such election.

#### 168 Provisions governing election petitions

(1) An election petition shall be—

- (a) presented by lodging it with the Registrar of the Electoral Court; and
- (b) signed by the petitioner or all of the petitioners if more than one.

(2) An election petition shall be presented within fourteen days after the day on which the result of the election has been notified in terms of this Act:

Provided that, if the return or election is questioned upon an allegation of an illegal practice, the petition may be presented, 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 an agent of the member or with the privity of the member or his or her chief election agent in pursuance or in furtherance of the illegal practice alleged in the petition, at any time within thirty days after the day of such payment or other act.

(3) Not later than seven days after the presentation of the election petition, security of an amount fixed by the Registrar of the Electoral Court, being not less than the amount prescribed by the Commission after consultation with the Chief Justice, for the payment of all costs, charges and expenses that may become payable by the petitioner—

- (a) to any person summoned as a witness on his or her behalf; and
- (b) to the respondent;

shall be given by or on behalf of the petitioner.

(4) Security given in terms of subsection (3) 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 Electoral Court, which recognizance shall be signed in the presence of the Registrar of the Electoral Court or a magistrate.

#### 169 Notice of election petition to be served on 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 or her usual or last known dwelling or place of business.

#### 170 Respondent may object to security provided

(1) The respondent may, by notice in writing served upon the petitioner, within such period as may be prescribed in rules of court, object to any recognizance given in terms of section *one hundred and sixty-eight* 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.

(2) An objection in terms of subsection (1) shall be heard and decided by the Electoral Court and if the objection is allowed—

- (a) the petitioner may, within a further period to be fixed by the Electoral Court not exceeding ten days, remove the objection by a deposit of such sum of money as may be considered necessary by the Electoral 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.

(3) If on the expiration of the period allowed for making objections no objection had been received, or after an objection is made the sufficiency of the security is established, the petition shall be deemed to be at issue.

#### **171 Provisions as to trial of election petition**

(1) An election petition shall be tried by the Electoral Court in open court.

(2) If, on the trial of an election petition praying the Electoral 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 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.

(3) At the conclusion of the trial of an election petition the Electoral 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 Electoral Court determines that—

- (a) the respondent was duly elected, such election shall be and remain as valid as if no petition had been presented against his or her 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 or her seat; and
  - (ii) the Electoral Court shall forthwith certify its determination to the Commission and the Speaker and the Commission shall thereupon, by notice published in the *Gazette*, declare such other person duly elected with effect from the day of the determination of the Electoral 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 Electoral Court shall forthwith certify its determination to the Speaker, and the Speaker shall notify the President that the vacancy has occurred and the cause of such vacancy.

(4) 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 Electoral Court shall, in addition to the certificate in terms of subsection (3), 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 or her 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.

(5) The Electoral Court may, in addition to the certificate required in terms of subsection (3), 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 Electoral Court considers that an account of such matter ought to be submitted to Parliament.

(6) A copy of every certificate and report made by the Electoral Court under this section shall, as soon as possible, be presented by the Speaker to Parliament.

(7) Where, on the trial of an election petition, the Electoral 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 Electoral 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 or employee of the Commission, it may, after sufficient notice to the Minister or the Commission, as the case may be, to show cause to the contrary, make such order as to the payment from the Consolidated Revenue Fund or the funds of the Commission, as the case may be, of the costs of the action or portion thereof as it thinks fit;
- (b) if the Electoral 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 or employee of the Commission, it may, after sufficient notice to such member or employee, as the case may be, to show cause to the contrary, make such order as to the payment by such member or employee of the costs of the action or portion thereof as it thinks fit.

(8) Notwithstanding any other provision of this section, the noting, within the time prescribed in rules of court, of an appeal against any determination or decision of the Electoral Court shall suspend such determination or decision until the abandonment or the final determination or dismissal of the appeal.

#### **172 Appeals from decisions of Electoral Court**

- (1) A decision of the Electoral Court on a question of fact shall be final.
- (2) A decision of the Electoral Court on a question of law may be the subject of an appeal to the Supreme Court.
- (3) An appeal under subsection (2) shall be determined within six months from the date of the lodging of the appeal.

#### **173 Procedure where Electoral Court reports cases of corrupt practices or illegal practices**

If the Electoral 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 illegal practice or that there is reason to believe that corrupt practices 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 Electoral Court to the Attorney-General with a view to the institution of any prosecution proper to be instituted in the circumstances; and
- (b) the report shall, so far as it concerns any such person, be transmitted by the registrar of the Electoral Court to the Commission.

#### **174 Witnesses**

- (1) 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 Electoral 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 in terms of paragraph (b) the witness or person may be cross-examined by or on behalf of the petitioner and respondent or either of them.
- (2) 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 or she knows to be false or does not know or believe to be true shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **175 Witnesses not excused from answering incriminating questions**

(1) 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 or herself.

(2) If any witness fully answers to the satisfaction of the Electoral Court every question relating to any matter mentioned in subsection (1) which he or she is required by the High Court to answer, and the answer to which may incriminate or tend to incriminate him or her, he or she 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 this Act, committed by him or her prior to the time that the witness gave his or her 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 from the Electoral Court under the hand of the registrar thereof a certificate stating that he or she is so freed and discharged from all liability to prosecution as aforesaid.

(3) No evidence given by a witness referred to in subsection (1) shall, except upon a charge of contravening subsection (2) of section *one hundred and seventy-four*, be admissible in evidence against him or her in any criminal or civil proceedings to which he or she is a party.

#### **176 Respondent may testify that election of petitioner undue**

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 a petition complaining of such election.

#### **177 When non-compliance with this Act invalidates election**

An election shall be set aside by the Electoral Court by reason of any mistake or non-compliance with the provisions of this Act if, and only if, it appears to the Electoral Court that—

- (a) the election was not conducted in accordance with the principles laid down in this Act; and
- (b) such mistake or non-compliance did affect the result of the election.

#### **178 Withdrawal of election petition**

- (1) An election petition may be withdrawn at any time.
- (2) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

(3) When there are more petitioners than one, no application to withdraw a petition shall be made without the consent of all the petitioners.

### **179 Election petition terminated on death of petitioner**

(1) An election petition shall be terminated by the death of the sole petitioner or of all the petitioners, as the case may be, but such abatement shall not affect the liability of the estate of the petitioner or petitioners for the payment of costs previously incurred.

(2) On the termination of a petition, any person who might have been a petitioner in respect of the election to which the petition relates may, within twenty-one days after such termination, apply to the Electoral Court to be substituted as a petitioner, and the Electoral Court may thereupon, if it thinks fit, substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.

### **180 Position when respondent does not oppose election petition**

A respondent who has given notice that he or she does not intend to oppose the election petition shall not, without the leave of the Electoral Court, be allowed to appear or to act as a party against the election petition in any proceedings thereon, and shall not sit or vote in Parliament, pending the result of the trial of the petition, and the Electoral Court shall, in all cases in which such notice has been given, report the same to the Commission.

### **181 Costs of election petition**

(1) 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 proportion as the Electoral Court may determine, regard being had to—

- (a) the disallowance of any costs, charges or expenses which may, in the opinion of the Electoral 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.

(2) The costs referred to in subsection (1) may be taxed and recovered in the same manner as the costs of civil proceedings in the High Court.

(3) 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 or her behalf or to the respondent any sum certified to be due to him or her for his or her costs, charges or expenses; and
- (b) the default is proved to the satisfaction of the Electoral Court;

every person who has entered into a recognizance relating to the petition shall be held to have made default in his or her said recognizance, and the registrar of the Electoral Court shall thereupon certify such recognizance to be forfeited, and execution may thereupon, by leave of the Electoral Court, be sued out thereon at the suit of any such witness or respondent as occasion may require.

### **182 Time within which election petition to be determined**

Every election petition shall be determined within six months from the date of its presentation.

## PART XXIV

### GENERAL

### **183 When incapacity may be removed**

Whenever a person has become subject to any incapacity under this Act or any other law by reason of a conviction, or by reason of a declaration or report of a court, and any witness who gave evidence against such incapacitated person upon the proceedings for the said conviction, declaration or report is convicted of perjury or of contravening subsection (2) of section *one hundred and seventy-four* in respect of that evidence, the incapacitated person may apply to the Electoral Court which, if satisfied that the conviction, declaration or report, so far as it concerns that person, was based upon perjured or false evidence, may order that his or her incapacity shall from that time cease, and the incapacity shall cease accordingly.

### **184 No person required to divulge how he or she voted**

No person who has voted at an election shall in any legal proceedings, whether taken to question the election or return or otherwise, be required to state for whom he or she has voted.

### **185 Evidence as to holding of election**

Upon any charge of a corrupt practice or illegal practice or any other offence against this Act alleged to have been committed at or in connection with an election, the certificate of the constituency elections officer for the constituency concerned, certifying that the election mentioned therein was being or had been held, shall be sufficient evidence of the fact that such election was being or had been held.

## **186 Penalty for interruptions in connection with elections**

Any person who wilfully interrupts, obstructs or disturbs any proceedings taken under this Act in connection with an election shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

## **187 Maintenance of secrecy**

(1) Every person in attendance at the counting of the votes after a poll in terms of this Act shall maintain, and aid in maintaining, the secrecy of the voting and shall not attempt to ascertain at such counting any number on the back of any ballot paper or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper.

(2) A person who has, in the carrying out of his or her duties under this Act, obtained knowledge as to the candidate for whom any other person has voted, shall not, except in answer to a question lawfully put to him or her in the course of proceedings in a competent court, disclose such knowledge.

(3) No person shall, except upon the order of a competent court or as authorised by this Act, break the seal of or open any sealed packet transmitted or in the course of transmission in terms of this Act to the Chief Elections Officer or to a constituency elections officer.

(4) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

## **188 How public notice may be given and documents served**

(1) A public notice required to be given by the Registrar-General of Voters, the Chief Elections Officer, a constituency registrar, a constituency elections officer or any other person whatsoever who under this Act is required to give public notice shall, except where it is expressly directed to be published in the *Gazette* or in any other particular manner, be sufficiently given if it is published in a newspaper circulating in the constituency or area intended to be affected by the notice or if it is posted outside the principal outer door of every magistrates court office in such constituency or area or in such place or places, if any, as the Commission may determine.

(2) Save as is otherwise specially provided in this Act and without derogation from section 40 of the Interpretation Act [*Chapter 1:01*], when any notice or other document is required to be served on any person under this Act, it may be served—

- (a) by delivering it to the person to whom it is addressed; or
- (b) by leaving it at his or her last known place of residence or any place of residence stated on a voters roll as his or her place of residence; or
- (c) by sending it to any place of residence referred to in paragraph (b) through the post by registered letter marked upon the outside “electoral notice letter” and, unless the contrary is proved, the notice or other document shall be deemed to have been served at the time at which such registered letter would have been delivered in the ordinary course of post.

## **189 Validation of certain documents despite misnomer or inaccurate description**

No misnomer or inaccurate description of any person or place in any voters roll or in any list, nomination paper, ballot paper, notice or other document required for the purposes of this Act shall affect the full operation of the document with respect to that person or place where the description of the person or place is such as to be commonly understood.

## **190 Complaints to Commission**

(1) Any claimant or person aggrieved by the decision of a constituency registrar under section *twenty-four* or *twenty-five* or the decision of the Registrar-General of Voters or constituency registrar under section *thirty-five* may lodge a complaint with the Commission in the prescribed time and manner.

(2) Upon receiving a complaint in terms of subsection (1), the Commission shall, if it considers the complaint to be justified, order the Registrar-General of Voters or constituency registrar, as the case may be, to take the appropriate remedial action after affording the Registrar-General of Voters or constituency registrar concerned an opportunity to make representations on the matter.

(3) The Commission may in writing delegate its functions under subsection (2) to the Chief Elections Officer or any other officer of the Commission.

## **191 Conflict management**

The Third and Fourth Schedules apply to the management of conflict between political parties contesting any elections.

## **192 Regulatory powers of Commission**

(1) The Commission may by regulation prescribe all matters which by this Act are required or permitted to be prescribed or which, in its opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations in terms of subsection (1) may provide for—

- (a) any matter for which it is expressly provided in this Act that regulations may be made;
  - (b) the form of any document to be used in the carrying out of the provisions of this Act;
  - (c) the duties of constituency elections officers, presiding officers and polling officers where the electoral officer has made a declaration in terms of subsection (6) of section *twenty-one*, including the manner of identifying applicants for ballot papers and the questions that may be put to such applicants;
  - (d) the issue of duplicate voters registration certificates and the fee payable therefor;
  - (e) such measures to be taken in connection with an election as may be desirable or expedient to ensure that—
    - (i) a person does not cast more than one vote; or
    - (ii) a person who is not eligible to vote does not cast a vote;
  - (f) measures to be taken by employers to provide their employees with an opportunity to vote in any election;
  - (g) the access by journalists to, and their conduct at, polling stations and constituency centres;
  - (h) penalties for contraventions thereof, not exceeding a fine of level ten or imprisonment for a period not exceeding one year or both such fine and such imprisonment.
- (3) The Commission shall consult the Minister responsible for local government before making regulations in terms of subsection (1) in respect of elections to which Part XVIII applies.
- (4) Notwithstanding any other provision of this Act but subject to subsection (5), the Commission may make such statutory instruments as it considers necessary or desirable to ensure that any election is properly and efficiently conducted and to deal with any matter or situation connected with, arising out of or resulting from the election.
- (5) Statutory instruments made in terms of subsection (4) may provide for—
- (a) altering any period specified in this Act within which anything connected with, arising out of or resulting from any election must be done;
  - (b) empowering any person to make orders or give directions in relation to any matter connected with, arising out of or resulting from any election;
  - (c) penalties for contraventions of any such statutory instrument, not exceeding a fine of level ten or imprisonment for a period not exceeding one year or both such fine and such imprisonment.
- (6) Regulations made in terms of subsection (1) and statutory instruments made in terms of subsection (4) shall not have effect until they have been approved by the Minister and published in the *Gazette*.

### 193 Repeal of Cap. 2:01 and savings

- (1) In this section—  
 “repealed Act” means the Electoral Act [*Chapter 2:01*].
- (2) The Electoral Act [*Chapter 2:01*] is repealed.
- (3) Despite subsection (2)—
- (a) the person who, immediately before the fixed date, held office as the Registrar-General of Elections in terms of the repealed Act shall be deemed to have been appointed Registrar-General of Voters in terms of section *eighteen*;
  - (b) every person who, immediately before the fixed date, held office as constituency registrar, deputy constituency registrar or assistant constituency registrar for any constituency shall be deemed to have been appointed constituency registrar, deputy constituency registrar or assistant constituency registrar, as the case may be, for the constituency concerned in terms of section *nineteen*;
  - (c) every roll kept by a constituency registrar in terms of section 17 of the repealed Act immediately before the fixed date shall be deemed to be the voters roll kept for the constituency concerned in terms of section *twenty* and every person who, immediately before the fixed date, was enrolled on such a roll, shall be deemed to have been registered on the voters roll for that constituency in terms of this Act;
  - (d) every claim, application or objection made, notice issued, proclamation, rule, regulation or other statutory instrument published or other matter or thing whatsoever made, done or commenced in terms of the repealed Act which, immediately before the fixed date, had or was capable of acquiring legal effect shall continue to have or to be capable of acquiring legal effect in terms of this Act in all respects as if it had been made, issued, published, done or commenced, as the case may be, in terms of the appropriate provision of this Act.
- (4) A person shall be deemed to have been registered on a voters roll in terms of paragraph (d) of subsection (3) notwithstanding that he or she may not have submitted a claim form in terms of Part IV of the repealed Act, if at the time of his or her enrolment he or she was qualified to be so enrolled.

## FIRST SCHEDULE (Sections 13(4)(a), 14(6)(c) and 83(1))

### CODE OF CONDUCT FOR CHIEF ELECTION AGENTS, ELECTION AGENTS, MONITORS AND OBSERVERS

1. A chief election agent, election agent, monitor or observer shall obey every lawful instruction of an electoral officer.
2. A chief election agent, election agent, monitor or observer shall not hinder or obstruct an electoral officer in the lawful conduct of his or her functions.
3. No monitor or observer shall wear any apparel sporting a prohibited symbol or apparel indicating any affiliation with a candidate or political party participating in the poll, nor in any other way canvass for any candidate or political party while monitoring or observing the poll.
4. A monitor or observer shall at all times within a polling station, constituency centre or ward or council centre wear a badge or label bearing proof that he or she has been duly accredited in terms of this Act.
5. A chief election agent or election agent shall not wear any apparel sporting a prohibited symbol or indicating any affiliation with a candidate or political party participating in the poll, but may wear such identification label or badge as is sufficient to indicate the candidate or political party he or she represents.
6. A chief election agent or election agent shall not, within or within two hundred metres of a polling station, constituency centre or ward or council centre, canvass for any candidate or political party.
7. A chief election agent, election agent, monitor or observer shall not obstruct or accost any voter at a polling station or on his or her way thereto or therefrom, nor interview any voter at a polling station.
8. A chief election agent, election agent, monitor or observer shall not do anything which compromises the secrecy of the ballot.
9. If a chief election agent, election agent or monitor considers that there has been any irregularity in the conduct of the poll or the counting of the votes, the chief election agent, election agent or monitor shall not bring such irregularity or apparent irregularity to the attention of any electoral officer other than the presiding officer or constituency elections officer.
10. If an observer considers that there has been any irregularity in the conduct of the poll or the counting of the votes, the observer shall bring such irregularity or apparent irregularity to the attention of a monitor on duty at the polling station, constituency centre or ward or council centre concerned and not to the attention of any electoral officer.
11. Not more than one election agent for any candidate shall be permitted to be in a polling station at any time.
12. A chief election agent or election agent may not be present at a polling station, constituency centre or ward or council centre located in a constituency or ward or council area for which his or her candidate was not nominated.
13. In the case of an election to the office of President—
  - (a) a candidate's provincial or constituency chief election agents shall not be permitted to enter any polling station, nor witness the verification of statements of presiding officers or the counting of votes, outside the province or constituency, as the case may be, for which they were appointed;
  - (b) not more than the prescribed number of the candidate's election agents may be present at the counting of votes.
14. A chief election agent, election agent, monitor or observer shall, generally, conduct himself or herself in a manner conducive to the peaceful, dignified and orderly conduct of the poll.

## SECOND SCHEDULE (Section 110)

### DETERMINATION AND NOTIFICATION OF RESULTS OF PRESIDENTIAL ELECTION

#### *Determination and declaration of result of Presidential poll*

- 1.(1) After the number of votes received by each candidate as shown in each polling-station return has been added together in terms of subparagraph (i) of subsection (3) of section *sixty-five* and the resulting figure added to the number of postal votes received by each candidate, the constituency elections officer shall forthwith—
  - (a) record on the constituency return the votes obtained by each candidate and the number of rejected ballot papers in such a manner that the results of the count for each polling station are shown on the return; and
  - (b) display the completed constituency return to those present and afford each candidate or his or her election agent the opportunity to subscribe their signatures thereto; and
  - (c) transmit to the Chief Elections Officer by hand through a messenger the constituency return or a copy thereof certified by the constituency elections officer to be correct.
- (2) Immediately after arranging for the constituency return to be transmitted in terms of paragraph (c) of subparagraph (1), the constituency elections officer shall affix a copy of the constituency return on the outside the constituency centre so that it is visible to the public.

*Procedure on receipt of constituency returns*

2.(1) The Chief Elections Officer shall give reasonable notice in writing to each candidate or his or her chief election agent of the time and place where the Chief Elections Officer will verify and collate all the constituency returns.

(2) At the time and place notified for the verification and collation of the constituency returns referred to in subparagraph (1) and in the presence of such candidates, their chief election agents, monitors and observers as are present, the Chief Elections Officer shall display each constituency return to those present and shall, on request, allow a candidate or chief election agent of a candidate to make notes of the contents of each constituency return.

(3) When the Chief Elections Officer has completed the verification of the constituency returns under subparagraph (2) the Chief Elections Officer shall, in the presence of such persons referred to in subparagraph (2) as are present, add together the number of votes received by each candidate as shown in each constituency return.

*Determination, declaration and notification of result of Presidential poll*

3.(1) Subject to subparagraph (2), after the number of votes received by each candidate as shown in each constituency return has been added together in terms of subparagraph (3) of paragraph 2, the Chief Elections Officer 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 President of the Republic of Zimbabwe with effect from the day of such declaration.

(2) A declaration by the Chief Elections Officer under this paragraph shall be final, subject to reversal on petition to the Electoral Court that such declaration be set aside or to the proceedings relating to that election being declared void under subsection (1) of section *fifty-one*.

(3) The Chief Elections Officer shall cause a notice to be published in the *Gazette*, giving the full name of the person duly elected as President of the Republic of Zimbabwe and the day with effect from which he or she was so elected.

**THIRD SCHEDULE (Section 191)**

CONFLICT MANAGEMENT

*Interpretation*

1. In this Schedule—

“Code” means the Electoral Code of Conduct for Political Parties and Candidates set out in the Fourth Schedule;

“multiparty liaison committee” means a national multiparty liaison committee or a constituency multiparty liaison committee.

*Constitution of multiparty liaison committees*

2. (1) As soon as possible after the close of nominations in an election, the Commission shall appoint—

(a) a national multiparty liaison committee, in the case of a Presidential election or general election; and

(b) a constituency multiparty liaison committee for each constituency in which the election is contested, in the case of a Presidential election, general election or by-election.

(2) A multiparty liaison committee shall, in the case of—

(a) a national multiparty liaison committee, consist of a Commissioner as the chairperson and—

(i) two representatives of each political party contesting the election, who shall be selected by the party concerned;

Provided that an independent candidate contesting a Presidential election shall be entitled to select two representatives to represent him or her on the committee;

(ii) any person invited by the representatives of every political party represented in the liaison committee;

(b) a constituency multiparty liaison committee, consist of a representative of the Commission selected by the Commission and—

(i) a representative of each political party contesting the election, who shall be selected by the party or candidate concerned; and

(ii) any person invited by the representatives of every political party represented in the liaison committee.

*Functions of multiparty liaison committees*

3. (1) The functions of a multiparty liaison committee shall be—

(a) to hear and attempt to resolve any disputes, concerns, matters or grievances relating to the electoral process, including in particular any disputes arising from allegations concerning non-compliance with the Code; and

- (b) in the case of a national multiparty liaison committee—
  - (i) to create and establish multiparty liaison subcommittees in each province; and
  - (ii) to delegate any of its functions to any multiparty liaison subcommittee; and
  - (iii) to monitor, supervise or direct the activities of multiparty liaison subcommittees;
- (c) to immediately report upon and refer to the Commission any disputes, concerns, matters or grievances relating to the electoral process;
- (d) to request the Commission to mediate or appoint an independent mediator to resolve any dispute, concern, matter or grievance relating to the electoral process;
- (e) to present to the Commission any reports, assessments, records or recommendations relating to the electoral process;
- (f) generally, to assist in implementing the Code.

(2) The Commission or an independent mediator referred to in subparagraph (1)(d) shall endeavour to resolve any dispute, concern, matter or grievance relating to the electoral process referred for mediation within the time requested by the multiparty liaison committee or within a reasonable time.

*Decisions of multiparty liaison committees*

4. The decisions of the multiparty liaison committee shall be made by consensus.

**FOURTH SCHEDULE (Section 191 and Paragraph 1 of Third Schedule)**

ELECTORAL CODE OF CONDUCT FOR POLITICAL PARTIES AND CANDIDATES

*Purpose*

1. The purpose of this Code is to promote conditions that are conducive to free and fair elections and a climate of tolerance in which electioneering activity may take place without fear or coercion, intimidation or reprisals.

*Application*

2. This Code will apply to political parties and their candidates, members, supporters and agents.

*Compliance*

3. Every political party and every candidate must comply with this Code and—
- (a) in the case of a political party, instruct its candidates, persons who hold political office in the party and its representatives, members and supporters to comply with this Code and any applicable electoral laws;
  - (b) in the case of a candidate, instruct the representative and supporters of the candidate to comply with this Code and any applicable electoral laws;
  - (c) take all reasonable steps to ensure such compliance.

*Public commitment*

4. Every political party and every candidate must—
- (a) give wide publicity to this Code;
  - (b) publicly state that everyone has the right—
    - (i) to freely express their political beliefs and opinions;
    - (ii) to challenge and debate the political beliefs and opinions of others;
    - (iii) to canvass freely for membership and support from voters;
    - (iv) to attend public meetings convened by others;
    - (v) to distribute campaign material;
  - (c) publicly condemn any action that may undermine the free and fair conduct of elections;
  - (d) accept the result of an election or challenge the result by due process of law.

*Duty to co-operate*

5. Every political party and every candidate must co-operate—
- (a) with other parties to minimise the risk of electoral-related conflict; in particular, they must endeavour not to call public meetings, marches or rallies that coincide with those called by another party or candidate contesting the election;
  - (b) with the election authorities to protect and enhance their role to supervise and administer elections;
  - (c) with law enforcement officers to maintain peace during the election period.

*Prohibited conduct*

6. No political party, candidate, member or supporter may—
- (a) harm or threaten to harm others participating in an election;
  - (b) use language or act in a way that may provoke violence or intimidation;
  - (c) publish false or defamatory allegations about a party, its candidate(s), representatives or members;

- (d) discriminate on the grounds of race, ethnicity, sex, gender, class or religion in connection with an election or political party;
- (e) damage or deface property, including the election posters, placards, banners and other election material of another party or candidate;
- (f) bar or inhibit access to meetings or to voters for the purpose of election campaigning;
- (g) carry or display weapons at political meetings or at marches, demonstrations, rallies or other public political events;
- (h) bribe or threaten a voter to vote for a particular candidate;
- (i) force a voter to reveal the identity of the candidate voted for;
- (j) disrupt the work of election officials at a polling station or counting centre;
- (k) campaign or display campaign material within 200 metres of a polling station or counting centre.

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