

Act No. 25/2004

Gazetted: Friday 21st January, 2005 (General Notice 17 of 2005)

Commencement: 1st February 2005 (Statutory Instrument 17 of 2005).

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**This document shows the wording of the Act as at 25th October 2016  
i.e. incorporating the amendments made by  
the General Laws Amendment Act (No. 3 of 2016)  
the Electoral Amendment Act (No. 6 of 2014) and  
the National Prosecuting Authority Act (No. 5 of 2014]  
as well as amendments previously made by  
the Electoral Laws Amendment Act, 2007 (No. 17 of 2007),  
the Local Government Laws Amendment Act, 2008 (No. 1 of 2008)  
and the Electoral Amendment Act, 2012 (No. 3 of 2012).**

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**CHAPTER 2:13**

**ELECTORAL ACT**

*Acts 25/2004, 17/2007, 1/2008<sup>1</sup>, 3/2012<sup>2</sup>, 6/2014<sup>3</sup>, 5/2014<sup>4</sup>, 3/2016<sup>5</sup>*

**PART I**

**PRELIMINARY**

*Section*

1. Short title and date of commencement.
2. Application.
3. General principles of democratic elections.
4. Interpretation.

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<sup>1</sup> Repeal of sections 120 and 122.

<sup>2</sup> Electoral Amendment Act, 2012 (No. 3/2012). Major amendments to the principal Act with effect from 28th September 2012. These amendments, *inter alia*, provided for the inclusion in the principal Act of the provisions previously contained in the Zimbabwe Electoral Commission Act (No. 22/2004) and the repeal of the latter Act. Statutory instruments made under the Zimbabwe Electoral Commission Act continue in force until repealed under section 192 of the principal Act; see section 44 of Act No. 3/2012, set out in the [Appendix](#) to the present document for the full text of that section, which also saves other things done under the Zimbabwe Electoral Commission Act.

The [Appendix](#) to the present document also sets out amendments to the principal Act, provided for by section 42 of Act No. 3/2012, that are not yet in force and will only come in force on a date to be fixed by the Zimbabwe Electoral Commission [these amendments provide for polling station voters rolls].

<sup>3</sup> Electoral Amendment Act, 2014 (No. 6/2014) with effect from 20th August 2014. These amendments largely repeated the temporary amendments made by the Presidential Powers (Temporary Measures) (Amendment of Electoral Act) Regulations, 2013 [SI 85/2013] which expired on 10th December 2013 and then fell away completely as if never made.

<sup>4</sup> National Prosecuting Authority Act, 2014 (No. 5/2014) with effect from 2nd January 2015.

<sup>5</sup> General Laws Amendment Act, 2016 (No. 3/2016) with effect from 1st July 2016. This Act did not entirely succeed in updating instances of “Registrar-General of Voters” to “Commission” and instances of “constituency registrar” to “voter registration officer”. Surviving inappropriate references to the former terms have been highlighted by footnotes suggesting that the provisions concerned should be read as if they had been updated.

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# ACT

**AN ACT** to provide for the terms of office, conditions of service, qualifications and vacation of office of members of the Zimbabwe Electoral Commission, the procedure at meetings of the Zimbabwe Electoral Commission and the appointment of the Chief Elections Officer; 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 in of vacancies in Parliament; to provide for elections to the office of the President; to provide for local authority elections; to provide for offences and penalties, and for the prevention of electoral malpractices 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; and to provide for matters connected with or incidental to the foregoing.

*Whereas sections 157(1), 238 and 239 of the Constitution provide as follows—*

*"157.(1) An Act of Parliament must provide for the conduct of elections and referendums to which this Constitution applies, and in particular for the following matters-*

- (a) the periodic delimitation of constituencies and wards in accordance with section 161;*
- (b) the registration of voters, and requirements for registration on particular voters' rolls;*
- (c) a code of conduct for political parties, candidates and other persons participating in elections or referendums;*
- (d) a system of proportional representation/or the election of persons to the seats in the Senate referred to in section 120(1)(a) and the seats reserved for women in the National Assembly referred to in section 124(1)(b), and the procedure for filling vacancies in those seats, which vacancies must be filled by persons-*
  - (i) belonging to the same political parties as those who previously held the seats;*  
*and*
  - (ii) of the same gender as the persons who previously held the seats;*
- (e) the election of representatives of persons with disabilities under section 120(1)(d);*
- (f) the conduct of elections to provincial and metropolitan councils and local authorities;*
- (g) challenges to election results.*

*238.(1) There is a commission to be known as Zimbabwe Electoral Commission consisting of-*

- (a) a chairperson appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and*
- (b) eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.*

*(2) The chairperson of the Zimbabwe Electoral Commission must be a judge or former judge or a person qualified for appointment as a judge.*

*(3) If the appointment of a chairperson to the Zimbabwe Electoral Commission is not consistent with a recommendation of the Judicial Service Commission, the President must cause the Committee on Standing Rules and Orders to be informed as soon as practicable.*

*(4) Members of the Zimbabwe Electoral Commission must be Zimbabwean citizens and chosen for their integrity and experience and for their competence in the conduct of affairs in the public or private sector.*

*(5) Members of the Zimbabwe Electoral Commission are appointed for a six-year term and may be re-appointed for one such further term, but no person may be appointed to or serve on the Commission after he or she has been a member for one or more periods, whether continuous or not, that amount to twelve years.*

*239. The Zimbabwe Electoral Commission has the following functions*

- (a) to prepare for, conduct and supervise-*
  - (i) elections to the office of President and to Parliament;*
  - (ii) elections to provincial and metropolitan councils and the governing bodies of local authorities;*
  - (iii) elections of members of the National Council of Chiefs established by section 285; and*
  - (iv) referendums;**and to ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law;*
- (b) to supervise elections of the President of the Senate and the Speaker and to ensure that those elections are conducted efficiently and in accordance with the Law;*
- (c) to register voters;*
- (d) to compile voters' rolls and registers;*
- (e) to ensure the proper custody and maintenance of voters' rolls and registers;*
  - (f) to delimit constituencies, wards and other electoral boundaries;*
- (g) to design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres;*
- (h) to conduct and supervise voter education;*
- (i) to accredit observers of elections and referendums;*
- (j) to give instructions to persons in the employment of the State or of a local authority for the purpose of ensuring the efficient, free, fair, proper and transparent conduct of any election or referendum; and*
- (k) to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate."*

NOW, THEREFORE, be it enacted by the President and Parliament of Zimbabwe as follows:—

## 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 provincial councils and 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;
- (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 fair and equal access to electronic and print media, both public and private;
  - (v) to have reasonable access to all material and information necessary for it to participate effectively in every election;
- (d) every candidate has the right—
  - (i) to have fair and equal access to electronic and print media, both public and private;
  - (v) to have reasonable access to all material and information necessary for it to participate effectively in every election;
- (e) voting methods must be simple, accurate, verifiable, secure and transparent.

## **4 Interpretation**

### **(1) In this Act—**

"absence", in relation to the absence of the Chairperson of the Commission, includes absence occasioned by the vacation of the office of the Chairperson;

"by-election" means an election to fill a casual vacancy in the membership of the Senate or the National Assembly or in the governing body of a local authority;

"call", in relation to an election, means to issue a proclamation referred to in section 38 or a notice in terms of section 39 in relation to that election, as the case may be;

"casual or special vacancy", in relation to a council, means a vacancy referred to in section 32 of the Rural District Councils Act [Chapter 29:13] or section 78 of the Urban Councils Act [Chapter 29:15];

"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 Commission's Chief Elections Officer appointed in terms of section 9, or any officer of the Commission acting on his or her behalf;

"claim" means a claim to be registered as a voter in a ward or 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*;

"Clerk of Parliament" means the Clerk of Parliament appointed in terms of section 154 of the Constitution;

"Commission" means the Zimbabwe Electoral Commission established by section 238(1) of the Constitution;

"Commissioner" means a member of the Commission, including the chairperson of the Commission;

"constituency" means a constituency into which Zimbabwe is divided or deemed to have been divided in terms of section 160 of the Constitution for the purpose of elections to the National Assembly;

"constituency candidate" bears the meaning given to that phrase in section 45D;

"constituency centre" means a constituency centre established in terms of section 37C(1)(c) for an election to the office of President or in terms of section 37C(1)(d) for an election of members of Parliament, as the case may be;

"constituency elections officer", in relation to-

- (a) an election of a member of the National Assembly, means a person appointed in terms of section 10(4)(a) as constituency elections officer for the purposes of that election;
- (b) an election to the office of President, means a person appointed in terms of section 10(4)(b) as the presidential constituency elections officer for the purposes of that election in the constituency concerned;

"constituency member" bears the meaning given to that phrase in section 45B;

"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 section 110;

"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);

"council" means a municipal council, town council or rural district council established in terms of the Rural District Councils Act [Chapter 29:13] or the Urban Councils Act [Chapter 29:15] for any local authority area;

"councillor" means a member of a council;

"covering envelope" means the envelope referred to in section 74(1)(b);

"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;

"designated office-bearer" means an office-bearer of a political party designated as such to the Commission by the political party in accordance with section 38A(1)(a) or (b);

"disciplined force" means the Defence Forces, the Police Force or the Prison Service;

"district" means a district as defined in the Rural District Councils (Districts) Notice, 1992, published in Statutory Instrument 67 of 1992, or any other enactment that may be substituted for the same;

"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 chief election agent or 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 nomination fee” 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 period” or “period of an election” means—

- (a) in the case of a Presidential election, the period between the calling of the election and the declaration of the result of the poll in terms of section 110(3)(h);
- (b) in the case of a general election for the purpose of electing members of Parliament, the period between the calling of the election and the declaration of the result of the poll for the last constituency in terms of section 66(1);
- (c) in the case of an election to fill a vacancy in the membership of Parliament, the period between the calling of the election and the declaration of the result of the poll for the constituency concerned in terms of section 66(1);
- (d) in the case of a general election for the purpose of electing councillors, the period between the calling of the election and the declaration of the result of the poll in terms of section 130(1) for the last council area or ward of the local authority concerned
- (e) in the case of an election for the purpose of filling a casual vacancy or special vacancy in the governing body of a local authority, the period between the publication of a notice referred to in section 121A and the declaration of the result of the poll in terms of section 130(1) for the council area or ward of the local authority concerned;

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

“electoral malpractice” means an intimidatory practice, corrupt practice, illegal practice or other offence in terms of Part XX;

“electoral officer” means the Chief Elections Officer, an officer employed by the Commission or seconded to its service, a nomination officer, a provincial elections officer, a constituency elections officer, a ward elections officer, a district elections officer, a presiding officer, a polling officer, or any official referred to in section 18(1) or 19;

“electoral province” bears the meaning given to that phrase in section 45;

“fixed date” means the 1st February 2005;

“general election” means a general election of members of Parliament, other than Chiefs;

“illegal practice” means any offence that is stated in Part XX to be an illegal practice;

“intimidatory practice” means any offence under Part XVIII A;

“local authority area” means an area the limits of which have been fixed in terms of the Rural District Councils Act [Chapter 29:13] or the Urban Councils Act [Chapter 29:15] or any other laws substituted for the same;

“metropolitan council” means a council established by section 268 of the Constitution for a ~~province~~ ~~other than a~~ metropolitan province;<sup>7</sup>

“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;

“multiparty liaison committee” has the meaning assigned to that term by section 160A;

“National Command Centre” means the National Command Centre established in terms of section 37C(1)(a);

“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*;

“nomination fee” means the sum deposited with the candidate’s nomination paper in terms of section 47 or section 105;

“nomination officer” means any person appointed by the Commission to receive nominations for candidates for elections to the office of the President or to Parliament or to a council;

“nomination paper in the prescribed form”, “nomination paper” or “nomination form” means, in reference to—

- (a) to the Presidential or National Assembly constituency elections, either of the forms prescribed in the Ninth Schedule; or
- (b) any other election, the prescribed nomination form;

“observer” means a person accredited as an observer in terms of Part IXB;

“office hours”, in relation to—

- (a) an office that is normally open to members of the public, means the hours on a week-day during which that office is open to members of the public;
- (b) an office that is not normally open to members of the public, means the hours on a week-day during which business is conducted in that office;

“party list”, “party-list candidate” and “party-list seat” bear the meanings given to those phrases in section 45B;

“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 the office of President, means the day or days fixed in terms of section 38(1)(a)(ii) or (iii), as the case may be, for the taking of a poll in that election;
- (b) the election of a member of the National Assembly, other than a party- list candidate, means the day or days fixed in terms of section 38(1)(b)(ii) for the taking of a poll in that election;
- (c) the election of a Senator Chief, means the day fixed in terms of section 38(3)(b) for the meeting of electoral colleges in terms of Part X;
- (d) the election of a Senator to represent persons with disabilities, means the day fixed in terms of the Seventh Schedule for the meeting of Electoral College for Persons with a Disability;
- (e) the election of a councillor, means a day fixed in terms of section 38(1)(c)(ii) or 121A(2)(c), as the case may be, for the taking of a poll in that election;

“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*;
- "postal vote" means a vote cast by a postal voter;
- "postal voter" means a person who votes by post in terms of Part XV;
- "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 any other satisfactory documentary evidence reasonably establishing the place of residence of the voter or complainant; 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 councillor, 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; or
  - (e) a sworn written statement by a property owner on whose property the voter or claimant resides;
- "province" means an area of Zimbabwe declared as such in terms of the Provincial Councils and Administration Act [Chapter 29:11] or any other law substituted for the same;
- "provincial command centre" means a provincial command centre established in terms of section 37C(1)(b);
- "provincial council" means a council established for a non-metropolitan province in terms of section 269 of the Constitution;
- "provincial elections officer" means a person appointed in terms of section 10(5);
- "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 the Fourth Schedule to the Constitution and section *twenty-three*, and "disqualification" shall be construed accordingly;
- "register of assisted voters" means the register kept by a presiding officer in terms of section 59(3);
- "registered", in relation to a voter, means registered in terms of Part V for the purpose of voting at an election;
- "registration office" means any office of a voter registration officer or office designated by the Commission as a place where persons may register as voters;
- "responsible authority" means, in relation to—

- (a) a council, the town clerk or chief executive officer of the local government body concerned, or any person acting in that capacity, as the case may be;
- (b) a statutory body, the board or other body responsible for the governance of the statutory body concerned, or, if that board or body is not appointed at the time anything is required to be done by it under this Act, the chief executive officer of that statutory body by whatever name he or she may be styled;

"roving political party election agent" means a roving political party election agent appointed in terms of section 93A;

"runoff presidential election" means a second presidential election held in the circumstances specified in section 110(3)(f)(iii);

"Speaker" means the Speaker of the National Assembly;

"statutory body" means—

- (a) any Commission established by the Constitution;
- (b) any body corporate established directly by or under any Act of Parliament for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister, any other statutory body or by a Commission established by the Constitution;

"voter" in relation to an election to the office of President or to Parliament or to a governing body of a local authority, means a person entitled to vote at that election by virtue of being registered as a voter;

"voter registration officer" means a person who is appointed in terms of section 19(1) to be a voter registration officer, and includes any person assisting the Commission in that capacity;

"voters registration certificate" means a certificate of registration as a voter issued in terms of section 26;

"voters roll" means (unless expressly otherwise specified) the voters roll for any ward;

"ward" means one of several subdivisions of a local authority area delimited for the purpose of electing members of the governing body of that authority;".

"ward centre" means a ward centre established for a council election in terms of section 37C(1)(f);

"ward elections officer" means a person appointed in terms of section 10(4)(c);

"Zimbabwe Human Rights Commission" means the Commission established by section 242 of the Constitution.

(2) Subject to subsection (3), the Minister, after consultation with the Commission, may by notice in a statutory instrument amend or replace the Ninth Schedule.

(3) When the Minister wishes to amend or substitute the Schedule the Minister shall lay the draft statutory instrument amending or substituting the Ninth Schedule before the National Assembly, and if the National Assembly makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the National Assembly, the Minister shall cause it to be published in the *Gazette*.

## **PART II**

### **ZIMBABWE ELECTORAL COMMISSION**

#### **4A Corporate status and ancillary powers of Commission**

(1) The Zimbabwe Electoral Commission shall be a body corporate capable of suing and being sued and, subject to the Constitution and this Act, of performing all acts that bodies corporate may by law perform.

(2) Without limiting subsection (1) but subject to this Act, for the better exercise of its functions the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of

the things specified in Part 1 of the Sixth Schedule, either absolutely or conditionally and either solely or jointly with others.

#### **4B Immunity of Commission, Commissioners, etc.**

No legal proceedings shall lie against the Commission or any of the Commissioners or the Chief Executive Officer or any member of the staff of the Commission acting under the direction of the Commission or the Chief Elections Officer in respect of anything done in good faith and without gross negligence in pursuance of this Act.

### **5 Additional functions and powers of Commission**

In addition to the functions set out in section 239 of the Constitution, the Commission shall be responsible for—

- (a) undertaking and promoting research into electoral matters; and
- (b) developing expertise and the use of technology in regard to electoral processes; and
- (c) promoting co-operation between the Government, political parties and civil society in regard to elections; and
- (d) keeping the public informed about—
  - (i) the times and places where persons can register as voters and the progress of the voter registration exercise; and
  - (ii) the delimitation of wards, constituencies and other electoral boundaries; and
  - (iii) the location and boundaries of polling stations and when they are open; and
  - (iv) voters rolls and the times and places at which they are open for inspection; and
  - (v) political parties and candidates contesting every election; and
  - (vi) voting; and
  - (vii) generally, all matters relating to the Commission's work and the electoral process;
- and
- (e) making recommendations to Parliament on appropriate ways to provide public financing for political parties.

### **6 Terms and conditions of office of Commissioners**

Part II of the Sixth Schedule applies to the terms and conditions of office of Commissioners.

#### **6A Parliament to be informed of removal of Commissioner**

If a tribunal established in terms of section 187 of the Constitution to inquire into the removal of a Commissioner from office recommends that the Commissioner should be removed, the Minister shall present a copy of the tribunal's report and advice before the Senate and the National Assembly as soon as practicable after the report and advice were delivered to the President, and in any event no later than seven sitting days of whichever House meets first after the date on which the report and advice were delivered to the President.

### **7 Procedure of Commission**

(1) Part III of the Sixth Schedule applies to the procedure to be followed by the Commission at its meetings.

(2) The Commission shall adopt and adapt the procedures set out in the Sixth Schedule in such a manner as to promote fairness and transparency in the performance of its functions.

### **8 Decentralisation of Commission**

The Commission shall endeavour to establish such provincial and district offices as will enable it to exercise its functions more effectively throughout Zimbabwe.

### **9 Chief Elections Officer and other employees of Commission**

(1) For the better exercise of its functions the Commission shall appoint a chief executive who shall be called the Chief Elections Officer.

- (2) Subject to the general control of the Commission, the Chief Elections Officer shall—
- (a) manage the affairs and property of the Commission;
  - (b) supervise and control the activities of the other employees of the Commission in the course of their employment;
  - (c) be the accounting officer of the Commission in terms of the Public Finance Management Act [Chapter 22:19] (No. 11 of 2009);
  - (d) perform any of the functions of the Commission that the Commission may entrust or assign to him or her:

Provided that the Commission shall not assign to the Chief Elections Officer any duty that has been assigned to the Chairperson of the Commission.

(3) Any assignment of functions in terms of subsection (2)(d) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Commission may determine, and may be revoked by the Commission at any time.

(4) The Commission shall terminate the appointment of the Chief Elections Officer if—

- (a) he or she would be required in terms of paragraph 3(b) or (c) of the Sixth Schedule to vacate his or her office had that paragraph and paragraph 2(1)(a), (b) and (c) of the Sixth Schedule, and subparagraph (2) of that paragraph, applied to him or her; or
- (b) he or she breaches any condition of service prescribed in terms of section 191(2) (a1) for the breach of which his or her appointment may be terminated.

(5) The Commission shall not terminate the services of the Chief Elections Officer on a ground other than one referred to in subsection (4) without the approval of the Minister.

(6) The Chief Elections Officer shall have the right to attend meetings of the Commission and, except in the case of any discussion relating to the terms and conditions of his or her appointment, to take part in the proceedings of the Commission as if he or she were a Commissioner, but shall not have a vote on any question before the Commission.

(7) The Commission shall employ such persons in addition to the Chief Elections Officer as it considers expedient for the better exercise of the functions of the Commission.

(8) The Commission shall, with the approval of the Minister responsible for finance, fix the terms and conditions of service of the employees of the Commission.

(9) The remuneration and other benefits payable to the Chief Elections Officer and other employees and agents of the Commission shall be paid from the funds of the Commission.

## **10 Staff of Commission during elections**

(1) At the request of the Commission, the chairpersons of the Public Service Commission and the Health Services Board established by the Health Services Act [Chapter 15:16] (No. 20 of 2004) and the responsible authority of any statutory body or council shall second to the Commission such persons in the employment of the State, the statutory body or the local authority, as the case may be, as are necessary to hold such offices and perform such functions as the Commission may direct during an election.

(2) The Commission shall select, screen and train all persons seconded in accordance with subsection (1) to enable the persons so seconded to discharge their functions adequately under this Act.

(3) 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 he or she were an employee of the Commission.

(4) For the purposes of—

- (a) an election of one or more constituency members of the National Assembly, the Commission may appoint a member of its staff or one of the persons seconded in terms of subsection (1) to be the constituency elections officer for each constituency in which the election is to take place;
- (b) an election to the office of President, the Commission may appoint a member of its staff or one of the persons seconded in terms of subsection (1) to be the presidential constituency elections officer for each constituency for the purposes of the election;

- (c) an election of one or more councillors, the Commission may appoint a member of its staff or one of the persons seconded in terms of subsection (1) to be the ward elections officer for each ward in which the election is to take place.

## **10A Provisions guaranteeing independence of Commission**

(1) Every Commissioner and member of staff of the Commission shall perform their functions independently.

(2) The State and any private person (including a private voluntary organisation), and any other person, body, organ, agency or institution belonging to or employed by the State or any private person, a local authority or otherwise, shall not interfere with, hinder or obstruct the Commission, its Commissioners or any member of staff of the Commission, in the exercise or performance of their functions.

(3) the State and any person, body, organ, agency or institution, belonging to or employed by the State, shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.

## **11 Provisions to ensure independence, impartiality and professionalism of Commissioners and staff and agents of Commission**

(1) In this section—

“political office” means—

(a) the office of—

- (i) the President; or
- (ii) a Vice-President, Minister or Deputy Minister; or
- (iii) a member of Parliament; or
- (iv) a member of a provincial or metropolitan council; or
- (v) a councillor;

or

(b) any executive or elected office, whether remunerated or not, in the service of a political party or of an organisation or movement which publicly supports or opposes the policies, candidates or cause of a political party;

(2) Commissioners and the Commission’s employees and agents shall—

(a) exercise their functions in a manner that—

(i) promotes conditions conducive to free, fair and democratic elections and referendums; and

(ii) ensures that the secrecy and integrity of voting at elections and referendums is respected; and

(b) not interfere, directly or indirectly, with the exercise by a voter of his or her rights under this Act; and

(c) maintain strict impartiality in the exercise of their functions; and

(d) not do anything, whether in the exercise of their functions or otherwise and whether by way of action, speech, attitude or manner, that may—

(i) give rise to a reasonable apprehension that they are exercising their functions with partiality or bias; or

(ii) place in jeopardy their independence or the perception of their independence; or

(iii) compromise the Commission's credibility, impartiality, independence or integrity;

and

(e) assist accredited observers to exercise their functions under this Act; and

(f) safeguard all ballot boxes, ballot papers and other electoral documentation and materials entrusted to the custody of the Commission in terms of this Act; and

(g) not—

- (i) divulge, except in the exercise of his or her functions or with the Commission's prior approval; or
- (ii) make private use of or profit from;

any confidential information gained through being a Commissioner or an employee or agent of the Commission.

(3) Without derogation from section 236 of the Constitution or subsection (2)(c) and (d) of this section, no Commissioner and no full-time employee of the Commission shall—

- (a) hold, or seek appointment, election or nomination to, any political office; or
- (b) except in the exercise of his or her functions as a Commissioner or as an employee of the Commission, perform any work for a political party or candidate in connection with an election or referendum; or
- (c) knowingly wear any badge or article of clothing that is or is reasonably likely to be associated with a political party or candidate contesting any election or supporting or opposing any question put to a referendum.

(4) Subsection (3) applies to part-time employees of the Commission during any period that they are employed or engaged by the Commission.

## **12 Funds and finances of Commission**

(1) The funds of the Commission shall consist of—

- (a) moneys appropriated to the Commission by Act of Parliament; and
- (b) fees, charges and other income accruing to the Commission from things done by it in terms of this Act; and
- (c) the proceeds of any monetary penalties imposed by the Commission under this Act; and
- (d) nomination fees paid by candidates under this Act; and
- (e) donations or grants from any local or foreign source whatsoever, which have been approved by the Minister and the Minister responsible for finance; and
- (f) such other moneys as may vest in or accrue to the Commission, whether in the course of its operations or otherwise, and whether under this Act or any other enactment.

(2) Moneys not immediately required by the Commission may be invested in such manner as the Commission in consultation with the Minister may approve.

(3) *[Repealed]*.

(4) Subject to this section, Part IV of the Sixth Schedule applies in relation to the Commission's finances.

## **13 Reports of Commission on elections, referendums and other matters**

(1) As soon as possible after the result of any election or referendum has been announced, and in any event no later than six months thereafter, the Commission shall submit a report on the conduct of the election or referendum to—

- (a) the President, the President of the Senate, the Speaker and the Minister; and
- (b) each of the political parties that contested the election or referendum.

(2) As soon as possible after the end of each financial year the Commission shall submit to the President, President of the Senate, the Speaker and the Minister a report on its activities during that financial year.

(3) The Commission—

- (a) shall submit to the President, the President of the Senate, the Speaker and the Minister such other reports on any matter related to its activities as the President, the President of the Senate, the Speaker and the Minister may require; and

- (b) may submit to the President, the President of the Senate, the Speaker and the Minister such other reports on any matter related to its activities as the Commission considers advisable.

(4) The Speaker shall cause every report received in terms of subsection (1), (2) or (3) to be laid before Parliament on one of the twenty-four days on which the Senate and the National Assembly next sit, whichever House meets first after the Speaker has received the report.

(5) The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament a report submitted to him or her by the Commission in terms of subsection (3)(a).

## 14 Legal proceedings against Commission

(1) Subject to subsection (1), the State Liabilities Act [Chapter 8:14] applies, with any necessary changes, to legal proceedings against the Commission as if the Chairperson of the Commission were a Minister.

(2) Despite sections 6, 7 and 8 of the State Liabilities Act [Chapter 8:14], no notice of intention to institute proceedings as required by those provisions shall be required when instituting proceedings against the Commission.

## 15 and 16 [Repealed]

### PART III

## 17 [Whole Part repealed]

### PART IV

#### VOTER REGISTRATION FUNCTIONS OF COMMISSION

## 17A Voter registration to be conducted continuously

(1) Voter registration shall be conducted on a continuous basis so as to keep the voters rolls up-to-date.

(2) Pursuant to subsection (1), every person claiming to be a voter shall be entitled, at any time while the voters roll is open, to lodge a claim for registration as a voter or for the transfer of registration as a voter in terms of this Act—

- (a) during normal working hours on any working day, in the case of a registration office; or
- (b) during the period when a mobile voter registration facility is operating in the area where the voter wishes to be registered as a voter, or from or to which he or she wishes to be transferred as a voter.

## 18 Commission to register voters

(1) In this section—

“former Registrar-General of Voters” is a reference to the Registrar-General of Voters appointed in terms of section 18 of this Act before its substitution by this section through the General Laws Amendment Act, 2016; .

“Registrar-General of Births and Deaths” means the person referred to section 3(a) of the Births and Deaths Registration Act [Chapter 5:02];

“Registrar-General of Citizenship” means the person referred to in section 3 of the Citizenship of Zimbabwe Act [Chapter 4:01];

“Registrar-General of National Registration” means the person referred to in section 3(a) of the National Registration Act [Chapter 10:17].

(2) The Commission is deemed with effect from the 22nd May, 2013 (being the “publication day” of the Constitution of Zimbabwe, 2013), to have assumed the functions of the former Registrar-General of Voters, that is to say, such functions as were imposed or conferred upon the Registrar-General of Voters by or under this Act before the 22nd May, 2013, including in particular the functions of registering voters, compiling voters' rolls and registers, ensuring the proper custody and maintenance of voters' rolls and registers, and all other functions in connection therewith:

Provided that, consistently with section 239(j) of the Constitution, the Commission may give such instructions to the former Registrar-General of Voters, in his or her capacity as the Registrar-General of Births and Deaths, the Registrar-General of Citizenship and the Registrar-General of National Registration, as will ensure the efficient, free, fair, proper and transparent conduct of any election or referendum.

(3) Notwithstanding any other provision of this Act, the Commission may—

- (a) direct the Chief Elections Officer, a voter registration officer, the former Registrar-General of Voters or (subject to paragraph (b)) any member of the Civil Service to assume and exercise any function which in terms of this Act before its amendment by the General Laws Amendment Act, 2016, is vested in a constituency registrar;
- (b) with the consent of the Civil Service Commission, instruct any member of the Civil Service to assist it in any of its voter registration functions in terms of this Act;
- (c) in relation to an election to which Part XVIII applies, delegate any of its voter registration 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 Civil Service.

(4) The Commission and the former Registrar-General of Voters, in his or her capacity as the Registrar-General of Births and Deaths, the Registrar-General of Citizenship and the Registrar-General of National Registration, have a duty to cooperate with each other to ensure that their respective databases, as they relate to the eligibility or potential eligibility of voters, are in harmony with each other.

(5) The Minister may, after consultation with the Commission and the former Registrar-General of Voters, by regulations made in terms of this section, provide for—

- (a) the manner of dealing with any confidential information in the custody of the former Registrar-General of Voters and the conditions under which it may be shared with the Commission; and
- (b) the resolution of any discrepancies between the records of the former Registrar-General of Voters and those of the Commission; and
- (c) the resolution of any disputes whatsoever that may arise between the Commission and the former Registrar-General of Voters; and
- (d) mandatory automatic and electronic voter registration.

## **19 Voter registration officers and registration offices**

(1) Voter registration shall be conducted by the Commission through its voter registration officers (who shall be employees of the Commission and who may be appointed to this office conjunctively with any other office as an electoral officer) or any persons whom the Commission may from time to time appoint to assist in voter registration.

(2) A voter registration officer shall be appointed for such locality as the Commission may determine, including (but not limited to) a constituency, district or ward.

(3) Voter registration officers shall exercise the functions conferred upon them by or under this Act under the general supervision and direction of the Commission.

(4) A person seeking registration as a voter may approach any of the registration offices of the Commission for registration as a voter during the period specified in section 17A(2).

## **20 Voters rolls to be kept by Commission**

(1) The Commission shall keep and maintain in printed and electronic form a voters roll for each ward and constituency, containing the names of all registered voters who may vote in that ward and constituency.

(2) A voters roll shall specify, in relation to each registered voter—

- (a) the voter's first and last names, date of birth, national registration number and sex; and
- (b) the place where the voter ordinarily resides; and
- (c) such other information as may be prescribed or as the Commission considers appropriate.

(3) Subject to subsection (2), a voters roll shall be in such form as may be prescribed or as the Commission considers appropriate.



Provided that every roll shall be kept in both printed and electronic form.

(4) The Commission shall—

- (a) keep at least one copy of every voters roll at its head office; and
- (b) keep at least one copy of each ward and constituency voters roll at all the Commission's offices within the constituency concerned:

Provided that where there is no office of the Commission within the constituency concerned, the constituency registrar shall have charge and custody of the ward and constituency voters roll for his or her constituency; and

- (c) keep at least one copy of a consolidated national voters roll at its head office.

(5) In the event of any discrepancy between an electronic copy of a voters roll and a printed copy of a voters roll, the latter shall be deemed to be the authentic record of the voters roll.

## **21 Inspection of voters rolls and provision of copies<sup>8</sup>**

(1) Every voters roll shall be a public document and open to inspection by the public, free of charge, during ordinary office hours at the office of the Commission or the registration office where it is kept.

(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 within a reasonable period of time provide any person who requests it, and who pays the prescribed fee, with a copy of any ward or constituency voters roll, either in printed or in electronic form as the person may request.

(4) Within a reasonable period of time after the calling of an election, the Commission shall provide, on payment of the prescribed fee, to every political party that intends to contest the election, and to any observer who requests it, one copy of every voters roll to be used in the election, either in printed or in electronic form as the party or observer may request.

(5) Fees prescribed for the purposes of subsection (3) or (4) shall not exceed the reasonable cost of providing the voters roll concerned.

(6) Within a reasonable period of the time after nomination day in an election, the Commission shall provide -

- (a) free of charge, to every nominated candidate, one copy in electronic form of the constituency voters roll to be used in the election for which the candidate has been nominated; and
- (b) at the request of any nominated candidate, and on payment of the prescribed fee, one copy in printed form of the constituency voters roll to be used in the election for which the candidate has been nominated.

(7) Where a voters roll is provided in electronic form in terms of subsection (3), (4) or (6), its format shall be such as allows its contents to be searched and analysed:

Provided that—

- (i) the roll may be formatted so as to prevent its being altered or otherwise tampered with;
- (ii) the Commission may impose reasonable conditions on the provision of the roll to prevent it from being used for commercial or other purposes unconnected with an election.

(8) For the purposes of any election the Chief Elections Officer shall, through the appropriate constituency elections officer, supply sufficient copies of the ward voters roll to every polling station.

(9) Any person who, having been provided with a voters roll in terms of this section—

- (a) alters the voters roll, that is to say, excises any name from, adds any name to or otherwise alters the voters roll with intent to misrepresent to any person that the altered voters roll is the authentic voters roll for any election; or
- (b) makes use of the voters roll for commercial or other purposes unconnected with an election;

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

## **22 Powers to demand information**

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

- (a) to demand from any claimant any information reasonably necessary to enable the voter registration officer 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 reasonably necessary to enable the voter registration officer 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 reasonable questions as will enable the voter registration officer to complete a prescribed form of claim in accordance with section *twenty-four*.

## **22A Polling station voters rolls**

*[Note by Veritas: This section is not yet in force. Please refer to the Appendix commencing at page 154 of this document for details of this section and other amendments related to polling station-based voting, which will be brought into force by the Zimbabwe Electoral Commission at a later date. Section 22A(3)(a) was amended by Act 3/2016.]*

### **PART V**

#### **RESIDENCE QUALIFICATIONS OF VOTERS AND REGISTRATION OF VOTERS**

## **23 Residence qualifications of voters**

(1) Subject to the Constitution and this Act, 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 voter registration officer 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 Commission, any voter registration officer 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.

(5) For the purposes of subsection (4), the Commission may prescribe documents that shall constitute proof of identity and additionally, or alternatively, proof of residence:

Provided that the prescribing of such documents shall not preclude a person from proving his or her identity or residence by other means.

## 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 voter registration officer:

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 Commission 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 voter registration officer 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 voter registration officer 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 Commission is satisfied that it is appropriate for the claimant to be registered in that constituency, the Commission shall direct the appropriate voter registration officer 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 voter registration officer considers that a claimant should be registered on the voters roll for some other constituency, the vro shall forward the claim to the constituency registrar for that other constituency and shall advise the claimant accordingly.

(6) The Commission, any voter registration officer 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 Commission or voter registration officer 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 voter registration officer 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 Commission for its approval.

(2) Where an applicant seeks transfer to a constituency in which he or she is not resident, the applicant shall provide the Commission 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 voter registration officer 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 voter registration officer 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 voter registration officer 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 voter registration officer, 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 voter registration officer 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 voter registration officer for the constituency to which the applicant has applied to be transferred; and
- (b) the voter registration officer 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 voter registration officers concerned shall comply with any such direction.

(6) Any applicant aggrieved by any decision of the Commission or a voter registration officer made under this section may appeal against the decision to a designated magistrate for the province in which either of the constituencies concerned is situated.

## **26 Voters registration certificates**

(1) On the registration of a voter in terms of this Part the voter registration officer shall issue him or her with a voters registration certificate specifying —

- (a) the voter's last name, date of birth, national registration number and sex; and
- (b) the ward, constituency, district, province and, in the case of polling station specific registration, the polling station in or for which the voter is registered.

(2) On the transfer of the registration of a voter in terms of section 25 the voter shall be issued with a voters registration certificate by the voter registration officer of the constituency to which he or she has been transferred.

## **26A Closure of voters rolls 12 days after nomination day**

No person shall be registered as a voter for the purposes of voting at any Presidential election or election of members of the National Assembly or councillors unless he or she lodges a claim for registration or transfer of registration under section 24 or 25 no later than twelve days after the nomination day fixed in terms of a proclamation referred to in section 38 or a notice referred to in section 39, as the case may be, in relation to that election.

## **PART VI**

### **OBJECTIONS TO REGISTRATION OF VOTERS**

## **27 Objections by voter registration officer**

(1) Subject to subsection (7), if a voter registration officer 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 voter registration officer 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 an election period (other than during an election period referred to in paragraph (c) or (e) of the definition of the term "election period" in section 4(2), if the objection or notice does not relate to a claimant or voter who may vote at an election referred to in those paragraphs).

(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 voter registration officer, 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 voter registration officer does not withdraw his or her objection, the voter registration officer 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 voter registration officer 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 voter registration officer.
- (4) The voter registration officer 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 voter registration officer, and, if the objection has been set down in terms of subsection (3) for hearing, the voter registration officer 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 the Fourth Schedule 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 voter registration officer —
  - (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, and to the removal of his or her name from the voters roll in terms of section 33(4).
- (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 voter registration officer; and
  - (c) accompanied by the prescribed fee.
- (3) If an objection in terms of subsection (1) is lodged and—
  - (a) the voter registration officer 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 voter registration officer gives notice in accordance with this paragraph, unless, within that period—

- A. the voter who has objected submits to the voter registration officer 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 voter registration officer 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 voter registration officer did not uphold the objection;

- (b) the voter registration officer 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 voter registration officer 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 voter registration officer 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 voter registration officer and the voter registration officer 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 voter registration officer —
  - (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 voter registration officer —
  - (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<sup>9</sup> 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 voter registration officer 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 voter registration officers 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 voter registration officer is satisfied that a voter is registered—
  - (a) more than once on the voters roll for his or her constituency, the voter registration officer 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 voter registration officer 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 voter registration officer 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 voter registration officer 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 voter registration officer 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 voter registration officer shall remove his or her name therefrom.

(2) Subject to subsection (5), if a voter registration officer 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 voter registration officer 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 voter registration officer 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 voter registration officer shall not remove the name of a voter in terms of subsection (1) or (2) unless he or she has published his or her intention to do so in a newspaper circulating in the area of the voter's last-known address and 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 voter registration officer of his or her powers in terms of subsection (1) or (2) as though the voter registration officer 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 in 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<sup>10</sup> 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<sup>11</sup> 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.

(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 Commission or voter registration officer, as the case may be.

(3) Any voter aggrieved by any decision of the Commission or voter registration officer made under this section may lodge a complaint with the Commission or voter registration officer 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.

#### **36A New registration of voters**

(1) Subject to subsection (2) (concerning the non-interruption of continuous registration and the extension of the period of new registration) and subsection (3) (concerning the automatic transfer of voters on a pre-existing voters roll to the new voters roll), the President, on the advice of the Commission, may at any time, by proclamation in the *Gazette*, order that there shall be a new registration of voters—

- (a) in all wards and constituencies; or
- (b) in such wards or constituencies as are specified in the proclamation;

and in the proclamation the President shall fix—

- (c) the day upon which the new registration shall begin; and

<sup>10</sup> Not formally amended by Act 3/2016, but “Registrar-General of Voters” should be read as “Commission”.

<sup>11</sup> Not formally amended by Act 3/2016, but “constituency registrar” should be read as “voter registration officer”.

- (d) the latest day upon which claims and applications for registration shall be received, which day shall not be less than sixty days and not more than six months after the day fixed in terms of paragraph(c).
- (2) Where a proclamation is published in terms of subsection (1) —
  - (a) section 17A (“Continuous registration”) shall continue to apply and operate alongside the new registration of voters;

Provided that when a new voters roll is produced after the conclusion of a new registration of voters ordered by the proclamation, such roll shall, with effect from such date as the Commission shall fix by notice in the *Gazette*, be the definitive voters roll on the basis of which the continuous registration of voters in terms of section 17A shall be conducted;

and

- (b) the day fixed in the proclamation as the latest day upon which claims and applications for registration shall be received may be postponed by the Commission by notice in the *Gazette* to a day not later than one hundred and eighty-one days from the first-mentioned day.

(3) Any person who, immediately before the publication of a proclamation in terms of subsection (1), is registered as a voter on a voters roll to which the proclamation applies shall be entitled to be registered on the new voters roll for the ward or constituency concerned without completing a claim form but merely producing proof of identity to the voter registration officer for the ward or constituency in which he or she was so registered.

Provided that if any such person seeks (by reason of having changed his or her residence) to be transferred to another ward from the ward in which he or she was registered as voter on a voters roll immediately before the publication of a proclamation in terms of subsection (1), he or she must (notwithstanding anything to the contrary in this Act)—

- (a) appear before the voter registration officer of the constituency within which the ward to which he or she wishes to be transferred is located; and
- (b) produce an affidavit or fill an application in the prescribed form deposing to the following facts, namely that he or she —
  - (i) was registered as voter on a voters roll for another (named) ward immediately before the publication of a proclamation ordering the new registration of voters; and
  - (ii) now qualifies to be registered in the (named) ward located within the constituency of the voter registration officer before whom the voter now appears;

and

- (c) produce together with the affidavit or application referred to in paragraph (b) his or her proof of identity and his or her proof of residence in the ward to which he or she seeks to be transferred.

(4) Where, during the period between the dates fixed in terms of subsection (1)(c) and (d), a person is residing outside his or her constituency in the circumstances described in section 33(3)(a) to (e), the person may, in a written application in terms of subsection (3), describe as his or her residential address for the purposes of registration on the new voters roll the place where he or she was last residing in the constituency concerned, and that person shall be entitled, subject to this Act, to be registered on the new voters roll for that constituency.

(5) A person who, immediately before the publication of a proclamation in terms of subsection (1), was registered with the approval of the Commission in a constituency in which he or she was not resident may, in a written application in terms of subsection (3), provide the address which he or she provided in terms of section 24(2) or section 25(2), as the case may be, and that person shall be entitled, subject to this Act, to be registered on the new voters roll for the constituency in which the address is situated.

### **36B Proof required for removal from voters roll on death or absence**

If a voter registration officer acting in terms of section 27 or 33, or a voter who lodges an objection in terms of section 28, seeks to remove a voter from the voters roll on the ground that the voter—

- (a) is dead; or

- (b) 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 Commission in a constituency in which he or she was not resident; or
  - (c) has left Zimbabwe with the intention of residing permanently outside Zimbabwe;
- and the voter registration officer or objecting voter produces to a designated magistrate or a judge in chambers, as the case may be, any of the following—
- (d) a death certificate or authenticated copy thereof relating to the voter sought to be removed; or
  - (e) a sworn statement by the mother, father, brother, sister, son, daughter or other direct descendant of the voter sought to be removed that the voter is dead, or absent for the reason mentioned in paragraph (b) or (c); or
  - (f) a sworn statement by the councillor, Chief, headman or village head of the area or village where the voter sought to be removed last resided, that the voter is dead;
- then it shall be presumed, in the absence of any other reliable evidence, that the ground thus put forward is established.

## 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 voter registration officer, 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 by—

- (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 VIIIA

### DELIMITATION OF CONSTITUENCIES AND ELECTORAL BOUNDARIES

#### **37A Delimitation of constituencies and electoral divisions to be conducted openly and with consultation**

(1) Before fixing and reviewing the boundaries of constituencies and other electoral divisions, the Commission shall cause notice of its intention to do so to be published in the *Gazette* and in such other manner as the Commission thinks appropriate.

(2) When fixing or reviewing the boundaries of constituencies and other electoral divisions, the Commission shall, so far as is practicable within the time available, entertain representations from voters, political parties and other interested persons and bodies likely to be affected by the decision made by the Commission.

#### **37B Commencement of delimitation of wards and constituencies**

Before the President, in terms of section 100J(1) of the Constitution, notifies the Commission of a date on which the Commission is to determine the limits of wards and constituencies, the President shall—

- (a) consult the Commission; and
- (b) fix the date so as to allow the Commission adequate time to determine the limits of the wards and constituencies and prepare its final report in terms of section 100J of the Constitution before the calling of the next general election.

#### **37C Electoral centres**

(1) The Commission shall designate a place—

- (a) to be the National Command Centre from which it controls all elections conducted in terms of this Act;
- (b) within each province to be the provincial command centre for the purposes of
  - (i) a presidential conducted within the province; or
  - (ii) an election of party-list members of Parliament conducted within the province; or
  - (iii) an election of members of the provincial council established for the province;
- (c) within each constituency, to be the presidential constituency centre for the purposes of a presidential election conducted within the province;
- (d) within each constituency, to be the constituency centre for the purposes of an election of members of the National Assembly conducted in the constituency;
- (e) within each district, to be the district centre for the purposes of special voting;<sup>12</sup>
- (f) within each ward, to be the ward centre for the purpose of an election of councillors to the local authority concerned.

(2) The Commission may designate the same place to be a constituency centre, a district centre, a ward centre and additionally, or alternatively, a presidential constituency centre.

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<sup>12</sup>

*Note by Veritas:* Paragraph (e) is no longer necessary, because special voting was abolished by Act 6/2014.

(3) The Commission may designate its head office or any other place to be the National Command Centre.

(4) The Commission shall ensure that the results of the presidential, National Assembly and local authority elections are collated, compiled and transmitted in the following manner-

- (a) with respect to local authority elections, polling-station returns gathered from every polling station within a ward shall be transmitted to the appropriate ward centre in a return distinctly indicating the results obtained in each polling station relating to those elections;
- (b) with respect to-
  - (i) presidential elections, polling-station returns gathered from every polling station within a ward shall be transmitted to the appropriate ward centre for collation at that centre, the results of which collation shall be embodied in a return ("presidential election ward return") distinctly indicating the results obtained in each polling station relating to that election; and
  - (ii) National Assembly elections, polling-station returns gathered from every polling station within a ward shall be transmitted to the appropriate ward centre for collation at that centre, the results of which collation shall be embodied in a return ("National Assembly election ward return") distinctly indicating the results obtained in each polling station relating to those elections:

Provided that duplicate copies of the polling-station returns gathered from every polling station within a ward for the purposes of subparagraph (i) and (ii) shall also be transmitted through the appropriate ward centre directly to the National Command Centre; and

- (c) after collation of the results of-
  - (i) presidential election at each ward centre, presidential election ward returns gathered from every ward centre within a constituency shall be transmitted to the appropriate presidential constituency centre for collation at that centre, the results of which collation shall be embodied in a return ("presidential constituency return") distinctly indicating the results obtained in each ward within that constituency relating to that election:
  - (ii) National Assembly elections at each ward centre, National Assembly election ward returns gathered from every ward centre within a constituency shall be transmitted to the appropriate National Assembly constituency centre for collation at that centre, the results of which collation shall be embodied in a return ("National Assembly constituency return") distinctly indicating the results obtained in each ward within that constituency relating to those elections;

and

- (d) after collation of the results of the presidential election at each presidential constituency centre, presidential constituency returns gathered from every presidential constituency centre shall be transmitted to the provincial command centre for collation at that centre, the results of which collation shall be embodied in a return ("provincial return for the presidential election") distinctly indicating the results obtained in each constituency relating to those elections:

Provided that duplicate copies of the presidential constituency returns gathered from every presidential constituency centre shall also be transmitted directly from the provincial command centre concerned to the National Command Centre;

and

- (e) after collation of the results of the National Assembly elections at each National Assembly constituency centre, National Assembly constituency returns gathered from every National Assembly constituency centre shall be transmitted to the provincial command centre, where—
  - (i) the result of the National Assembly election in the province in question will be embodied in a return ("provincial return for the National Assembly elections")

distinctly indicating the results obtained in each constituency relating to those elections; and

- (ii) the results of the election for the party-list candidates for the province in question will be determined in accordance with section 45J on the basis of the provincial return for the National Assembly elections, and be embodied in return ("provincial return for elections of party-list candidates") distinctly indicating the results obtained for the Senate, National Assembly and provincial council party-list seats;

and

- (f) after the collation of the results of the presidential election at each provincial command centre, provincial returns for the presidential election gathered from every provincial command centre shall be transmitted to the National Command Centre, where—
  - (i) the provincial returns shall be collated to obtain the initial results of the presidential election; and
  - (ii) the final result of the presidential election shall, after reconciling the provincial returns with the polling station returns and presidential constituency returns referred to in the provisos to paragraphs (b) and (d) respectively, be reflected in a return that distinctly reflects number of votes cast for each presidential candidate at every polling station, ward centre, presidential constituency centre and provincial command centre;

and

- (g) after the compilation of the provincial return for the National Assembly elections and the provincial return for elections of party-list candidates at each provincial command centre, the provincial returns for the National Assembly elections and elections of party-list candidates shall be gathered from every provincial command centre and transmitted to the National Command Centre.

## PART IX

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

#### **38 General, presidential and local authority elections**

(1) In a proclamation in terms of section 144(2) of the Constitution fixing dates for the holding of an election to the office of President, a general election and elections for councillors, the President, after consultation with the Commission, shall—

- (a) for the purposes of the election of a person to the office of President, fix —
  - (i) a place or places at which, and a day or days, at least fourteen and not more than twenty-one days after the day of publication of the proclamation, on which a nomination court shall sit for the purpose of receiving nominations of candidates for election to the office of President; and
  - (ii) a day or days, at least thirty and not more than sixty-three days after the nomination day or last nomination day, as the case may be, fixed in terms of subparagraph (i), on which a poll shall be taken if a poll becomes necessary in terms of section 109(2); and
  - (iii) a day or days, not less than twenty-eight and not more than forty-two days after the polling day or last polling day, as the case may be, fixed in terms of subparagraph (ii), on which a runoff Presidential election shall be taken if such an election becomes necessary in terms of section 110(3)(f)(iii);
- (b) for the purposes of an election of members of the National Assembly, fix—
  - (i) a place or places at which, and a day or days, at least fourteen and not more than twenty-one days after the day of publication of the proclamation, on which a nomination court shall sit in terms of section to receive nominations of constituency and party-list candidates for election as members of the National Assembly; and

- (ii) a day or days, at least thirty and not more than sixty-three days after the last nomination day fixed in terms of subparagraph (i), on which a poll shall be taken if a poll becomes necessary in terms of section 46(17)(c) for the election of members of the National Assembly;
- (c) for the purposes of elections for councillors, fix—
  - (i) a place or places within the ward at which, and a day or days, at least fourteen and not more than twenty-one days after the day of publication of the proclamation, on which a nomination court will sit in terms of section <sup>13</sup> to receive nominations of candidates for election as councillor; and
  - (ii) a day or days, at least thirty and not more than sixty-three days after the nomination day or last nomination day, as the case may be, fixed in terms of subparagraph (i), on which a poll shall be taken if a poll becomes necessary:

Provided that day or days fixed for polling in terms of paragraphs (a)(ii), (b)(ii) and (c)(ii) shall be the same for the Presidential election, general election and elections for the purposes of elections for councillors.

(2) The polling day or polling days fixed in terms of subsection (1) shall be deemed to be a public holiday or public holidays, as the case may be, for the purposes of the Public Holidays and Prohibition of Business [Chapter 10:21].

(3) For the purposes of the election of Senator Chiefs in terms of the Constitution the President shall, in the proclamation referred to in subsection (1) and after consultation with the Commission, fix the times and places at which and a day or days—

- (a) between the date of publication of the proclamation and the day or the last day, of the poll for the Presidential election fixed in terms of subsection (1)(a)(ii), on which—
  - (i) each provincial assembly of Chiefs referred to in section 35 of the Traditional Leaders Act [Chapter 29:17], shall convene for the purpose of electing the Council of Chiefs in terms of section 37 of the Traditional Leaders Act [Chapter 29:17]; and
  - (ii) the Council of Chiefs referred to in section 37 of the Traditional Leaders Act [Chapter 29:17] shall convene for the purpose of electing the President and the Deputy President of the Council of Chiefs;
- and
- (b) being not earlier than the day or the last day, as the case may be, for the Presidential election fixed in terms of in terms of subsection (1)(a)(ii) and not later than 48 hours after the day or last day, as the case may be, of the election so fixed, on which the electoral colleges shall meet in terms of Part X.

(4) Subject to Chapter 7 of the Constitution, the President may, by further proclamation in the *Gazette*, alter any day, time or place fixed in terms of subsection (1) or (3) and the day, time or place as so altered shall be deemed to have been fixed in terms of the appropriate subsection.

### **38A Designation of national and provincial political party office-bearers for certain purposes and advance filing of certain documents in connection with elections**

(1) On any of the days in the period starting from the fourth day after the publication of the election proclamation and ending two days before the sitting of the nomination court for the party-list candidates, any political party contesting the election may—

- (a) provide, through the head office of the Commission, to the provincial elections officer of every province in which the political party is contesting the election, the names of at least three national office-bearers of the party, any two of whom will be authorised to make any countersignature required to be made for the purposes of Part XIA and section 46 in any province in which the political party is contesting the election (that is to say, any

countersignature required in connection with the Senatorial party-list candidates, the National Assembly constituency and party-list candidates, and the provincial council party-list seats); and

- (b) provide to the provincial elections officer at the appropriate provincial command centre, the names of at least three provincial office-bearers of the party in that province, any two of who will be authorised to make any countersignature required to be made for the purposes of section 46 for the nomination of candidates for election as councillors in any ward in that province; and
  - (c) if it intends to field party-list candidates in an electoral province, lodge, at the head office of the Commission, copies of nomination papers conforming to section 45E(2) with the provincial elections officer for advance scrutiny by that officer, which copies shall be countersigned by any two of the designated national office-bearers of the party referred to in paragraph (a); and
  - (d) through the head office of the Commission, lodge with the provincial elections officer for advance scrutiny copies of nomination papers for the National Assembly constituency candidates conforming to section 46(1) and (2) (each nomination paper being countersigned by any two of the designated national office-bearers of the party referred to in paragraph (a) and supported by the names of at least five proposed nominators); and
  - (e) lodge with the provincial elections officer at the appropriate provincial command centre, for advance scrutiny by that officer, copies of nomination papers for the nomination of candidates for election as councillors in any ward in that province (each nomination paper being countersigned by any two of the designated provincial office-bearers of the party referred to in paragraph (b) and supported by the names of at least five proposed nominators).
- (2) The Chief Elections Officer shall, after receiving reports from the appropriate provincial elections officers on the results of their scrutiny of the copies of nomination papers lodged in accordance with subsection (1)(c) or (d), inform the designated office-bearers concerned that the papers are in order or request the designated office-bearers concerned to make such corrections or alterations to, or supply such clarifications in connection with, the nomination papers as are required in the interests of accuracy and ensuring conformity with Part XIA section 46, and this Act.
- (3) The provincial elections officer at the appropriate provincial command centre shall, after scrutinising the copies of nomination papers lodged in accordance with subsection (1)(e), inform the designated office-bearers concerned that the papers are in order or request the designated provincial office-bearers concerned to make such corrections or alterations to, or supply such clarifications in connection with, the nomination papers as are required in the interests of accuracy and ensuring conformity with section 46, and this Act.
- (4) A political party that complies with this section to the extent of providing, to the satisfaction of the provincial elections officer, the names of at least three office-bearers of the party in accordance with subsection (1)(a), shall have the following privileges-
- (a) the party concerned will be entitled to nominate substitute candidates for any candidates who have died or withdrawn before polling day in accordance with section 50A; and
  - (b) the party concerned will be entitled to appoint roving political party election agents in accordance with section 93A.

### 39 Vacancies and by-elections

- (1) In the event of a vacancy occurring among the constituency members of the National Assembly, otherwise than through a dissolution of Parliament, the Speaker shall notify the President and the Commission of the vacancy, in writing, as soon as possible after he or she becomes aware of it.
- (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 among the constituency members of the National Assembly; 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 as a constituency member of the National Assembly;



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

- (i) 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 section 144 of the Constitution fixing a day or days for the holding of a general election;
- (ii) polling day or the last polling day, as the case may be, in the election to fill the vacancy shall not be more than ninety days after the vacancy occurred.

(3) In the event of a vacancy occurring among the party-list members of the Senate or of the National Assembly, otherwise than through a dissolution of Parliament, the President of the Senate or the Speaker, as the case may be, shall notify the Commission of the vacancy, in writing, as soon as possible after he or she becomes aware of it.

(4) Upon being notified of a vacancy in terms of subsection (3), the Commission shall without delay-

- (a) notify the public of the vacancy by notice in the *Gazette* ; and
- (b) invite the political party in writing to submit the name of a qualified person to fill the vacancy, for which purpose the political party must lodge with the Commission a nomination paper in the prescribed form referred to in section 45E(2), countersigned by any two of the designated national office-bearers of the party referred to in section 38A(l)(a) (or by such other two office-bearers of the political party whom the Commission is satisfied are duly authorised to make the required countersignatures).

(5) The Chief Elections Officer shall, after scrutinising the nomination paper lodged in accordance with subsection (4)(b) (for which purpose he or she may refer the nomination paper to the appropriate provincial elections officer for additional scrutiny), inform the office-bearers concerned that the papers are in order or request them to make such corrections or alterations to, or supply such clarifications in connection with, the nomination paper as are required in the interests of accuracy and ensuring conformity with this Act.

(6) Upon the Chief Elections Officer being satisfied in terms of subsection (5) that the nomination paper is in order, the Commission shall without delay-

- (a) notify the public of the nomination to fill the vacancy by notice in the *Gazette*, giving the name, address and such other particulars of the party-list candidate as it considers necessary in the interests of public information; and
- (b) afford any person who is a voter to lodge any written objection (together with reasons for the objection) to the nomination within a specified time from the date of publication of the notice in the *Gazette*.

(7) As soon as possible after the last day for the lodging of objections in terms of subsection (6)(b) the Commission shall-

- (a) if no objection to the party-list candidate has been received or, having considered every objection received , it finds that there are no valid grounds for objecting to the candidature, notify the public by notice in the *Gazette* that the person nominated to fill the vacancy has been appointed as a Senator or member of the National Assembly (as the case may be) with effect from the date of the notice, giving the name, address and such other particulars of the person as it considers necessary in the interests of public information; or
- (b) having considered every objection received, and having found that there are valid grounds for objecting to the candidature, afford the political party concerned to make representations on the matter.

(8) If, having considered any representations of the political party received in terms of subsection (7)(b), the Commission is still of the view that there are valid grounds for objecting to the candidature, the Commission shall proceed in accordance with subsection (4)(a), and subsections (5), (6) and (7) shall thereafter apply until a qualified person is identified to fill the vacancy concerned.

PART IXA  
VOTER EDUCATION

**40A Interpretation in Part IXA**

In this Part—

“foreign contribution or donation” means a contribution or donation made by—

- (a) a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or
- (b) a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or
- (c) any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe;

“local contribution or donation” means a contribution or donation that is not a foreign contribution or donation;

“voter education” means any course or programme of instruction on electoral law and procedure aimed at voters generally and not offered as part of a course in law or civics or any other subject for students at an educational institution;

“voter education materials” means printed, aural, visual or audio-visual materials intended for use in voter education.

**40B Functions of Commission with respect to voter education**

(1) The Commission shall have the following functions with respect to voter education—

- (a) to provide adequate, accurate and unbiased voter education; and
- (b) to ensure that voter education provided by other persons is adequate and not misleading or biased in favour of any political party; and
- (c) to ensure compliance otherwise by persons referred to in paragraph (b) with the provisions of section 40C(1).

(2) The Commission shall produce its own voter education materials for use in the provision of voter education.

(3) The Commission may permit any person to assist it in providing voter education.

**40C Voter education by persons other than the Commission or political parties**

(1) No person, other than—

- (a) the Commission; or
- (b) a person permitted to assist the Commission in terms of section 40B(3); or
- (c) a political party;

shall provide voter education unless—

- (d) the person is—
  - (i) a citizen or permanent resident of Zimbabwe domiciled in Zimbabwe; or
  - (ii) an association, whether incorporated or unincorporated, consisting wholly or mainly of citizens or permanent residents of Zimbabwe domiciled in Zimbabwe; or
  - (iii) a lawfully constituted trust, the majority of whose trustees are of citizens or permanent residents of Zimbabwe domiciled in Zimbabwe;

and

(e) where the person is an association or a trust, the person is—

- (i) registered as a private voluntary organisation in terms of the Private Voluntary Organisations Act [Chapter 17:05]; or
- (ii) registered in the Deeds Registry as a trust;

and is mandated by its constitution or trust deed, as the case may be, to provide voter education; and

- (f) the person employs individuals who are citizens or permanent residents of Zimbabwe to conduct any voter education; and
- (g) the person conducts voter education in accordance with a course or programme of instruction furnished or approved by the Commission; and
- (h) the voter education is, subject to section 40F (whereunder foreign contributions or donations may be channelled to the Commission for onward allocation), funded solely by local contributions or donations; and
- (i) the voter education materials used by the person and the course or programme of instruction in accordance with which the voter education is conducted are adequate, current, correct and not misleading or biased in favour of any political party; and
- (j) the voter education materials used by the person and the course or programme of instruction in accordance with which the voter education is conducted are furnished to the Commission for its scrutiny no later than twenty-eight days before they are intended to be used; and
- (k) no fee or charge is levied for the provision of voter education or voter education materials.

(2) The Commission shall in writing require any person, other than a political party, providing or proposing to provide voter education, to—

- (a) furnish the Commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted; and
- (b) furnish the Commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education; and
- (c) disclose the manner and sources of funding of its proposed voter education activities; and
- (d) satisfy the Commission that it is not otherwise disqualified in terms of subsection (1) from providing voter education.

(3) Any person who—

- (a) contravenes subsection (1); or
- (b) provides voter education after failing to comply with a requirement by the Commission in terms of subsection (2); or
- (c) with intent to circumvent the restrictions on the provision of voter education specified in subsection (1), provides voter education under the guise of providing it as part of a course in law or civics or any other subject for students at an educational institution;

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.

(4) Where a person is convicted in terms of subsection (3), the person shall not provide voter education in terms of this Act for a period of five years from the date of the conviction.

(5) Any person who contravenes subsection (4) 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.

#### **40D Provision of voter education by Commission**

(1) Not later than one week after the publication of a proclamation or notice in terms of section 38 or 39 fixing the dates of an election, the Commission shall begin a programme of voter education directed at the electorate in the election.

(2) The Government shall give the Commission whatever assistance it may require in providing programmes referred to in subsection (1).

(3) Subsection (1) shall not be construed—

- (a) as absolving the Commission from its obligation to provide general programmes of voter education at other times; and

- (b) subject to section 40C (specifying what persons other than the Commission or political parties may provide voter education), as preventing anyone other than the Commission from providing programmes of voter education.

#### **40E Commission to monitor voter education by other persons**

(1) The Commission shall monitor programmes of voter education provided by other persons in Zimbabwe.

(2) If the Commission considers that any programme of voter education is—

- (a) false, in that the information provided by it is materially false or incorrect; or
- (b) misleading, in that while the programme purports to be impartial it is materially and unfairly biased in favour of or against a political party or candidate contesting the election;

and that the programme is likely to prevent a substantial number of voters from making an informed political choice in an election, the Commission may by written notice direct every person responsible for providing and publishing the programme to cease providing or publishing it or to make such alterations to it as the Commission may specify to render it accurate and fair.

(3) Before giving a direction under subsection (2), the Commission shall afford every person responsible for providing and publishing the programme concerned an adequate opportunity to make representations in the matter.

(4) A person to whom a direction has been given under subsection (2) shall immediately take all necessary steps to comply with the direction.

(5) Any person who contravenes subsection (4) 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.

#### **40F Foreign contributions or donations for the purposes of voter education**

No foreign contribution or donation for the purposes of voter education shall be made except to the Commission, which may allocate such contribution or donation to any person referred to in section 40B(3) or section 40C(1).

### **PART IXB**

#### **ELECTION OBSERVERS**

#### **40G Functions of accredited observers**

(1) Persons who are accredited by the Commission in terms of this Part as observers of an election shall be entitled to do all or any of the following—

- (a) to observe the election process and, in particular, the conduct of polling at the election;
- (b) to 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 63, 64 and 65;
- (c) to bring any irregularity or apparent irregularity in the conduct of the poll or the counting or collating of votes to the attention of the Commission;
- (d) to provide the Commission with a comprehensive review of the election taking into account all relevant circumstances, including—
  - (i) the degree of impartiality shown by the Commission; and
  - (ii) the degree of freedom of political parties to organise, move, assemble and express their views publicly; and
  - (iii) the opportunity for political parties to have their agents observe all aspects of the electoral process; and
  - (iv) the fairness of access afforded to political parties to the national media and other resources of the State; and
  - (v) the proper conduct of the polling and the counting of the votes at the election; and

(vi) any other issue concerning the essential freedom and fairness of the election

(2) The Minister, the Commission, and all electoral officers shall take all necessary steps to ensure that accredited observers are able to exercise their functions under subsection (1).

#### **40H Observers Accreditation Committee**

(1) The Commission shall establish a committee, to be called the Observers Accreditation Committee, consisting of—

- (a) the Chairperson of the Commission, who shall be the chairperson of the Committee; and
- (b) the Deputy Chairperson of the Commission; and
- (c) three Commissioners, designated by the Commission; and
- (d) one person nominated by the Office of the President and Cabinet; and
- (e) one person nominated by the Minister; and
- (f) one person nominated by the Minister responsible for foreign affairs; and
- (g) one person nominated by the Minister responsible for immigration.

(2) The functions of the Observers Accreditation Committee shall be, subject to this Part, to recommend to the Commission the accreditation of the following persons as observers—

- (a) individuals representing foreign countries or international organisations and foreign eminent persons who have applied to be accepted as observers; and
- (b) individuals representing local organisations and eminent persons from within Zimbabwe who have applied to be accepted as observers; and
- (c) individuals representing bodies that exercise functions similar to those of the Commission and that have been invited by the Commission to observe an election; and
- (d) individuals representing foreign countries or international organisations and foreign eminent persons who have been invited by the Minister responsible for foreign affairs to observe an election; and
- (e) individuals representing local organisations and eminent persons from within Zimbabwe who have been invited by the Minister to observe an election.

#### **40I Accreditation of observers**

(1) An application for accreditation as an observer must be made no later than the fourth day before the first day of polling fixed in a proclamation made under section 38(1)(a), (b) or (c) for the election of the President, constituency members of the National Assembly or councillors.

(1a) An application for accreditation as an observer shall—

- (a) in the case of observers other than those referred to in paragraph (b), be made directly to the Chief Elections Officer; or
- (b) in the case of observers referred to in section 40H(2)(b) (that is to say, individuals representing local organisations and eminent persons from within Zimbabwe), be made indirectly to the Chief Elections Officer through the appropriate provincial elections officer of the province in which the observers propose to discharge their functions;

and the application shall be made by any of the following—

- (c) the individual or eminent person who wishes to be accredited; or
- (d) the organisation that wishes its representatives to be accredited; or
- (e) the Minister or the Minister responsible for foreign affairs, in respect of individuals whom the Minister concerned has invited to observe an election;

as the case may be.

(2) An application for accreditation made by an organisation or a Minister shall state the names of the individuals whom the organisation or Minister wishes to have accredited.

(3) The Chief Elections Officer shall without delay forward to the Observers Accreditation Committee all applications for accreditation that he or she has received, as well as the names of any

persons referred to in section 40H(2)(c) whom the Commission wants to have accredited, and the Observers Accreditation Committee shall forthwith consider the applications.

(4) If the Minister responsible for foreign affairs has lodged an objection to the accreditation of a foreign individual or eminent person, the Observers Accreditation Committee shall pay due regard to the objection when deciding whether or not to recommend the individual's or person's accreditation.

(5) After considering all applications for accreditation forwarded to it, the Observers Accreditation Committee shall submit its recommendations thereon to the Commission, and the Commission shall consider the recommendations of the Committee within forty-eight hours after they have been submitted by the Committee:

Provided that if the Commission rejects any of the Committee's recommendations, it shall notify the Chief Elections Officer accordingly in writing..

(6) An individual who has been accredited shall not exercise any functions as an observer unless he or she has—

- (a) reported to the Observers Accreditation Committee at a time and place notified by the Committee; and
- (b) received a copy of, or been made aware of the contents of, the code of conduct set out in the First Schedule; and
- (c) paid such accreditation fee as may be prescribed.

(7) Upon satisfaction of the requirements of subsection (6) the Observers Accreditation Committee shall issue the observer concerned with an accreditation certificate specifying that he or she is accredited as an observer for the period of the election concerned.

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

#### **40J Limitation on number of observers**

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

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

### **PART X**

#### **ELECTION OF CHIEFS TO PARLIAMENT**

### **40 Election of Council of Chiefs and of President and Deputy President of Council of Chiefs and other Senator Chiefs**

For the purpose of electing—

- (a) the President and the Deputy President of the Council of Chiefs referred to in section 37 of the Traditional Leaders Act [Chapter 29:17]—
  - (i) each provincial assembly of Chiefs referred to in section 35 of the Traditional Leaders Act [Chapter 29:17] shall convene at the time and place and on the day or days fixed by the President in terms of section 38(3)(a)(i) to elect the Council of Chiefs referred to in section 37 of the Traditional Leaders Act [Chapter 29:17]; and
  - (ii) the Council of Chiefs shall convene at the time and place and on the day or days fixed by the President in terms of section 38(3)(a)(ii) to elect the President and the Deputy President of the Council of Chiefs;

and

- (b) two Chiefs to the Senate to represent each non-metropolitan province in terms of section 34(1)(d) of the Constitution, 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 section 38(3)(b).

## **41 Presiding officers**

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

## **42 Quorum of electoral colleges**

One-half of the total membership of the 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 the Senate that are to be filled by the electoral college concerned.

(2) Every candidate for election to the Senate 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) *{Repealed}*

(5) If at a meeting of an electoral college—

- (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 Senator 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 section 43(5)(b).

(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 nomination of candidates, 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 Senator 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 declare the candidates whose names appear first and second at the top of the list to have been duly elected as Senators 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 Senator 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 Senator or Senators, 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 Senators and the day with effect from which they were declared so elected.

## **PART XI**

### **ELECTION OF SENATORS TO REPRESENT PERSONS WITH DISABILITIES**

#### **45 Interpretation in Part XI**

In this Part-

"candidate to represent persons with a disability" means a person nominated in accordance with Seventh Schedule for election as one of the two Senators referred to in section 120(1)(d) of the Constitution, and who is himself or herself a person with a disability ;

#### **45A Application of Seventh Schedule to election of Senators to represent persons with disabilities**

The Seventh Schedule applies to the election of candidates to represent persons with a disability in the Senate.

## **PART XIA**

### **ELECTION OF PARTY-LIST CANDIDATES BY PROPORTIONAL REPRESENTATION**

#### **45B Interpretation in Part XIA**

In this Part—

"constituency candidate" means a candidate for election as a constituency member; "constituency member" means a member of the National Assembly elected for a constituency as provided in section 124(1)(a) of the Constitution;

"constituency member" means a member of the National Assembly elected for a constituency as provided in section 124(1)(a) of the Constitution;

"electoral province" means an electoral province referred to in section 45C(3);

"national identity number" means an identity number assigned to a person under the National Registration Act [Chapter 10:17];

"non-metropolitan province" means any province other than the metropolitan provinces of Bulawayo and Harare;



"party list" means the list of party-list candidates referred to in section 45E(1)(b);

"party-list candidate" means a candidate for one of the party-list seats;

"party-list seat" means one of the seats in the Senate referred to in section 120(1)(a) of the Constitution or one of the seats in the National Assembly reserved for women referred to in section 124(1)(b) of the Constitution, or one of the seats in a provincial council referred to in section 268(1) of the Constitution.

#### **45C Application of Part XIII A, allocation of party-list seats and disqualification of votes for purposes of party-list elections**

(1) This Part applies to the election of party-list candidates and to the procedure for filling of vacancies in party-list seats.

(2) The nomination of party-list candidates under this Part shall take place on the same day as the nomination of the constituency candidates under section 46, and at the same places as are fixed in terms of section 38(1)(b) for the sitting of nomination courts to receive nominations for constituency candidates in the provinces concerned.

(3) The ten provinces into which Zimbabwe is, before the fixed date, divided in terms of the Provincial Councils and Administration Act [Chapter 29:11], namely—

- (a) Bulawayo Province; and
- (b) Harare Province; and
- (c) Manicaland Province; and
- (d) Mashonaland Central Province; and
- (e) Mashonaland East Province; and (f) Mashonaland West Province; and (g) Masvingo Province; and
- (h) Matabeleland North Province; and
- (i) Matabeleland South Province; and
- (j) Midlands Province;

shall each constitute an electoral province.

(4) Each electoral province shall be allocated six seats in the Senate and six seats reserved for women in the National Assembly, and each electoral province that is a non-metropolitan province shall be allocated ten seats in the provincial council for that electoral province.

(5) The formula prescribed in the Eighth Schedule for the election of party-list candidates is calculated on the basis of the total number of valid votes cast for all the constituency candidates in the electoral province concerned, excluding any valid votes cast for constituency candidates—

- (a) not belonging to any political party; and
- (b) belonging to any political party which has opted not to field any party-list candidates for the Senate, National Assembly or provincial council, as the case may be, in the electoral province in question.

#### **45D Disqualifications for nomination as party-list candidate**

(1) Subject to subsection (2), a person shall not be qualified for nomination as a party-list candidate for an electoral province in terms of section 45C if he or she—

- (a) is not registered on a voters roll in a ward belonging to a constituency in the electoral province; or
- (b) is nominated, and has accepted to be nominated, as a party-list candidate by more than one political party; or
- (c) in the case of a party-list candidate for election as a Senator, is also nominated as a party-list candidate for election to the National Assembly or the provincial council, or as a candidate for election as a constituency member of the National Assembly, or as a councillor; or

- (d) in the case of a party-list candidate for election as a member of the National Assembly, is also nominated as a party-list candidate for election as a Senator or the provincial council, or as a candidate for election as a constituency member of the National Assembly, or as a councillor; or
- (e) in the case of a party-list candidate for election as a member of the provincial council, is also nominated as a party-list candidate for election as a Senator or the National Assembly, or as a candidate for election as a constituency member of the National Assembly, or as a councillor.

(2) Where a person is nominated more than once contrary to subsection (1)(b), (c), (d) or (e), all the nominations of the person as a party-list candidate shall be void.

#### **45E Nomination of party-list candidates**

(1) On the day and at the place fixed in terms of section 45C(2) for the sitting of a nomination court to receive nominations for party-list candidates, the nomination officer shall hold a public court, commencing at ten o'clock in the morning, at which an office-bearer of a political party shall-

- (a) present himself or herself before the nomination officer in the electoral province for which such party has nominated one or more ordinary candidates; and
- (b) submit a nomination paper containing three party lists of the names of party-list candidates nominated by such party for the electoral province concerned, that is to say, party-list candidates for the senatorial, National Assembly and provincial council seats allocated to that electoral province in terms of section 45C(4), each candidate being a person who, in the case of a party-list candidate for election to-
  - (i) the Senate, is eligible in terms of section 121(1)(a) of the Constitution for election to the Senate; or
  - (ii) the National Assembly, is eligible in terms of section 124(1)(b) of the Constitution for election to the National Assembly; or
  - (iii) the provincial council, is eligible in terms of section 268(2) of the Constitution for election to the provincial council.

(2) A nomination paper referred to in subsection (1)(b) shall be in the prescribed form and—

- (a) must state the name of the political party and the address of its main office in Zimbabwe; and
  - (b) must state any abbreviation of the party's name which the party may wish to appear on the ballot paper; and
  - (c) may specify a distinctive symbol which the party wishes to appear on the ballot paper in conjunction with its name; and
  - (d) shall-
    - (i) list the names, addresses and national identity numbers of—
      - A. six party-list candidates nominated by the party for election as Senators for the electoral province; and
      - B. six party-list candidates nominated by the party for election as women members of the National Assembly for the electoral province; and
    - (ii) in the case of an electoral province that is a non-metropolitan province, list the names, addresses and national identity numbers of ten party-list candidates nominated by the party for election as members of the provincial council for that province; and
    - (iii) contain a declaration that no party-list candidate has been nominated in any other party list lodged with the nomination officer or any other nomination officer;
- and
- (e) bear the signature of each of the party-list candidates in the appropriate space, each signature being countersigned by the office-bearer; and
  - (f) in respect of party-list candidates for election to-

- A. the Senate, conform to the requirements of section 120(2)(b) of the Constitution, that is, male and female party-list candidates must be listed alternately, the list being headed by a female candidate; and
- B. the National Assembly, consist of women only in conformity with section 124(1)(b) of the Constitution; and
- C. the provincial council, conform to the requirements of section 268(3) of the Constitution, that is, male and female party-list candidates must be listed alternately, the list being headed by a female candidate;

and

- (g) be accompanied by three recent passport-sized photographs of each of the party-list candidates, each of which must be affixed opposite the name of party-list candidate to which it relates in the space provided in the prescribed form, or be marked on the back of the photograph with the name or initials of the party-list candidate; and
- (h) contain the contact particulars of each party-list candidate; and
- (i) contain a sworn declaration signed by the office-bearer that he or she has checked all the particulars furnished in the nomination form in relation to every one of the party-list candidates and that, to the best of his or her knowledge and belief, the particulars are true:

Provided that such a declaration does not relieve the nomination officer from ensuring that each nominee in a party-list nomination form is registered as a voter in the electoral province in question and is otherwise eligible to be nominated;

and

- (j) contain such other particulars as may be prescribed; and
- (k) be accompanied by the prescribed nomination fee in respect of each party-list candidate, which fee shall form part of the funds of the Commission.

(3) No nomination paper of party-list candidates shall be received by the nomination officer in terms of subsection (1) after four o'clock in the afternoon of nomination day:

Provided that, if at that time, an office-bearer is present in the court and ready to submit a nomination paper, the nomination officer shall give him or her an opportunity to do so.

(4) The nomination officer shall examine every nomination paper which has been lodged with him or her in terms of this section in order to ascertain whether it is in order.

(5) Subject to subsections (4) and (6), the nomination officer in open court shall—

- (a) reject any nomination paper lodged with him or her in terms of this section
  - (i) if he or she considers that any symbol or abbreviation specified in it—
    - A. is indecent or obscene; or
    - B. so closely resembles the recognised symbol or abbreviation of any other political party contesting the election as to be likely to cause confusion;or
- (ii) if any symbol specified therein is a prohibited symbol; or
- (iii) the nomination fee has not been deposited; or
- (iv) if the nomination paper states that the party-list candidate concerned is to stand for or be sponsored by a political party and the nomination officer has reason to believe that that fact is not true; or
- (v) if, in his or her opinion, the nomination paper as a whole is for any other reason defective or not in order;

or

- (b) delete from the nomination paper the name of any party-list candidate—
  - (i) who is not eligible for election to the party-list seat for which he or she is a candidate; or
  - (ii) whose furnished particulars are inadequate or inaccurate in any material way; or

- (iii) whose name appears on more than one party list contrary to section 45D(l)(b), (c), (d) or (e), whether in that electoral province or elsewhere.

(6) The exercise by the nomination officer of his or her powers under subsection (5)(b) does not invalidate the nomination form:

Provided that if less than-

- (i) six valid nominations of party-list candidates for the Senate; and
- (ii) six valid nominations of party-list candidates for the National Assembly; and
- (iii) ten valid nominations of party-list candidates for a provincial council;

remain after any deletions of names in terms of subsection (5)(b), the political party concerned must nominate additional party-list candidates to match the minimum number of valid nominations in each of the categories of party-list candidates referred to in paragraphs (i), (ii) and (iii) of this proviso.

(7) If the exercise by the nomination officer of his or her powers under subsection (5)(b) results in any senatorial or provincial council party list not being headed by a female candidate, or causes two or more female names or two or more male names to be listed consecutively in such list, the nomination officer shall re-arrange the order of names in such list to bring it into conformity with the requirements of the Constitution, while, however, deviating as little as possible from the order of preference specified by the political party concerned in the nomination paper.

(8) Without derogating from section 189, the nomination officer shall not reject any nomination paper on account of any imperfection if he or she is satisfied that there has been substantial compliance with this section.

(9) Where the nomination officer finds a nomination paper lodged in terms of this section to be defective for any reason, he or she shall give the political party concerned an opportunity to rectify the defect and may adjourn the sitting of the court for that purpose to a later time during that day, or to a time on the following day when the ordinary candidates are nominated.

(10) The nomination officer shall in open court announce the names of the party-list candidates who has been duly nominated.

(11) The sitting of the nomination court in terms of this section shall end immediately after the announcement in terms of subsection (10) and after the close of the sitting no political party shall be entitled or permitted to lodge a nomination paper.

(12) The question whether any, and if so what, advice has been given by the nomination officer in relation to a nomination paper shall not be inquired into by any court.

(13) Any voter registered on any voters roll may-

- (a) before the sitting of the nomination court, at the office of the nomination officer and during office hours, inspect any nomination paper lodged with the constituency elections officer in terms of this section;
- (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.

(14) If a nomination paper has been rejected in terms of subsection (5), or if any name of a party-list candidate has been deleted from the nomination form by the nomination officer-

- (a) the nomination officer shall forthwith notify the political party concerned, giving reasons for his or her decision; and
- (b) the political party shall have the right of appeal from the decision to a judge of the Electoral Court in chambers, and the judge may confirm, vary or reverse the decision of the nomination 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 political party received notice of the decision, the right of appeal shall lapse and the decision shall be final; and

- (d) if an appeal in terms of paragraph (b) is lodged, the judge concerned may direct that any further proceedings under this section shall be suspended, if necessary, pending determination of the appeal.

(15) Any person who—

- (a) on a nomination paper lodged in terms of this section, forges any signature purporting to be that of a candidate or a designated office-bearer of a political party; or
- (b) lodges a nomination paper knowing that any signature on it purporting to be that of a candidate or a designated office-bearer of a political party 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.

#### **45F Publication and printing of party lists after nomination**

(1) Upon completion of all formalities in connection with the nomination of the party-list candidates in an electoral province under section 45E, the nomination officer concerned shall make at least three copies of the party-lists (containing the photographs of the party-list candidates) authenticated by his or her signature, of which the nomination officer must—

- (a) enclose two sets of copies in separate packets, sealed with his or her own seal and with the seals of those designated office-bearers who may wish to affix their seals, and forthwith transmit-
  - (i) one set of copies to the Chief Elections Officer; and
  - (ii) one set of copies to the provincial centre;

and

- (b) affix one copy on the outside of the nomination court so that it is visible to the public.

(2) The provincial elections officer shall, immediately upon receiving copies of the party-lists under subsection (1)(a)(ii), make sufficient copies thereof for distribution to every ward centre within the province before the nomination of candidates for election as councillors.

(3) No later than seven days after receiving the last party list from every electoral province the Chief Elections Officer shall notify in the *Gazette*—

- (a) in relation to each electoral province, the names of the political parties which have submitted party lists; and
- (b) the names of the party-list candidates duly nominated by each party for each electoral province in the order in which such names appear on the appropriate party list of candidates.

(4) The provincial centre, after receiving the party lists submitted in respect of the electoral province concerned, shall forthwith arrange for the party-lists to be printed—

- (a) in such numbers as are sufficient for at least two copies to be distributed before the polling day in the election concerned (or the first polling day, as the case may be) to every constituency centre in the electoral province to which the party-lists relate; and
- (b) in such a manner that-
  - (i) the names, abbreviations and distinctive symbols of all political parties contesting for party-list seats in the electoral province in question appear in alphabetical order in a single folio; and
  - (ii) the names of the party-list candidates appear, together with a photograph of each candidate, under the name of the political party by which they were nominated, clearly distinguishing between those party-list candidates nominated for the Senate, the National Assembly and the provincial council.

#### **45G Appeal against nomination of party-list candidate**

(1) Any person who is registered on the voters roll of a constituency within a province may, within forty-eight hours after the close of a nomination court in terms of section 45E, appeal to a judge of the Electoral Court in chambers against the nomination of any party-list candidate who has been declared duly nominated for election in that province.

(2) In an appeal under subsection (1), the judge must confirm, vary or reverse the decision of the nomination officer within forty-eight hours of receiving the appeal, and there shall be no appeal from the judge's decision.

(3) If in an appeal under subsection (1) the judge declares a candidate not to be qualified for nomination as a party-list candidate in the election concerned, the candidate's name shall be deleted from the list of candidates of the party concerned.

#### **45H Filling of vacancies for party-list candidatures before election results determined**

(1) If at any time before the date when results of an election for the party-list candidates are determined under section 45I any party-list candidate dies, is declared ineligible by the Electoral Court under section 45G(3), or withdraws or otherwise becomes unavailable for election, the Commission shall, on the date when the results of the election are determined, select (as the case may be)—

- (a) the candidate whose name appears on the party list immediately after the name of the person whose candidature for a seat in the National Assembly has been vacated; or
- (b) the next eligible name after the name of the person whose candidature for a seat in the Senate or provincial council has been vacated.

(2) If, at any time before the date referenced in subsection (1), two or more party-list candidates die, are declared ineligible by the Electoral Court under section 45G(3), or withdraw or otherwise become unavailable for election to a particular seat the Commission shall, on the date when the results of the election are determined, proceed down the appropriate party list until an eligible party-list candidate is found to fill the seat concerned.

(3) If, having proceeded down the list as described in subsection (2), the Commission finds that the list no longer contains any eligible party-list candidates, the Commission shall by notice in the *Gazette* published on any day before the day when the Senate, National Assembly or provincial council, as the case may be, first meets after the election—

- (a) notify the public of the vacancy in the Senate, National Assembly or provincial council, as the case may be, by notice in the *Gazette*; and
- (b) invite the political party concerned in writing to submit the name of a qualified person to fill the vacancy, for which purpose the political party must lodge with the Commission a nomination paper in the prescribed form referred to in section 45E(2), countersigned by any two of the designated national office-bearers of the party referred to in section 38A(1)(a).

(4) The Chief Elections Officer shall, after scrutinising the nomination paper lodged in accordance with subsection (3)(b) (for which purpose he or she may refer the nomination paper to the appropriate provincial elections officer for additional scrutiny), inform the office-bearers concerned that the papers are in order or request them to make such corrections or alterations to, or supply such clarifications in connection with, the nomination paper as are required in the interests of accuracy and ensuring conformity with this Act.

(5) Upon the Chief Elections Officer being satisfied in terms of subsection (4) that the nomination paper is in order, the Commission shall without delay—

- (a) notify the public of the nomination to fill the vacancy by notice in the *Gazette*, giving the name, address and such other particulars of the party-list candidate as it considers necessary in the interests of public information; and
- (b) afford any person who is a voter to lodge any written objection (together with reasons for the objection) to the nomination within a specified time from the date of publication of the notice in the *Gazette*.

(6) As soon as possible after the last day for the lodging of objections in terms of subsection (5)(b) the Commission shall—

- (a) if no objection to the party-list candidate has been received or, having considered every objection received, it finds that there are no valid grounds for objecting to the

candidature, notify the public by notice in the Gazette that the person nominated to fill the vacancy has been appointed as a Senator or member of the National Assembly (as the case may be) with effect from the date of the notice, giving the name, address and such other particulars of the person as it considers necessary in the interests of public information; or

- (b) having considered every objection received, and having found that there are valid grounds for objecting to the candidature, afford the political party concerned to make representations on the matter

(7) If, having considered any representations of the political party received in terms of subsection (6)(b), the Commission is still of the view that there are valid grounds for objecting to the candidature, the Commission shall proceed in accordance with subsection (3)(a), and subsections (4), (5) and (6) shall thereafter apply until a qualified person is identified to fill the vacancy concerned."

#### **451 Determination of result of election for party-list candidates**

(1) Upon receipt of returns from all the constituencies in a province in terms of section 65(5a), the provincial elections officer shall determine, in accordance with the Eighth Schedule, which of the duly nominated party-list candidates for the province should be declared elected, and shall forthwith declare those candidates to be duly elected as Senators, members of the National Assembly or members of the provincial council, as the case may be.

(2) Immediately after making a determination in terms of subsection (1), the provincial elections officer shall-

- (a) provide each representative of the political parties contesting the election with a copy of the determination, showing-
  - (i) the names of the candidates determined to be elected; and
  - (ii) the calculations by which the determination was reached;
 and cause another such copy to be sent to the Commission without delay by telegram, telefacsimile, electronic mail or such other means that may be prescribed; and
- (b) affix, on the outside of the provincial centre so that it is visible to the public, a list of the names of the candidates determined to be elected.

(3) A declaration by a provincial elections officer under this section shall be final, subject to reversal on petition to the Electoral Court that the declaration be set aside or to the proceedings relating to the election concerned being declared void under section 50(1):

Provided that if, as a result of a recount of votes or the setting aside of a constituency election in terms of this Act, the number of votes cast for any political party in the province is altered, the Commission shall cause the determination under subsection (1) to be made afresh and shall, where appropriate, alter the declaration accordingly.

### **PART XII**

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

#### **46 Nomination of candidates**

(1) A candidate for election as a constituency member of the National Assembly shall be nominated by means of a separate nomination paper in the prescribed form which—

- (a) shall be signed by not fewer than five 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:

Provided that if, at the time a nomination paper is lodged in terms of subsection (5), the name of any person nominating the candidate does not appear on the voters roll, the nomination officer shall reject the nominator unless the candidate produces a voters registration certificate in respect of that nominator or a copy thereof certified by a commissioner of oaths; 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 photograph of the candidate; and
- (e) shall be accompanied by two copies of the electoral code of conduct for political parties and candidates prescribed in the Fourth Schedule, with the candidate's name printed or legibly written at the bottom of each page thereof, and signed next to his or her name by the candidate or his or her chief election agent (which copies may be obtained on nomination day from the nomination officer, and one copy of which will be returned to the candidate or his or her chief election agent on due completion of the nomination); and
- (f) shall contain such particulars as may be prescribed.

(2) Where a nomination paper specifies the matters referred to in subsection (1)(c), the nomination paper shall be countersigned by any two designated office-bearers of the political party concerned.

(3) Nomination papers in respect of candidates for election as constituency members of the National Assembly 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 election period.

(5) On the day and at the place fixed in terms of paragraph (a) of subsection (2) of section *thirty-eight*, the nomination officer shall hold a public court, commencing at ten o'clock in the morning, for receiving the nomination of candidates for election as a constituency member of the National Assembly for the constituency for which he or she is the nomination officer.

(6) The nomination 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 constituency member of the National Assembly for the constituency for which he or she is the nomination officer.

(7) No nomination paper shall be received by the nomination 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 nomination officer shall give him or her an opportunity to do so.

(8) The nomination 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 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 nomination officer is doubtful that such fact is true, the nomination 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 nomination 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 nomination officer has reason to believe that that fact is not true; or
- (d) if the nomination paper is not accompanied by two copies of the electoral code of conduct referred to in and endorsed in the manner required by subsection (1)(e); or
- (e) if in his or her opinion the nomination paper is for any other reason not in order.

(11) Without derogation from section *one hundred and eighty-nine*, the nomination 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 nomination 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 nomination officer constituency elections officer is satisfied that there has been substantial compliance with this section.

(12) The nomination 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 nomination 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 election as a constituency member 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 sum 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 as a constituency member 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 nominated for—

- (a) more than one senatorial or National Assembly constituency; or
- (b) a senatorial and National Assembly constituency;

his or her nomination for all the constituencies for which he or she has been 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 nomination 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 nomination 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 nomination 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 nomination 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 nomination 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 nomination 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 nomination 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 Nomination fee**

At the same time as the nomination paper is lodged in terms of section 46 there shall be deposited with the nomination officer, by or on behalf of the person nominated, such nomination fee as may be prescribed, which shall 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 nomination 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-five* for the opening and closing of each fixed 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) *{Repealed}*

(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 nomination 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 nomination 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 nomination 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.

(6) This section must be read subject to section 50A, which provides for the pre-polling day substitution in certain circumstances of candidates who have withdrawn or died.

**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 nomination 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.

(3) This section must be read subject to section 50A, which provides for the pre-polling day substitution in certain circumstances of candidates who have withdrawn or died.

**50A Pre-polling day substitution in certain circumstances of candidates who have withdrawn or died**

(1) In this section-

"forthwith" must be construed in accordance with subsection (5);

"qualifying political party" means a political party that, in terms of section 38A(1)(a), provided through the National Command Centre the names of the office-bearers of the party there referred to.

(2) If, no later than seven days after the nomination day or last nomination day, as the case may be, fixed in terms of section 38(1)(b)(i), a duly nominated candidate sponsored by a qualifying political party for election for a constituency withdraws his or her nomination or dies, then, no later than forty-eight hours after the party concerned becomes aware that its candidate has withdrawn or died, and in any event, not later than nine days after the nomination day or last nomination day, as the case may be, fixed in terms of section 38(1)(b)(i) (a), any two of the party's designated office-bearers may provide to the appropriate provincial elections officer through the National Command Centre, a nomination paper conforming to section 46(1) and (2) for another candidate ("substitute candidate") in substitution for the candidate who has withdrawn or died.

(3) The Chief Elections Officer shall forthwith transmit any nomination paper lodged in terms of subsection (2) to the appropriate provincial elections officer for scrutiny, and the provincial elections shall, after scrutiny of the nomination paper, forthwith report to the Chief Elections Officer whether, in his or her opinion, the substitute candidate would qualify for nomination if he or she had been nominated in accordance with section 46.

(4) Where-

(a) the provincial elections officer has reported that-

- (i) the substitute candidate qualifies for nomination, the Chief Elections Officer shall forthwith declare the substitute candidate to be duly nominated and make arrangements for the printing of the ballot papers requiring to be modified or, if the ballot papers concerned have already been printed, for them to be withdrawn and reprinted with the particulars of the substitute candidate; or
- (ii) he or she cannot ascertain whether the substitute candidate qualifies for nomination for want of specified information, the Chief Elections Officer shall forthwith inform the designated office bearers of the qualifying political party who lodged the nomination paper for the substitute candidate of the need to submit the specified information forthwith to the Chief Elections Officer, who shall thereupon determine whether the substitute candidate qualifies for nomination and, if the candidate so qualifies, forthwith proceed in accordance with subparagraph (i); or
- (iii) the substitute candidate does not qualify for nomination for any specified reason, the Chief Elections Officer shall forthwith inform the designated office bearers of the qualifying political party who lodged the nomination paper for the substitute

candidate of the disqualification of the substitute candidate concerned and of the reasons for the disqualification;

or

- (b) the designated office bearers of the qualifying political party who lodged a nomination paper for a substitute candidate do not timeously comply with a request for specified information under paragraph (a)(ii) or, having complied, the Chief Elections Officer finds that the substitute candidate does not qualify for nomination for any specified reason, the Chief Elections Officer shall forthwith inform the designated office bearers of the disqualification of the substitute candidate concerned and of the reasons for the disqualification.

(5) For the purposes of subsections (3) and (4) the word "forthwith" shall be so construed that not more than seventy-two hours must lapse from the time--

- (a) a nomination paper for a substitute candidate is lodged with the National Command Centre in terms of subsection (2); and
- (b) a final declaration is made by the Chief Elections Officer in accordance with subsection (4) (a) or (b) (as the case may be) whether a substitute candidate qualifies for nomination.

(6) A qualifying political party may nominate any other substitute candidate in the place of one who is disqualified under subsection (4)(a) or (b), but only in relation to the substitution of a duly nominated candidate whose withdrawal or death was notified to the Chief Elections Officer no later than seven days after the nomination day or last nomination day, as the case may be, fixed in terms of section (38)(1)(b)(i).

## **PART XIII**

### **PREPARATION FOR AND VOTING AT POLL**

#### **51 Polling stations**

(1) (1) Subject to this section, the Commission shall in each constituency establish, at such convenient places as it may determine, as many polling stations as it may consider to be necessary for the purposes of conveniently taking a poll of the voters of that constituency:

Provided that the Commission—

- (i) shall establish a sufficient number of polling stations in each ward of the constituency concerned;
- (ii) shall receive from political parties contesting the election concerned any representations on the issue of the location of polling stations in any constituency, and may give directions on this matter to any provincial elections officer, district elections officer or constituency elections officer on the basis of such representations.

(1a) Every polling station shall be located in a place that is readily accessible to the public, including persons with physical disabilities.

(1b) No polling station shall be located—

- (a) in premises owned or occupied by a political party or candidate; or
- (b) in a police station, barracks, cantonment area or other place where police officers or members of the Defence Forces are permanently stationed; or
- (c) in premises licensed under the Liquor Act [Chapter 14:12]; or
- (d) at or in any place which, for any reason, may give rise to reasonable apprehension on the part of voters as to the secrecy of their votes or the integrity of the electoral process.

(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) The Commission 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 three weeks before polling day and again on polling day, in a newspaper circulating in the constituency concerned and in such other manner as it thinks fit.

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

(1) For any election the Commission shall ensure that every constituency elections officer is provided with polling booths or 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 the Commission 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) Where two or more elections are to be held concurrently in a constituency, the Commission shall ensure that the constituency elections officer concerned is provided with separate ballot boxes for each such election.

### **52A Publication of details re ballot papers**

The Commission shall without delay provide the following information to all political parties and candidates contesting an election, and to all observers—

- (a) where and by whom the ballot papers for the election have been or are being printed; and
- (b) the total number of ballot papers that have been printed for the election; and
- (c) the number of ballot papers that have been distributed to each 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 (1) 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.

#### **54A Recording of ballot papers before polling**

Subject to section 84, 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, in the presence of such persons entitled in terms of section 55(2)(b) to be within the polling station as are present, count and record the total number of ballot papers received at the polling station.

#### **55 Conduct of poll**

(1) [*Repealed*]

(2) Subject to subsection (7), 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—
  - (i) electoral officers present for the performance of their official duties; and
  - (ii) the candidates; and
  - (iii) the number of election agents permitted in terms of subsection (2a); and
  - (iiia) police officers on duty; and
  - (iv) accredited observers; and
  - (v) persons who are recording their votes; and
  - (vi) such other classes of persons as may be prescribed.

(2a) Subject to section 95(5) (which empowers the Commission to prescribe that only one election agent representing each political party may be appointed during concurrent elections), each candidate in an election shall be entitled to have one election agent present in the polling station while polling is taking place, and another such agent outside the polling station to act as a substitute for the first-mentioned agent if for any reason the first-mentioned agent leaves the polling station.

(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) For the purpose of keeping order at a polling station and the area surrounding it, every electoral officer at the polling station shall have the powers of a peace officer under the Criminal Procedure and Evidence Act [*Chapter 9:07*].

(6) A presiding officer may call upon a police officer for assistance in keeping order at the polling station and the area surrounding it, and every police officer so called upon shall provide whatever assistance is needed.

(7) The Commissioner-General of Police shall ensure that sufficient numbers of police officers are available in the immediate vicinity of each polling station to provide immediate assistance; if called upon in terms of subsection (6).

(7a) Police officers referred to in subsection (7) -

- (a) shall have the sole functions of maintaining order and preventing contraventions of the law so that voters may freely cast their votes;
- (b) shall not interface with the electoral processes at the polling station;
- (c) when inside a polling station, shall exercise their duties under the direction and instruction of the presiding officer.

(8) The presiding officer shall record in detail every incident in which order at the polling station and the area surrounding it was disrupted and, in particular, every occasion in which a person was expelled or required to leave the polling station or its surrounding area in terms of this section.

## **56 Entitlement to vote, number of votes and identification of voters**

(1) At an election held for the purpose of electing the President, members of the National Assembly and councillors

- (a) every voter registered on a ward voters roll shall be entitled to vote in the ward concerned for—
  - (i) a Presidential candidate; and
  - ii) one of the candidates who have been duly nominated for election as a constituency member in the constituency in which the ward is situated; and
  - .. (iii) one of the candidates who have been duly nominated for election as councillor for the ward:

Provided that if the name of any voter does not appear on the ward voters roll, he or she shall be entitled to vote upon production to the presiding officer of

- A. a voters registration certificate issued to him or her; and
- B. proof of identity.

and

- (b) except as provided in Part XIV ("Postal Voting"), a voter shall not be entitled to vote otherwise than at a polling station located in a ward for which he or she is registered as a voter on the ward voters roll;
- (c) subject to sections 57 and 58, a voter shall not be entitled to vote more than once for a Presidential candidate or a candidate who has been duly nominated for the constituency or ward referred to in paragraph (a).

(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 ward.

(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 ward; 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.

## 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 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 drop the ballot paper in the ballot box placed in front of the presiding officer:

Provided that, if he or she has spoilt 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 or physically handicapped voters<sup>14</sup>

(1) Upon request by a voter who is illiterate or physically handicapped and cannot vote in the way set out in section 57, a presiding officer shall—

- (a) permit another person, selected by the voter, to assist the voter in exercising his or her vote; or

- (b) in the absence of a person selected by the voter, assist the voter in exercising his or her vote in the presence of two other electoral officers or employees of the Commission and a police officer on duty.

(2) A person permitted to assist a voter in terms of subsection (1)(a)—

- (a) need not be a registered voter but shall not be a minor, electoral officer, accredited observer, chief election agent, election agent or a candidate in the election; and
- (b) shall identify himself or herself to the presiding officer by producing proof of identity, and shall complete and sign the register referred to in subsection (3); and
- (c) shall not be permitted to assist more than one voter in any election.

(3) For the purposes of subsection (2)(b), every presiding officer shall keep a special register in which shall be recorded the name of every person whom the presiding officer permits to assist a voter in terms of subsection (1)(a), relevant particulars of the proof of identity produced by that person, and the name of the voter assisted by that person.

(4) A presiding officer permitted to assist a voter in terms of subsection (1)(b), together with the other persons there mentioned, shall 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 intentions.

(5) No person other than—

- (a) the person selected by the voter in terms of subsection (1)(a) shall take part in assisting an illiterate or physically handicapped voter, and no person who is entitled to be in a polling station shall attempt to ascertain how the voter is voting:

Provided that, in the case of a voter who is visually impaired, the presiding officer shall observe the casting of the vote in order to ensure that the voter's intention is respected by the person assisting him or her;

or

- (b) the presiding officer selected by the voter in terms of subsection (1)(b) and the persons there mentioned shall assist an illiterate or physically handicapped voter.

(6) The presiding officer shall cause the name of every voter who has been assisted in terms of subsection (1)(a) or (b), and the reason why that voter has been assisted, to be entered on a list.

**60** ...[Repealed]

## **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
- (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 register of assisted voters.

## **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 every chief election agent and election agent of each candidate (or, if section 95(5) applies, of each political party) who, at the time of the commencement of the counting, is present within the polling station or in the immediate vicinity of the polling station:

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 ; and

- (c) any roving political party election agent who, at the time of the commencement of the counting, is present within the polling station or in the immediate vicinity of the polling station.

(2a) For the avoidance of doubt it is declared that the proviso to subsection (2)(b) does not prevent a candidate or his or her chief election agent or election agent from being present at the counting of the votes for a Presidential election or general election of members of Parliament or councillors which takes place concurrently with the election for which he or she was nominated, so long as the counting of the votes for the elections in question are held concurrently at the polling station concerned.

(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 register of assisted voters.

### **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 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 Procedure after counting at polling station**

(1) After the counting is completed the presiding officer shall without delay, in the presence of such candidates and their election agents as are present—

- (a) close and seal the aperture in 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 register of assisted voters;

and

- (c) 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 are shown on the return; and
- (d) 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
- (d1) provide each candidate or his or her election agent with a copy of the completed polling-station return; and
- (e) affix a copy of the polling-station return on the outside of the polling station so that it is visible to the public and shall ensure that it remain there so that all members of the public who wish to do so may inspect it and record its contents..

(2) Immediately after affixing a polling station return on the outside of the polling station in terms of subsection (1)(e), the presiding officer shall personally transmit to the ward elections officer for the ward in which the polling station is situated—

- (a) the ballot box and packets referred to in subsection (1)(a) and (b), 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; and
- (b) 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 ballot box, packets, statement and polling station return under this subsection, a polling officer who was on duty at the polling station shall personally transmit these, and in that event any statement or certification required to be made by the presiding officer for the purposes of this section may be made by the polling officer concerned.

## **65 Procedure on receipt of polling-station returns at ward centre**

(1) Either before or as soon as possible after receiving polling-station returns transmitted in terms of section 64, a ward elections officer shall give reasonable notice in writing to—

- (a) each candidate or his or her chief Election Agent; and

- (b) each political party whose party-list candidates are contesting the election in the ward; and
- (c) such observers as can readily be contacted;

of the time when the ward elections officer will verify and collate the polling-station returns at the ward centre and count the postal votes.

(2) At the time notified in terms of subsection (1) and in the presence of such candidates, Election Agents and observers as are present, the ward elections officer shall-

- (a) display each polling-station return to those present; and
- (b) verify each polling-station return by ensuring that it purports to be duly certified by the presiding officer of the polling station concerned; and
- (c) on request, allow any candidate, Election Agent or observer to make notes of the contents of any polling-station return.

(3) When the ward elections officer has displayed and verified the polling-station returns in terms of subsection (2), he or she shall add together the number of votes received by each candidate as shown in each polling-station return and record the result on a ward return.

(4) Having recorded the results of the polling-station returns in terms of subsection (3), the ward elections officer, in the presence of such candidates, election agents and observers as are present, shall-

- (a) verify the postal ballots and special ballots in accordance with sections 78 and 81 F, if they have not already been verified; and
- (b) count the postal votes and record separately on the ward return the number of each such votes received by each candidate; and
- (c) enter on the ward return the total number of votes received by each candidate, including postal votes; and
- (d) close and seal the aperture in the postal ballot box.

(5) Section 63 shall apply, with any necessary changes, to the counting of the postal votes in terms of subsection (4)(b).

(6) The ward elections officer shall-

- (a) provide a copy of the completed ward return to every candidate, election agent and observer who requests one; and
- (b) ensure that a copy of the ward return is displayed prominently outside the ward centre so that all members of the public who wish to do so may inspect it and record its contents.

(7) Immediately after causing a copy of the ward return to be displayed outside the ward centre, the ward elections officer shall cause the return, certified by himself or herself to be correct, to be transmitted to the constituency centre for the constituency in which the ward is situated.

### **65A Procedure on receipt of ward returns at constituency centre**

(1) Either before, or as soon as possible after, receiving ward returns transmitted in terms of section 65, a constituency elections officer shall give reasonable notice in writing to—

- (a) each candidate or his or her chief election agent; and
- (b) each political party whose party-list candidates are contesting the election in the constituency; and
- (c) such observers as can readily be contacted;

of the time when the constituency elections officer will verify and collate the ward returns at the constituency centre and declare the results of the constituency election.

(2) At the time notified in terms of subsection (1) and in the presence of such candidates, election agents and observers as are present, the constituency elections officer shall —

- (a) display each ward return to those present; and
- (b) verify each ward return by ensuring that it purports to be duly certified by the ward elections officer concerned; and
- (c) on request, allow any candidate, election agent or observer to make notes of the contents of any ward return.

(3) When the constituency elections officer has displayed and verified the ward returns in terms of subsection (2), he or she shall add together the number of votes received by each candidate as shown in each ward return and—

- (a) record the totals on a constituency return; and
- (b) in terms of section 66, declare the result of the election in the constituency.

(4) The constituency elections officer shall —

- (a) provide a copy of the completed constituency return to every candidate, election agent and observer who requests one; and
- (b) ensure that a copy of the constituency return is displayed prominently outside the constituency centre so that all members of the public who wish to do so may inspect it and record its contents.

(5) Immediately after causing a copy of the constituency return to be displayed outside the constituency centre, the constituency elections officer shall cause the return, certified by himself or herself to be correct, to be transmitted to the provincial command centre for the province in which the constituency is situated.

### **65B Procedure on receipt of constituency returns at provincial command centre**

(1) Either before, or as soon as possible after, receiving constituency returns transmitted in terms of section 65A, a provincial elections officer shall give reasonable notice in writing to—

- (a) each candidate or his or her chief election agent; and
- (b) each political party whose party-list candidates are contesting the election in the province; and
- (c) such observers as can readily be contacted;

of the time when the provincial elections officer will verify and collate the constituency returns at the provincial command centre and declare which of the party-list candidates have been duly elected for the province.

(2) At the time notified in terms of subsection (1) and in the presence of such candidates, Election Agents and observers as are present, the provincial elections officer shall—

- (a) display each constituency return to those present; and
- (b) verify each constituency return by ensuring that it purports to be duly certified by the constituency elections officer concerned; and
- (c) on request, allow any candidate, Election Agent or observer to make notes of the contents of any constituency return.

(3) When the provincial elections officer has displayed and verified the constituency returns in terms of subsection (2), he or she shall add together the number of votes received by each candidate as shown in each constituency return and—

- (a) record the totals on a provincial return; and
  - (b) ascertain, in accordance with section 45J and the Eighth Schedule, the party-list candidates who are to be declared duly elected in terms of that section.
- (4) The provincial elections officer shall—

- (a) provide a copy of the completed provincial return to every candidate, Election Agent and observer who requests one; and
- (b) ensure that a copy of the provincial return is displayed prominently outside the constituency centre so that all members of the public who wish to do so may inspect it and record its contents.

(5) Immediately after causing a copy of the provincial return to be displayed outside the provincial command centre, the provincial elections officer shall cause the return, certified by himself or herself to be correct, to be transmitted to the National Command Centre..

## **66 Determination and declaration of result of poll**

(1) Subject to subsection (2), after verifying the ward returns in terms of section 65A and recording on a constituency return the total number of votes received by each constituency candidate, the constituency elections officer shall forthwith declare the constituency candidate who has received-

- (a) where there are two such candidates, the greater number of votes;
- (b) where there are more than two such candidates, the greatest number of votes;

to be duly elected as a member of the National Assembly with effect from the day of the declaration.

(2) When an equality of votes is found to exist between two or more constituency 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 the National Assembly 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 constituency candidates who have received an equality of votes; and
- (b) one 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, **unless**-

- (a) the declaration is set aside by the Electoral Court on petition; or
- (b) the proceedings relating to the election are declared void under section 50(1) following the death of a candidate; or
- (c) as a result of a recount of votes under section 67A another candidate is declared in terms of that section to be duly elected.

## **66A Unofficial or false declaration of results prohibited**

(1) Subject to subsection (3), any person who-

- (a) purports to announce the result of an election as the true or official results; or
- (b) purports to declare any candidate to have been duly elected;

before an electoral officer, acting in accordance with this Act, has announced the result of that election or declared a candidate to have been duly elected in that election, as the case may be, 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) Subject to subsection (4), any person who, with intent to deceive or to discredit the electoral processes in an election, falsely--

- (a) reports or announces the number of votes received by a candidate or political party in an election; or
- (b) declares any candidate to have been elected in 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.

(3) Subsection (1) shall not be construed as preventing any person from reporting the number of votes received by a candidate or political party in an election, where the report is based on polling-station returns and constituency returns from the election concerned.

(4) Subsection (2) shall not be construed as preventing any person from making any allegation regarding the result or conduct of an election in or for the purposes an election petition..

## **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, notify the Chief Elections Officer, by telegram, telefacsimile, electronic mail or such other means as may be prescribed, of 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 he or she was notified of the information in terms of subsection (1).

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

## **67A Recounting of votes**

(1) Within forty-eight hours after a constituency elections officer has declared a candidate to be duly elected in terms of section 66(1), any political party or candidate that contested the election in the ward or constituency concerned may request the Commission to conduct a recount of votes in one or more of the polling stations in the constituency.

(2) A request in terms of subsection (1) shall—

- (a) be in writing, signed by an appropriate representative of the political party or candidate making the request; and
- (b) state specifically the number of votes believed to have been miscounted and, if possible, how the miscount may have occurred; and
- (c) state how the results of the election have been affected by the alleged miscount.

(3) On receipt of a request in terms of subsection (1), the Commission shall—

- (a) immediately notify all the other political parties and candidates that contested the election of the nature of the request and of the date and time on which it was received by the Commission; and
- (b) order a recount of votes in the polling stations concerned if the Commission considers there are reasonable grounds for believing that the alleged miscount of votes occurred and that, if it did occur, it would have affected the result of the election.

(4) The Commission may on its own initiative order a recount of votes in any polling stations if it considers there are reasonable grounds for believing that the votes were miscounted and that, if they were, the miscount would have affected the result of the election.

(5) Where the Commission orders a recount of votes in terms of this section, the Commission shall specify—

- (a) the polling stations whose votes are to be recounted and, where appropriate, the votes that are to be recounted; and
- (b) the date on which, and the place and time at which the recount is to take place; and
- (c) the procedure to be adopted for the recount;

and shall take all necessary steps to inform accredited observers and all political parties and candidates that contested the election of its decision and of the date, time and place of the recount.

(6) Accredited observers and representatives of candidates and political parties that contested the election shall be entitled to be present at any recount ordered in terms of this section.



(6a) The Commission shall ensure that any recount of votes in terms of this section is completed within five days after the announcement of the last result in the Presidential, Parliamentary or local authority election, as the case may be, and that the result of the recount is announced within twenty-four hours of completion:

Provided that the Electoral Court, on application, may for good cause extend either of the periods referred to in this subsection.

(7) The Commission's decision on whether or not to order a recount and, if it orders one, the extent of the recount, shall not be subject to appeal.

## **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 ...**

*[Repealed]*

## **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 section 64(1)(a) and (b); or
- (b) sealed packet containing documents referred to in section 79; or
- (c) closed and sealed postal ballot box or sealed packet referred to in section 64(1)(a) and (b);

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 places designated by 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—

- (a) unless an election petition is lodged in relation to the constituency concerned, cause to be destroyed all the documents referred to in subsection (1) relating to that constituency not earlier than the fourteenth day after the end of the election period;
- (b) if an election petition is lodged in relation to any constituency within fourteen days after the end of the election period to which the election relates, retain for six months all the documents referred to in subsection (1) relating to that constituency 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**

### **POSTAL VOTING**

#### **71 Interpretation in Part XIV**

The reference in section 73(2)(b)(ii) to a “letter” includes a reference to a letter sent by way of electronic mail, under the following conditions—

- (a) the sender (that is, the person referred to in 73(2) (b) (ii) A or B) and recipient (that is, the applicant for a postal vote) must both use official electronic mail addresses; and
- (b) the electronic mail sent by sender must be authenticated by the electronic signature of the sender; and
- (c) the electronic mail must be embodied in a hard copy printed by the recipient, which copy shall be the “letter” referred to in 73(2) (b) (ii).

#### **72 Persons who may vote by post**

Where an election is to be held in a constituency, a person who is registered as a voter on the roll for that constituency shall be entitled to vote by post in terms of this Part if, on all polling days in the election, he or she will be—

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

and so unable to vote at a polling station in the constituency.

#### **73 Application for postal vote**

(1) A person who wishes to vote by post may apply to the Chief Elections Officer for a postal ballot paper.

(2) An application for a postal ballot paper shall be—

- (a) in the prescribed form; and
- (b) signed by the applicant and accompanied by—
  - (i) a certified copy of the voter’s national registration certificate; and
  - (ii) except in the case where the application is submitted (individually or as part of a batch of such applications) by a commanding officer on behalf of a member of a disciplined force, a letter from—
    - A. the applicant’s head of Ministry, head of department or head of station; or
    - B. the head of Zimbabwe’s Embassy or diplomatic or consular mission in the foreign State where the applicant is employed;

stating the capacity in which the applicant is employed by the Government and where the applicant will be employed on polling day or polling days, as the case may be, in the election;

and

- (c) sent to the Chief Elections Officer by means of a commercial courier service or by diplomatic courier, or delivered by hand to the Chief Elections Officer (in which event written proof of

delivery shall be required) not later than noon on the fourteenth day after nomination day in the election.

(3) Where more than one election is to be held concurrently in any constituency, a single application form may be used by applicants who apply for postal ballot papers in all those elections.

(4) The Commission shall ensure that application forms for postal ballot papers are available at all Embassies and diplomatic or consular missions of Zimbabwe located in foreign countries.

(5) The Chief Elections Officer shall number in consecutive order of their receipt all applications for postal ballot papers received by him or her, and shall permit them to be inspected by members of the public, free of charge, until the declaration of the result of the poll, when they shall be dealt with in terms of section 70(3).

## **74 Issue of postal ballot papers**

(1) If the Commission is satisfied, in regard to an application received not later than noon on the fourteenth day after nomination day in the election, that the applicant is entitled to a postal vote, the Chief Elections Officer shall issue a postal ballot paper to the applicant by placing in an envelope addressed to the applicant—

- (a) the postal ballot paper; and
- (b) a covering envelope addressed to Chief Elections Officer; and
- (c) a smaller envelope marked “Ballot Paper Envelope” on the back of which shall be written the name of the voter, his or her voter registration number and the constituency and ward in which he or she is registered; and
- (d) an unmarked envelope to be used in accordance with section 75 (1) (b).

(2) Where more than one election is to be held concurrently in a constituency, the Chief Elections Officer may enclose in a single envelope all the postal ballot papers for which the applicant has applied together with the appropriate number of smaller envelopes referred to in subsection (1) (c) and (d)

(3) The Chief Elections Officer shall then effectively close the envelope addressed to the applicant and deliver it to—

- (a) the nearest post office for registration and dispatch to the applicant by registered post; or
- (b) a commercial courier service for delivery to the applicant; or
- (c) the Ministry of Foreign Affairs for delivery to the applicant by diplomatic courier;

and the Chief Elections Officer shall keep the receipt for such registration or a receipt provided by the commercial courier service or Ministry of Foreign Affairs, as the case may be.

(4) The Chief Elections Officer shall keep a list of all postal ballot papers issued, which list shall contain the following details of every person to whom such a ballot paper has been issued—

- (a) the person’s name and address; and
- (b) the person’s voter registration number; and
- (c) the constituency and ward in which the person is registered;

and shall permit the list to be inspected by members of the public, free of charge, until the declaration of the result of the poll, when it shall be dealt with in terms of section 70(3).

(5) The Chief Elections Officer shall ensure that the voters roll supplied to each constituency centre in terms of section 76 for the purposes of the election has a line drawn through every voter in the constituency who has been issued with a postal ballot paper, and shall inscribe opposite that person’s name the letters “P.V.”

## **75 Voting by post**

(1) A person to whom a postal ballot has been sent shall—

- (a) signify the candidate for whom he or she wishes to vote by secretly placing on the ballot paper a cross in accordance with section 57(c)(ii); and

- (b) then place the marked ballot paper in the unmarked envelope referred to in section 74(1)(d), efficiently close that envelope, and then place it in the envelope marked “Ballot Paper Envelope” and effectively close that envelope; and
- (c) then place the envelope marked “Ballot Paper Envelope” in the covering envelope addressed to the Chief Elections Officer; and
- (d) then dispatch the covering envelope by registered post or by a commercial courier service or diplomatic courier so that it is received by the Chief Elections Officer not later than noon on the fourteenth day before polling day or the first polling day, as the case may be, in the election.

(2) Where more than one election is being held concurrently in a constituency and the voter marks more than one ballot paper, he or she shall -

- (a) place each of the marked ballot papers in a separate unmarked envelope referred to in section 74(1)(d); then
- (b) place each of the envelopes referred to in paragraph (a) in a separate envelope marked “ Ballot Paper Envelope”; then
- (c) place each of the envelopes referred to in paragraph (b) in a single covering envelope addressed to the Chief Election Officer.

## **76 Distribution of postal ballots by Chief Elections Officer and ward elections officers**

(1) Upon receipt of a covering envelope dispatched in terms of section 75, the Chief Elections Officer shall open it and dispatch the enclosed ballot paper envelope, unopened, to the constituency elections officer for the constituency indicated on the back of the envelope.

(2) Whenever the Chief Elections Officer sends a ward elections officer one or more ballot paper envelopes, he or she shall send an accompanying note indicating the number of envelopes that are sent.

(3) The Chief Elections Officer shall keep a list of all covering envelopes received, showing—

- (a) the date on which they were received; and
- (b) the names and voter registration numbers of the voters who sent them; and
- (c) the constituencies to which the ballot paper envelopes were sent and the dates on which they were sent;

and shall permit the list to be inspected by members of the public, free of charge, until the declaration of the result of the poll, when it shall be dealt with in terms of section 70(3).

(4) The Chief Elections Officer shall ensure that each constituency elections officer receives the ballot paper envelopes sent to him or her at least seven days before the polling day or the first polling day, as the case may be, in the election concerned.

(5) Upon receipt of the ballot paper envelopes dispatched in terms of subsection (4), the constituency elections officer shall forthwith distribute each ballot paper envelope to the ward elections officer of the ward indicated on the back of the envelope, together with an accompanying note indicating the number of envelopes that are sent.

(6) The constituency elections officer shall ensure that the appropriate ward elections officer receives the ballot paper envelopes sent to him or her at least two days before the polling day or the first polling day, as the case may be, in the election concerned.

## **77 Postal ballot boxes**

(1) Every ward elections officer who receives any ballot paper envelopes dispatched to him or her in terms of section 76(5) shall provide a postal ballot box at the polling station for the reception of the ballot paper envelopes.

(2) The ward elections officer shall give to each candidate or his or her chief election agent reasonable notice of the time, date and place at which he or she will seal the postal ballot box, which date shall be at least two days before the polling day or first polling day, as the case may be, in the election.

(3) At the time and place notified, the ward elections officer shall show the postal ballot box open and empty to such candidates and election agents and observers as are present and it shall then be sealed

with the ward elections officer's seal and the seals of such candidates and agents as wish to affix their seals and shall be marked "Postal Ballot Box", and the ward elections officer shall make adequate provision for the safe custody of the ballot box.

(4) The ward elections officer shall immediately place in the postal ballot box, unopened, all the ballot paper envelopes he or she receives from the voter registration officer in terms of section 76(5).

## **78 Opening of postal ballot boxes**

(1) After the close of the poll and before the time fixed for the counting of the votes, the ward elections officer shall, in the presence of such electoral officers, candidates, election agents and observers as are entitled to be present—

- (a) open the postal ballot box; and
- (b) count and record the number of envelopes in the postal ballot box; and
- (c) compare the number of envelopes in the postal ballot box with the number specified in the accompanying note or notes sent by the voter registration officer in terms of section 76(5) and, if there is any discrepancy between the numbers, inform the candidates, election agents and observers who are present.

(2) The ward elections officer shall then examine each ballot paper envelope and ensure that the name of the voter written on the back of the envelope is that of a voter registered on the voters roll of the constituency and ward, and that the voter's name has been marked in the manner specified in section 74(5) as that of a voter to whom a postal ballot paper has been issued.

(3) If the name of the voter written on the back of a ballot paper envelope—

- (a) appears on the voters roll of the ward and is noted as that of a voter to whom a postal ballot paper has been issued, the ward elections officer shall cause the envelope to be opened and the ballot paper therein to be placed in a separate package, to be counted along with the votes cast at polling stations in the election concerned;
- (b) does not appear on the voters roll of the ward or is not noted as that of a voter to whom a postal ballot paper has been issued, the ward elections officer shall endorse the envelope "vote rejected" and place the envelope, unopened, in a separate package.

(4) The ward elections officer shall show to the candidates and their agents present every ballot paper envelope which he or she proposes to reject in terms of subsection (3) (b) and, if a candidate or an agent objects to his or her decision, the ward elections officer shall add to the endorsement on the envelope the words "rejection objected to".

## **79 Safe-keeping of documents**

The ward elections officer shall, immediately after the declaration of the result of the poll, seal in separate packets or containers—

- (a) all the postal ballot papers cast in the election; and
- (b) unopened, all ballot paper envelopes which have been endorsed "vote rejected" in terms of section 78(3) (b); and
- (c) unopened, all ballot paper envelopes which have been endorsed "vote rejected" but whose rejection has been objected to as provided in section 78(4).

## **80 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 six or to imprisonment for a period not exceeding one year 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 any 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
- (b) fails to deliver or post forthwith an envelope containing or purporting to contain a postal ballot paper entrusted to him or her by a voter for the purpose of delivering or posting it to the Chief Elections Officer;

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.

## PART XIVA SPECIAL VOTING

**81 to 81H** [This Part was repealed by Act 6/2014.]]

## PART XV GENERAL PROVISIONS RELATING TO POLLS

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

Every electoral officer, 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 or a presiding officer, before a commissioner of oaths; or
- (b) in any other case, before a commissioner of oaths or the constituency elections officer or the presiding officer.

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

(1) Every chief election agent, election agent 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 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 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 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—

- (1a) at the counting and recording of the total number of ballot papers received at a polling station in terms of section 54A; or
- (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 subsection (2) of section *sixty-one* or of the packets referred to in paragraph (b) of that subsection; 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
- (a1) at a polling station, applies for a ballot paper, knowing that he or she is not entitled to vote in the ward or constituency concerned; 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 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 section 59, 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) Commissioner; or
- (c) electoral officer or employee of the Commission; or
- (c) 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.

## **89A Refusal of precautions against double voting**

Any person who, having applied for a ballot paper in a polling station, refuses without just cause—

- (a) to undergo a prescribed test to determine whether or not he or she has already voted; or
- (b) to be marked in the prescribed way;

shall be guilty of an offence and liable to a fine not exceeding level five.

## **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 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.

### **93A Appointment of roving political party election agents**

(1) Before, on or after nomination day but not later than twelve days before polling day or the first polling day, as the case may be, in the election concerned, a political party that has complied with section 38A(1)(a) or (b) may, through any two of its designated office-bearers at national or provincial level, appoint one person for each ward in which it is fielding candidates to be a roving election agent, and shall forthwith notify in writing the full names and address of its roving election agent to the constituency elections officer concerned.

(2) A roving political party election agent who is duly notified in accordance with subsection (1) must present himself or herself no later than seven days before polling day or the first polling day, as the case may be, to the provincial elections officer to be given an official identity badge or certificate as a roving political party election agent.

(3) A roving political party election agent who exhibits to a presiding officer of a polling station within the ward for which the agent is appointed the badge referred to in subsection (2) shall, without interfering in or disrupting the conduct of the poll in the polling station, have the authority to enter and move through a polling station to observe the conduct of the election within that polling station, and to confer with any chief election agent or election agent of his or her political party who is present within that polling station.

(4) A roving political party election agent shall otherwise have all the rights, powers, privileges, duties and obligations of a chief election agent, other than the power to appoint election agents.

(5) If a political party revokes the appointment of any roving political party election agent or the roving political party election agent dies, the political party may, through any two of its designated office bearers at national or provincial level, appoint another roving political party election agent and shall forthwith notify in writing the full names and address of such chief election agent to the provincial elections officer.

Provided that a political party may not appoint a roving political party election agent in terms of this subsection unless any two of its designated office-bearers at national or provincial level, notifies the appropriate provincial elections officer not later than five days before the polling day or earliest polling day, as the case may be, of such appointment.

**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.

(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) *[Repealed]*

(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.

(4) Any two of the designated national or provincial office-bearers of a political party referred to in section 38A(1)(a) or (b) may, on behalf of its candidates contesting in any constituency or ward within a province, perform, on behalf of those candidates, the duties imposed by this section on individual candidates by submitting (on or after nomination day but not later than twelve days before polling day or the first polling day, as the case may be, in the election concerned) lists of chief elections agents and the candidates they represent to the provincial elections officer, who thereupon must distribute (no later than seven days before polling day or the first polling day, as the case may be, in the election concerned) the lists to every constituency elections officer in or within whose jurisdiction the candidates concerned are to stand.

(5) Subsections (2) and (3) shall apply to the designated office-bearers of a political party referred to in subsection (4) as if they were candidates.

**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) ... *{Repealed}*.

(1a) Subject to subsection (5) (which provides for limiting the number of election agents in or about a polling station where more than one election is being held concurrently), of the election agents appointed in terms of subsection (1) by a candidate's chief election agent—

- (a) one shall be entitled to be present in each polling station in the constituency in which the candidate is standing for election; and
- (b) two shall be entitled to be present in the immediate vicinity of each such polling station;

for the purposes of observing whether or not the electoral processes at the polling station concerned are conducted in accordance with this Act, and either one of the two election agents in the immediate vicinity of the polling station may relieve the election agent entitled to be present in the polling station.

(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 an electoral malpractice shall be an electoral malpractice in terms of Part XVIII, XIX or XX, as the case may be, 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 section 148(3), 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) ... {Repealed}

(5) Where more than one election is to be held concurrently in any constituency, the Commission may by notice in the *Gazette* published no later than four days after nomination day, prescribe that, in relation to candidates nominated by political parties, only **three** election agents representing each political party may be present within or in the immediate vicinity of each polling station, of whom—

- (a) one shall be entitled to be present in the polling station concerned; and
- (b) the other two (either of whom may relieve the election agent entitled to be present in the polling station) shall be entitled to be present in the immediate vicinity of the polling station concerned;

and for that purpose any references to the chief election agent of the candidate making the appointments and notifications of elections agents referred to in subsection (1) shall be substituted by references to the political party of the candidates competing in the concurrent elections concerned.

(6) Where the Commission prescribes the notice referred to in subsection (5), the provisions for the appointment of roving political party election agents in terms of section 93A shall apply (with such changes as are necessary) to the appointment of the election agents for the purposes of subsection (5).

(7) Subsection (5) does not apply to the election agents of a candidate for election as President, that is to say, subsection (1a) continues to apply to such election agents even where the Commission prescribes the notice referred to in subsection (5).

## **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 electoral malpractice 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 ...**

*{Repealed}*

**103 ...**

*{Repealed}*

**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 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 Nomination fee**

At the same time as the 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 nomination fee as may be prescribed, which shall 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 section 38(1)(a), 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.

### **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 section 91 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 President shall, subject to section 158 of the Constitution, by further proclamation in the *Gazette* published in terms of section 38(4), announce the sitting of a new nomination court, and thereafter the provisions of this Part shall apply accordingly.

### **109 Procedure after nomination day in election to office of President**

(1) Where only one candidate for President is validly nominated at the close of sitting of the nomination court, the nomination officer shall report that fact to the Chief Elections Officer, and the chairperson of the Commission shall thereupon declare the candidate to be duly elected as President without the necessity of a poll.<sup>15</sup>

(2) Where two or more candidates for President are validly nominated, a poll shall be taken in each constituency in accordance with sections 110.

(3) If the chairperson of the Commission is for any reason unable to declare a person to be duly elected in terms of this section, the declaration shall be made by the deputy chairperson or, if he or she is for any reason unavailable, by any other Commissioner designated for the purpose by the chairperson of the Commission.

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<sup>15</sup> *Note by Veritas:* This is inconsistent with section 110(1).

(4) Subject to subsection (5), a person declared elected as President in terms of subsection (1) shall assume office in accordance with section 94 of the Constitution.

(5) A declaration in terms of subsection (1) shall be final unless, by virtue of a petition to the Constitutional Court in terms of section 111, an additional candidate is to be regarded as having been duly nominated for election to the office of President, in which event the Chief Elections Officer shall publish notice of that fact in the *Gazette* and a poll shall be taken in each constituency in accordance with sections 110.

### **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 section 38(1)(a), the Chief Elections Officer shall declare such candidate to be duly elected as President without the necessity of a poll.<sup>16</sup>

(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) Subject to this Part, Part XIII shall apply, with any changes that may be necessary, to an election to the office of President (any references to a constituency centre or a constituency elections officer being construed as references to a presidential constituency centre or a presidential constituency elections officer respectively), other than sections 66, 67 and 68, for which the following provisions are substituted—

- (a) after the number of votes received by each candidate as shown in each polling-station return has been added together in terms of section 65(3)(i) and the resulting figure added to the number of postal votes received by each candidate, the constituency elections officer shall forthwith—
  - (i) 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
  - (ii) 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
  - (iii) 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;
- (b) immediately after arranging for the constituency return to be transmitted in terms of paragraph (a)(iii), 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;
- (c) immediately after receiving all the constituency returns transmitted in terms of paragraph (a)(iii), the Chief Elections Officer shall verify them, having given reasonable notice to each candidate or to his or her chief election agent of the time and place at which the returns are to be verified;
- (d) at the time and place notified for the verification of the constituency returns referred to in paragraph (c) and in the presence of such candidates, their chief election agents 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;
- (e) when the Chief Elections Officer has completed the verification of the constituency returns under paragraph (d) the Chief Elections Officer shall, in the presence of such persons referred to in paragraph (d) as are present, add together the number of votes received by each candidate as shown in each constituency return;
- (f) subject to paragraph (h), after the number of votes received by each candidate as shown in each constituency return has been added together in terms of paragraph (e), the Chairperson of the Commission (or, in his or her absence, the Deputy Chairperson or, in his or her absence, a Commissioner designated by the Chairperson) shall—

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<sup>16</sup> *Note by Veritas:* This is inconsistent with section 109(1). Section 109(1) must prevail, as the later provision [2014, as opposed to 2012].

- (i) where there are two candidates, forthwith declare the candidate who has received the greater number of votes to be duly elected as President of the Republic of Zimbabwe with effect from the day of such declaration; or
- (ii) where there are more than two candidates, forthwith declare the candidate who has received more than half the number of votes to be duly elected as President of the Republic of Zimbabwe with effect from the day of such declaration; or
- (iii) where there are more than two candidates, and no candidate has received more than half the number of votes, forthwith declare that a runoff presidential election shall be held on the date fixed by the President in terms of section 38(1)(a)(iii) (that is to say, a fixed date not less than twenty-eight and not more than forty-two days after the polling day or last polling day, the case may be, of the original election):

Provided that the Electoral Court, on the application of the Commission, may for good cause extend the period;

- (g) subject to this section, if a runoff presidential election is required to be held—

- (i) 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; and
- (ii) the election shall be held in accordance with this Act or, in case any situation arises that may be peculiar to such election, in the manner prescribed;
- (iii) after the number of votes received by each candidate at a presidential runoff election as shown in each constituency return has been added together in terms of paragraph (e), the Chairperson of the Commission (or, in his or her absence, the Deputy Chairperson or, in his or her absence, a Commissioner designated by the Chairperson) shall forthwith declare the candidate who has received the greater number of votes to be duly elected as President of the Republic of Zimbabwe with effect from the day of such declaration:

Provided that if the two candidates 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;

- (h) a declaration by the Chairperson of the Commission (or, in his or her absence, the Deputy Chairperson or, in his or her absence, a Commissioner designated by the Chairperson) under paragraph (f) or (g)(iii) shall be made not later than—
- (i) five days after the polling day or last polling day, as the case may be, in the presidential election or runoff presidential election concerned; or
  - (ii) where a recount has been ordered in terms of section 67A, five days after the completion of the recount:

Provided that the Electoral Court may, on application by the Commission, for good cause extend the period;

- (i) a declaration by the Chairperson of the Commission (or, in his or her absence, the Deputy Chairperson or, in his or her absence, a Commissioner designated by the Chairperson) under paragraph (h) 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;
- (j) the Chairperson of the Commission (or, in his or her absence, the Deputy Chairperson or, in his or her absence, a Commissioner designated by the Chairperson) shall as soon as possible after he or she has declared the result of an election to the office of President in terms of paragraph (i), publish such result by notice in the *Gazette* and in such other manner as he or she considers necessary to give sufficient publicity to the result, which notice shall also, in the event that the candidate in question has obtained more than half of the votes at the election, give 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.

(4) Subject to this Part, Parts XIV and XV, shall apply, with any changes that may be necessary, to an election to the office of President, any references to a constituency centre or a constituency elections



officer being construed as references to a presidential constituency centre or a presidential constituency elections officer respectively.

(5) In accordance with section 94 of the Constitution, a person elected as President assumes office when he or she takes, before the Chief Justice or the next most senior judge available, the oath of President in the form set out in the Third Schedule to the Constitution.

### **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 Constitutional Court within seven 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 Constitutional 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 Constitutional 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 Constitutional Court

(3) A declaration by the Constitutional 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** ... [Repealed]

**112A** ...[Repealed]

## **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<sup>17</sup> 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 ward voters rolls*

## 115 Qualifications of voters in local authority elections

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

- (a) is qualified in terms of the Fourth Schedule to the Constitution for registration as a voter; and
- (b) is resident within a ward;

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

(2) Subject to section 23, a person shall be regarded as resident in a ward if—

- (a) in relation to any Communal Land within the ward, 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<sup>18</sup> 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 ward in which he or she is not resident, the claimant may be registered as a voter in that ward:

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

## 116 First ward voters rolls<sup>19</sup>

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

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

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

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

(3) The expenses incurred in compiling the first ward voters rolls shall be paid 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.

<sup>17</sup> Not formally amended by Act 3/2016, but "Registrar-General of Voters" should be read as "Commission".

<sup>18</sup> Not formally amended by Act 3/2016, but "Registrar-General of Voters" should be read as "Commission".

<sup>19</sup> Not formally amended by Act 3/2016, but "Registrar-General of Voters" should be read as "Commission".

**117 Preparation of subsequent ward voters rolls<sup>20</sup>**

(1) Subject to this section—

- (a) in each year in which elections for councillors are to be held, the Registrar-General of Voters shall prepare ward voters rolls containing the names of persons entitled to be enrolled thereon on the date fixed in terms of section 26A 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 one or more ward voters rolls containing the names of persons entitled to be enrolled thereon in terms of section 115.

(2) Instead of preparing a ward 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 ward 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 ward voters roll for the area concerned but who are no longer qualified to be enrolled thereon;

or

- (b) ensure that the existing ward 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 ward 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) Section 116(2) and (3) 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** *[Repealed]**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 ...**

*[Repealed]*

*When elections to be held*

**121 Casual or special vacancies in councils to be notified to responsible Minister and Commission**

(1) A casual or special vacancy on a council shall be notified in writing by the town clerk or chief executive officer of the council concerned to the Minister responsible for the Rural District Councils Act [Chapter 29:13] or the Urban Councils Act [Chapter 29:15], as the case may be, and the Commission, no later than twenty-one days after the town clerk or chief executive officer becomes aware of it.

(2) Upon being notified of a vacancy in terms of subsection (1) the Commission shall publish a notice in accordance with section 121A(2).

**121A Notice of election and nomination day to fill casual vacancies in councils**

(1) A by-election to fill—

- (a) a casual or special vacancy in 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, 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 day or first day fixed in a proclamation in terms of section 38 as the polling day or first polling day, as the case may be, in a general election.

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

- (a) 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 fourteen 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 46 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 thirty 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.

(3) The day on which the voters roll for the ward concerned is to be regarded as closed for the purposes of an election to which this section applies shall be the day on which the vacancy occurred in the council concerned.

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

## **122 ...**

*[Repealed]*

## **123 ...**

*[Repealed]*

### *Conduct of elections*

## **124 ...**

*[Repealed]*

## **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 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 proclamation referred to in section 38(1)(c)(i) or section 121A(2), as the case may be, but before the closing of the nomination court on nomination day or the last nomination day, as the case may be, in the election concerned.

(3) ... *[Repealed]*

(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 fixed polling station and the hours during which it will be open;
- (c) the same person has been duly nominated for—
  - (i) more than one vacancy in the office of councillor; or
  - (ii) the office of mayor and one or more vacancies in the office of councillor;
 his or her nomination for all the vacancies for which he or she has been duly nominated shall be void.
- (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 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 Runoff election where votes tied**

(1) 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 forthwith declare that a runoff by-election shall be held on the same day as the Presidential runoff would have had to have been held if it became necessary to hold it (that is to say, the date fixed by the President in terms of section 38(1)(a)(iii), being a fixed date not less than twenty-one and not more than sixty-three days after the polling day or last polling day, as the case may be, of the original election):

Provided that the Electoral Court, on the application of the Commission, may for good cause extend the period;

(2) Subject to this section, if a runoff by-election is required to be held-

- (a) only the two candidates who received the highest numbers of valid votes cast at the previous election and whose votes are tied shall be eligible to contest the runoff by-election; and
- (b) the runoff by-election shall be held in accordance with this Act or, in case any situation arises that may be peculiar to such election, in the manner prescribed;
- (c) after the number of votes received by each candidate at the runoff by-election as shown in the constituency return has been added together, the Chief Elections Officer shall forthwith declare the candidate who has received the greater number of votes to be duly elected as member of the National Assembly for the constituency concerned with effect from the day of such declaration:

Provided that if the two candidates 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 member of the National Assembly for the constituency concerned by secret ballot and without prior debate.

(3) A declaration by the Chief Elections Officer under subsection (1) or (2)(c) shall be made not later than-

- (a) five days after the polling day or last polling day, as the case may be, in the presidential election or runoff presidential election concerned; or



- (b) where a recount has been ordered in terms of section 67A, five days after the completion of the recount:

Provided that the Electoral Court may, on application by the Commission, for good cause extend either period.

(4) A declaration by the Chief Elections Officer under subsection (2)(c) 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.

(5) The Chief Elections Officer shall as soon as possible after he or she has declared the result of a runoff by-election, publish such result by notice in the *Gazette* and in such other manner as he or she considers necessary to give sufficient publicity to the result, which notice shall also, in the event that the candidate in question has obtained more than half of the votes at the election, give the full name of the person duly elected member of the National Assembly for the constituency concerned and the day with effect from which he or she was so elected.

**130** [Repealed]

**131** [Repealed]

### *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 centre or a constituency elections officer were references to a ward centre or a ward elections officer respectively.

## **PART XVIII**

### **INTIMIDATORY PRACTICES**

## **133A Meaning of “intimidation”**

For the purposes of this Part, a person shall be regarded as having done or attempted to do something through intimidation if he or she achieves or attempts to achieve an object through any of the following methods—

- (a) inflicting or threatening to inflict bodily injury upon a person; or
- (b) abducting a person or detaining a person against his or her will; or
- (c) causing or threatening to cause unlawful damage to a person's property; or
- (d) withholding or threatening to withhold from a person any assistance or benefit to which that person is legally entitled; or
- (e) illegally doing or threatening to do anything to the disadvantage of a person.

**133B Intimidation**

A person who, through intimidation—

- (a) compels or attempts to compel a person to sign or refrain from signing a nomination paper; or
  - (b) prevents or attempts to prevent a candidate from lodging a nomination paper with a constituency elections officer; or
  - (c) compels or attempts to compel a person or persons generally—
    - (i) to vote for a political party or candidate; or
    - (ii) not to vote;
- or
- (d) compels or attempts to compel a person or persons generally to attend or participate in any political meeting, march, demonstration or other political event;

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

**133C Preventing political party or candidate from campaigning**

A person who, through intimidation prevents or obstructs or attempts to prevent or obstruct a political party or candidate from campaigning in any election shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

**133D Theft or destruction of voter identification**

A person who, in order to prevent or discourage another person from voting in an election, takes, destroys or damages any proof of identity, 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.

**133E Additional punishment for intimidation**

(1) Where the High Court convicts a person of an offence under this Part, the court may, in addition to any other punishment, declare the person 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 the person holds a public office that is covered by a declaration under paragraph (b), the High Court may declare the office to be vacant as from the date of the conviction.

(2) Notwithstanding any other law, where the High Court has declared a public office to be vacant in terms of subsection (1), that office shall be vacant from the effective date of the declaration.

**PART XVIIIIB****MEASURES AGAINST POLITICALLY-MOTIVATED VIOLENCE AND INTIMIDATION****133F Interpretation in Part XVIIIIB**

In this Part—

“intimidation” has the meaning assigned to it in section 133A;

“Special Investigation Committee” means a Special Investigation Committee established in terms of section 133H;

“special police liaison officer” means a senior police officer appointed in terms of section 133H(1).

### **133G Responsibilities of political parties and candidates**

Every office-bearer of a political party that is contesting an election, and every candidate and election agent—

- (a) shall take all appropriate measures to prevent politically-motivated violence and any electoral malpractices before, during and after the election period; and
- (b) shall in the case of an office-bearer of a political party, take effective steps to discipline all members of the party who engage in politically-motivated violence or who commit any electoral malpractice before, during or after the election period; and
- (c) whenever called upon to do so by the Commission, shall publicly undertake to abide by the code of conduct for political parties and candidates set out in the Fourth Schedule.

### **133H Appointment and functions of special police liaison officer and Special Investigation Committee**

(1) For the purpose of every general election and by-election, the Commission-General of Police shall, in consultation with the Zimbabwe Human Rights Commission, appoint a senior police officer for each provincial centre who shall be the special police liaison officer responsible for the expeditious investigation of cases of politically-motivated violence or intimidation within that province which come to the attention of the police, a multiparty liaison committee, the Commission or the Zimbabwe Human Rights Commission during the election period.

(2) To assist each special police liaison officer, the Zimbabwe Human Rights Commission shall, in consultation with the Commission, establish a Special Investigation Committee for each provincial centre, to be chaired by a Zimbabwe Human Rights Commissioner or a member of the staff of the Zimbabwe Human Rights Commission chosen by the Zimbabwe Human Rights Commission, and consisting of—

- (a) the special police liaison officer for the province in question; and
- (b) 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.

(3) Section 11 (“Provisions to ensure independence, impartiality and professionalism of Commissioners and staff and agents of Commission”) shall apply, with any necessary changes, to the members of a Special Investigation Committee appointed under subsection (3).

(4) Where a Special Investigation Committee becomes aware, whether through the police, a multiparty liaison committee, the Commission or the Zimbabwe Human Rights Commission or otherwise, of any case of politically-motivated violence or intimidation within the province for which it was appointed, it shall direct the special police liaison officer to conduct the required investigations, and may for that purpose, if the members so resolve, accompany the special police liaison officer during his or her investigations.

(5) Where members of the Committee have resolved to accompany the special police liaison officer for the purposes of an investigation under this section, they shall have the powers of peace officers under the Criminal Procedure and Evidence Act [Chapter 9:07].

### **133I Powers of Committees after investigation of alleged violence or intimidation**

If, after any investigation in terms of section 133H, the Committee considers that an incident of politically-motivated violence or intimidation did take place, the **Committee** may take any of the following steps—

- (a) where the violence or intimidation was perpetrated by a candidate or his or her election agent, warn the candidate that he or she may be prosecuted and prohibited from campaigning in the election; or
- (b) where the violence or intimidation was perpetrated by a supporter of a political party or of a candidate, remind the leader or deputy leader of the political party, or the candidate, that he or she has an obligation to take effective steps to prevent his or her supporters from engaging in politically-motivated violence, and warn him or her that he or she may be prosecuted and, in the case of a candidate, prohibited from campaigning in the election; or

- (c) if any warning referred to in the foregoing paragraphs has gone unheeded, or if the Committee believes that the incident in question is of a very extensive or serious nature, the Committee shall, as soon as possible, submit a written report of the incident identifying (to the extent it is able to do so) the perpetrators of the violence or intimidation, together with a summary of any evidence it has gathered in support of its findings, to any prosecutor appointed in terms of section 133J(4) in the province for which the Committee is responsible.

### **133J Investigations, prosecutions and trials of cases of politically-motivated violence and intimidation**

(1) Immediately after an election is called, the Commissioner-General of Police, in consultation with the Zimbabwe Human Rights Commission, shall establish one or more special police units to investigate cases of politically-motivated violence and intimidation arising from the election.

(2) The police officers constituting the special police units established in terms of subsection (1) shall investigate as expeditiously as possible all cases of politically-motivated violence and intimidation that are referred to them by the police, a multiparty liaison committee, the Commission or the Zimbabwe Human Rights Commission or are otherwise brought to their attention.

(3) Immediately after an election is called, the Judicial Service Commission shall designate one or more magistrates in each province in which the election is to be held, to try cases involving politically-motivated violence and intimidation, and the magistrates so designated shall give priority to all such cases and ensure that they are brought to trial and completed as expeditiously as possible.

(4) The Prosecutor-General<sup>21</sup> shall ensure that during every election period sufficient competent prosecutors are provided to ensure that all cases of politically-motivated violence and intimidation arising within the area in which the election is being held are processed quickly and brought to court as soon as possible before the magistrates designated in terms of subsection (3).

### **133K Special penalty for politically-motivated violence or intimidation**

(1) A court which convicts a person of an offence involving politically-motivated violence or intimidation committed during an election period may, in addition to any other penalty it imposes on the convicted person, prohibit him or her from campaigning or taking any further part in the election.

(2) Where a person has been prohibited in terms of subsection (1) from campaigning or taking any further part in an election, that person shall not, during the election period—

- (a) attend or address any meeting of a political nature at which more than three other persons are present; or
- (b) encourage, urge or persuade any other person to cast his or her vote in the election for a particular political party or candidate;

but the person may vote in the election and, if he or she has been duly nominated as a candidate in the election, his or her name may appear on the ballot-papers in the election.

(3) Any person who contravenes subsection (2) 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.

(4) Where a magistrates court convicts a person of an offence involving politically-motivated violence or intimidation committed during an election period, the court may adjourn the case in terms of section 54(2) of the Magistrates Court Act [Chapter 7:10] and, if the case is thereafter transferred to the High Court for sentence in terms of section 224 of the Criminal Procedure and Evidence Act [Chapter 9:07], the High Court may, in addition to any other penalty it imposes on the convicted person, declare him or her to be incapable, for a period not exceeding five years from the date of the 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 the convicted person holds any such public office, the High Court may declare that the office shall be vacated by him or her as from the date of the conviction.

<sup>21</sup> “Prosecutor-General” substituted for “Attorney-General” by section 33 of Act 5/2014 with effect from 2nd January 2015.

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 ...**

*[Repealed]*

**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 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 ...**

*[Repealed]*

**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 three 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 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 electoral malpractice 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 electoral malpractice, 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 an electoral malpractice with reference to that election, and the candidate has proved to the satisfaction of the Electoral Court that—

- (a) no electoral malpractice 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 electoral malpractices, 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 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 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 electoral malpractice, 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 electoral malpractice**

Any person charged with—

- (a) a corrupt practice may, if the circumstances warrant such a finding, be found guilty of an intimidatory practice or an illegal practice;
- (b) an intimidatory practice may, if the circumstances warrant such a finding, be found guilty of an corrupt practice or an illegal practice;
- (c) an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice or an intimidatory 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 election agent for their personal consumption, the payment whereof is under this Act part of the personal expenses allowed to the candidate.

## **PART XXIA**

### **CONFLICT MANAGEMENT**

### **160A Interpretation in Part XXIA**

In this Part—

“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, a constituency multiparty liaison committee or a local authority multiparty liaison committee.

### **160B Constitution of multiparty liaison committees**

(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 for the purpose of electing members of the National Assembly;

- (b) a constituency multiparty liaison committee for each constituency in which the election is contested, in the case of a Presidential election, general election for the purpose of electing members of the National Assembly or by-election to fill a casual vacancy in the National Assembly;
  - (c) a local authority multiparty liaison committee for each local authority area in which the election is contested, in the case of a general election of councillors or local authority by-election or by-election to fill a casual or special vacancy in any council.
- (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:

Provided that an independent candidate contesting an election at a particular constituency shall be entitled to select two representatives to represent him or her on the committee for that constituency; and
    - (ii) any person invited by the representatives of every political party represented in the liaison committee;
  - (c) a local authority 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:

Provided that an independent candidate contesting an election at a particular ward shall be entitled to a representative to represent him or her on the committee for that ward;
    - (ii) any person invited by the representatives of every political party represented in the liaison committee.

### **160C Functions of multiparty liaison committee**

- (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; and
  - (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; and
  - (e) to present to the Commission any reports, assessments, records or recommendations relating to the electoral process; and

(f) generally, to assist in implementing the Code.

(2) The Commission or an independent mediator referred to in subsection (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.

### **160D Decisions of multiparty liaison committees**

The decisions of the multiparty liaison committee shall be made by consensus.

## **PART XXIB**

### **MEDIA COVERAGE OF ELECTIONS**

#### **160E Interpretation in Part IVA**

In this Part—

“broadcaster” means a person who operates a broadcasting service for the transmission of television or radio programmes to the public or any substantial section of the public, whether the transmission is effected by wireless or other means;

“print publisher” means a person who publishes a newspaper, magazine or other printed document at regular intervals for sale or distribution to the public generally;

“public broadcaster” means a broadcaster that is owned or controlled by the State.

#### **160F Application of Part IVA in relation to other media laws**

In the event of inconsistency between this Part and the Broadcasting Services [Chapter 12:06] (No. 3 of 2001), the Access to Information and Protection of Privacy [Chapter 10:27] (No. 5 of 2002) or any other enactment, this Part shall prevail over that enactment to the extent of the inconsistency.

#### **160G Access to public broadcasting media**

(1) Public broadcasters shall afford all political parties and independent candidates contesting an election such free access to their broadcasting services as may be prescribed.

(2) Regulations made for the purposes of subsection (1) shall provide for—

- (a) the total time to be allocated to each political party and candidate and the duration of each broadcast that may be made by or on behalf of a party or candidate; and
- (b) the times at which broadcasts made by political parties and candidates are to be transmitted; and
- (c) the areas to which broadcasts made by political parties and candidates are to be transmitted;

and the regulations shall ensure—

- (d) a fair and balanced allocation of time between each political party and independent candidate; and
- (e) that each political party and independent candidate is allowed a reasonable opportunity to present a case through the broadcasting service concerned.

#### **160H Political advertising in broadcasting and print media**

(1) A broadcaster or print publisher shall not be obliged, subject to section 160G, to publish any advertisement by or on behalf of a political party or candidate contesting an election, but if the broadcaster or publisher is prepared to publish any such advertisement—

- (a) it shall offer the same terms and conditions of publication, without discrimination, to all the political parties and candidates contesting the election; and
- (b) the price it charges for publication shall be at the lowest rate it offers to publishers of commercial advertisements; and
- (c) every such publication shall be identified clearly as an advertisement.

(2) Subsection (1) shall not be construed as obliging a broadcaster or print publisher to publish an advertisement which would render the broadcaster or publisher liable to any criminal or delictual penalty.

### **160I Publication of electoral information in public interest**

(1) If required to do so by the Commission, broadcasters and print publishers shall publish statements issued by the Commission for the purpose of informing voters about aspects of the electoral process.

(2) The Commission shall pay for the publication of any statement referred to in subsection (1) such reasonable amount as may be agreed between it and the broadcaster or print publisher concerned.

### **160J Conduct of news media during election period**

During an election period broadcasters and print publishers shall ensure that—

- (a) all political parties and candidates are treated equitably in their news media, in regard to the extent, timing and prominence of the coverage accorded to them;
- (b) reports on the election in their news media are factually accurate, complete and fair;
- (c) a clear distinction is made in their news media between factual reporting on the election and editorial comment on it;
- (d) inaccuracies in reports on the election in their news media are rectified without delay and with due prominence;
- (e) political parties and candidates are afforded a reasonable right of reply to any allegations made in their news media that are claimed by the political parties or candidates concerned to be false;
- (f) their news media do not promote political parties or candidates that encourage violence or hatred against any class of persons in Zimbabwe;
- (g) their news media avoid language that—
  - (i) encourages racial, ethnic or religious prejudice or hatred; or
  - (ii) encourages or incites violence; or
  - (iii) is likely to lead to undue public contempt towards any political party, candidate or class of person in Zimbabwe.

### **160K Monitoring of Media by Commission**

(1) The Commission, with the assistance, at its request, of the Zimbabwe Media Commission established by section 248 of the Constitution, and the Broadcasting Authority of Zimbabwe established by section 3 of the Broadcasting Services Act [Chapter 12:06] (No. 3 of 2001), shall monitor the Zimbabwean news media during any election period to ensure that political parties, candidates, broadcasters, print publishers and journalists observe the provisions of this Part.

(2) In its post-election report the Commission shall include a report on the coverage of the election by the news media, for which purpose the Zimbabwe Media Commission and the Broadcasting Authority of Zimbabwe will furnish the Commission with such information and reports as the Commission may request.

(3) This section shall not be construed as preventing anyone other than the Zimbabwe Media Commission from monitoring news media and reporting on their conduct during an election period.

## **PART XXII**

### **ESTABLISHMENT, COMPOSITION AND RULES OF ELECTORAL COURT**

### **161 Establishment and jurisdiction of Electoral Court**

(1) There is hereby established a court, to be known as the Electoral Court, which shall be a court of record.

(2) The Electoral Court shall have exclusive jurisdiction—

- (a) to hear appeals, applications and petitions in terms of this Act; and
- (b) to review any decision of the Commission or any other person made or purporting to have been made under this Act;

and shall have power to give such judgments, orders and directions in those matters as might be given by the High Court:

Provided that the Electoral Court shall have no jurisdiction to try any criminal case.

(3) Judgments, orders and directions of the Electoral Court shall be enforceable in the same way as judgments, orders and directions of the High Court.

### **162 Judges of Electoral Court and composition thereof**

(1) The Chief Justice shall, after consultation with the Judicial Service Commission and the Judge President of the High Court, appoint at least two judges of the High Court to be Judges, of the Electoral Court for such a period as he or she may specify in such appointment.

(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 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 President, a member of Parliament or councillor whose election or qualification for holding the office 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, electoral malpractice, 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 end of the period to which the election to which it relates:

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) may 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 treated or subjected to undue influence by the respondent or anyone on behalf of the respondent; or
- (b) was guilty of personation or of an illegal practice or was not qualified or was disqualified as a voter at the election;

the vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election.

(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 to the President of the Senate or the Speaker, as the case may be, 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 President of the Senate or the Speaker, as the case may be, and the President of the Senate or the Speaker shall thereupon 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 an electoral malpractice 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 President of the Senate or the Speaker, as the case may be—

- (a) whether any electoral malpractice 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 electoral malpractice; 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 electoral malpractices have, or whether there is reason to believe electoral malpractices 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 President of the Senate or the Speaker, as the case may be as to any matter arising in the course of the trial, including the commission or possible commission of any electoral malpractice, 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 President of the Senate or the Speaker, as the case may be 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 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 an electoral malpractice or that there is reason to believe that electoral malpractices, 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 Prosecutor-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 electoral malpractice 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 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 an electoral malpractice 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<sup>22</sup>, the Chief Elections Officer, a constituency registrar<sup>23</sup>, 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 voter registration officer under section *twenty-four* or *twenty-five* or the decision of the Commission or voter registration officer 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 (2), the Commission shall, if it considers the complaint to be justified, order the Commission or voter registration officer, as the case may be, to take the appropriate remedial action after affording the Commission or voter registration officer 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.

<sup>22</sup> Not formally amended by Act 3/2016, but “Registrar-General of Voters” should be read as “Commission”.

<sup>23</sup> Not formally amended by Act 3/2016, but “constituency registrar” should be read as “voter registration officer”.

## 191 Provision of copies of electoral legislation

- (1) The Commission shall ensure that—
  - (a) every political party contesting an election and every observer is provided, for the prescribed fee, if any, with an electronic copy of this Act and all regulations and rules made under this Act; and
  - (b) this Act and all regulations and rules made under this Act are available at all times, whether in printed or electronic form, to members of the public for the prescribed fee.
- (2) The fees prescribed for the purposes of subsection (1) shall not exceed the minimal cost of providing printed or electronic copies of this Act and all regulations and rules made under this Act.

## 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;
  - (a1) the terms and conditions of service of the employees of the Commission, including the Chief Elections Officer;
  - (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;
  - (g1) facilities enabling electoral officials and other persons who, on polling day in any election are or will be assisting with the conduct of the election, to cast their votes, whether through the medium of postal voting or otherwise;
  - (g2) the membership and functions of multi-party liaison committees as defined in Part XXIA;
  - (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,  
AND OBSERVERS**

1. A chief election agent, election agent or observer shall obey every lawful instruction of an electoral officer.
2. A chief election agent, election agent or observer shall not hinder or obstruct an electoral officer in the lawful conduct of his or her functions.
3. No 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 observing the poll.
4. An 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 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 or observer shall not do anything which compromises the secrecy of the ballot.
9. If a chief election agent or election agent considers that there has been any irregularity in the conduct of the poll or the counting of the votes, the chief election agent or election agent 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 the presiding officer or constituency elections officer at the polling station, constituency centre or ward or council centre concerned. .
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 or observer shall, generally, conduct himself or herself in a manner conducive to the peaceful, dignified and orderly conduct of the poll.



**SECOND SCHEDULE**

*[Repealed]*

**THIRD SCHEDULE**

*[Repealed]*

**FOURTH SCHEDULE (SECTION 160A)**

**ELECTORAL CODE OF CONDUCT FOR POLITICAL PARTIES AND CANDIDATES**

*Purpose of Code*

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.

*General principles*

2.(1) All political parties and their members and supporters, and all candidates and their supporters, must promote conditions conducive to free, fair and democratic elections conducted through a secret ballot in a climate of democratic tolerance in which political activity may take place without fear of intimidation or reprisals.

(2) All political parties and their members and supporters, and all candidates and their supporters, must accept that others have the right to present their political principles and ideas in a peaceful environment without intimidation or fear of reprisal, and must respect that right.

*Application*

3. This Code will apply to political parties, candidates for election, election agents for candidates and members and supporters of political parties and candidates.

*Public commitment*

4. Every political party and every candidate must—

- (a) give wide publicity to this Code and ensure that their members and supporters are familiar with this Code and their obligation to comply with its terms; and
- (b) publicly state that everyone has the right—
  - (i) to freely express their political beliefs and opinions;
  - (ii) to freely challenge and debate the political beliefs and opinions of others;
  - (iii) to freely canvass freely for membership and support from voters;
  - (iv) to freely attend public meetings convened by others;
  - (v) to freely distribute campaign material;
- (c) publicly condemn any action that may undermine the free and fair conduct of elections and in particular to condemn unreservedly and publicly any violence or intimidation and co-operate with the law enforcement agencies in apprehending the culprits;
- (d) disseminate accurate information on electoral processes;
- (e) accept the result of an election or challenge the result by due process of law.

*Prohibited conduct: politically-motivated violence or intimidation*

5. No political party or any of its members or supporters, and no candidate or any of his or her supporters, may—

- (a) use violence, or threaten violence or incite or encourage the use of violence, against anyone on account of his or her political opinions or membership or support of a political party or participation in the election;
- (b) intimidate, or incite or encourage the intimidation, of anyone on account of his or her political opinions or membership or support of a political party; act in a way that may provoke violence or intimidation;

- (c) use violence or threats or illegal pressure to force voter to refrain from voting or to vote for a candidate or political party against his or her will;
- (d) force a voter to reveal the identity of the candidate voted for or take reprisals against a person because of the way in which he or she has voted or is believed to have voted.

*Prohibited conduct: other prohibited acts*

6. No political party or any of its members or supporters, and no candidate or any of his or her supporters, may—

- (a) publish false or defamatory allegations about a party, its candidate(s), representatives or members;
- (b) discriminate on the grounds of race, ethnicity, sex, gender, class or religion in connection with an election or political party;
- (c) damage or deface property, including the election posters, placards, banners and other election material of another party or candidate, and any posters or other voter education materials disseminated by the Zimbabwe Electoral Commission;
- (d) bar or inhibit access to meetings or to voters for the purpose of election campaigning;
- (e) carry or display weapons at political meetings or at marches, demonstrations, rallies or other public political events;
- (f) bribe a voter to exercise his or vote in a particular manner;
- (g) bribe or intimidate an election official to induce him or her to make a false entry in the voters roll or to alter or falsify election results;
- (h) encourage a person to vote knowing that they are not entitled to do so;
- (i) use the information on the voters roll supplied by the Commission for commercial purposes or to harass or intimidate voters nor may they publish personal information about voters contained in the electoral roll.

*Compliance*

7.(1) 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 and general 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 and general laws.

(2) Every political party must restrain its office-bearers, members and supporters, and all candidates must restrain their representatives and supporters, from contravening this Code and any applicable electoral or general law, and must take or initiate appropriate disciplinary action against those who contravene this Code or that law.

*Duty to co-operate*

8. Every political party and every candidate must co-operate—

- (a) with other parties to avoid 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.

*Conduct during polling period*

9.(1) No political party or candidate may, from midnight twenty-four hours before polling day in any election or referendum until polling stations are closed on that day—

- (a) convene or hold a public gathering of any kind;

- (b) publish, or cause or permit the publication, of any advertisement or statement promoting or opposing a particular party or candidate;
- (c) disrupt the work of election officials at a polling station or counting centre;
- (d) campaign or display campaign material within 200 metres of a polling station or counting centre.

(2) On polling day in any election or referendum, all political parties and their members and supporters, and all candidates and their supporters, must—

- (a) co-operate with election officials to ensure that polling is peaceful and orderly and that voters are completely free to exercise their vote without being subjected to intimidation, annoyance or disturbance; and
- (b) generally, conduct themselves so as to respect the secrecy and integrity of the ballot.

*Announcement of result of election*

10. No candidate, and no office-bearer or member of a political party, may purport to declare or announce the results of an election before it has been declared officially by an electoral officer.

*Respect for media and journalists*

11. Every political party and candidate—

- (a) must respect the role of the news media before, during and after an election or referendum; and
- (b) may not prevent access by members of the news media to public political meetings, marches, demonstrations and rallies; and
- (c) must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, threat or physical assault by any of their representatives or supporters.

**FIFTH SCHEDULE (Section 112A(2))**

*[Repealed]*

[Note by Veritas: Both the Fifth Schedule and the relevant provision of the Act, section 112A, were rendered redundant by the new Constitution.]

**SIXTH SCHEDULE (SECTIONS 4A(2), 6(1), 7 AND 12(4))**

**PROVISIONS APPLICABLE TO ZIMBABWE ELECTORAL COMMISSION**

**ARRANGEMENT OF PARAGRAPHS**

**PART I**

**ANCILLARY POWERS OF COMMISSION**

*Paragraph*

1. Ancillary powers.

**PART II**

**TERMS AND CONDITIONS OF OFFICE OF COMMISSIONERS**

2. *[Repealed]*
3. Vacation of office by Commissioners.
4. Terms and conditions of office of Commissioners.
5. Filling of vacancies on Commission.
6. Deputy Chairperson of Commission.
7. Remuneration and expenses of Commissioners.

PART III

PROCEDURE OF COMMISSION

8. Meetings and procedure of Commission.
9. Committees of Commission.
10. Commissioners to disclose certain connections and interests.
11. Minutes of proceedings of Commission.
12. Execution of contracts and instruments by Commission.

PART IV

FINANCIAL PROVISIONS RELATING TO COMMISSION

13. Financial year of Commission.
14. Accounts of Commission.
15. Audit of Commission's accounts.
16. Internal auditor.
17. Powers of auditors
18. Statement of accounts and auditor's report to be laid before House of Assembly

PART I

ANCILLARY POWERS OF COMMISSION

*Ancillary powers*

1. The Commission shall have the following powers, in addition to those conferred by this Act and by the Constitution—

- (a) to acquire by lease, purchase, or otherwise, immovable property and to construct buildings thereon.
- (b) to buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
- (c) to maintain, alter and improve property acquired by it.
- (d) to mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Commission may, with the approval of the Minister, determine.
- (e) to open bank and building society and post office accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.
- (f) to insure against losses, damages, risks and liabilities which it may incur.
- (g) to enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind suretyships or guarantees.
- (h) to enter into, renew, cancel or abandon arrangements with the Government or any local or other authority within Zimbabwe, or, with the approval of the Minister, any foreign government or authority, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Commission thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.
- (i) with the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Commission.

- (j) to employ, upon such terms and conditions as the Commission may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.
- (k) subject to section 47 of the Public Finance Management Act [Chapter 22:19] (No. 11 of 2009), to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay bonuses and the like to its employees as the Commission thinks fit.
- (l) to provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.
- (m) with the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.
- (n) to construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Commission.
- (o) to sell or let dwellings and land for residential purposes to its employees.
- (p) with the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.
- (q) to provide security in respect of loans guaranteed in terms paragraph (p) by the deposit of securities.
- (r) to make loans to any employee of the Commission—
  - (i) not exceeding six months' salary or wages payable to him or her, for any purpose;
  - (ii) with the approval of the Minister, for the purpose of purchasing vehicles, tools or other equipment used by him or her in carrying out his duties;on such security as the Commission considers adequate;
- (s) to do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.
- (t) to provide such services as the Commission considers could properly be provided by the Commission.
- (u) with the approval of the Minister, to provide financial assistance to any person, association, organisation or institution whose activities are such as to be, in the opinion of the Commission, of benefit to the Commission.
- (v) generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Commission under this Act or any other enactment.

## **PART II**

### **TERMS AND CONDITIONS OF OFFICE OF COMMISSIONERS**

#### **2. [Repealed]**

#### *Vacation of office by Commissioner*

#### **3. A Commissioner shall vacate his or her office and his or her office shall become vacant—**

- (a) three months after the date upon which he or she gives notice in writing to the President of his or her intention to resign, or on the expiry of such other period of notice as he or she and the President may agree; or
- (b) [Repealed]
- (c) if he or she becomes disqualified in terms of paragraph 2(1)(a), (b) or (c), or in terms of subparagraph (2) of that paragraph, to hold office as a Commissioner; or

(d) *[Repealed]*

*Terms and conditions of office of Commissioners*

4. Subject to the Constitution, Commissioners shall hold office on such terms and conditions as the President may fix for Commissioners generally.

*Filling of vacancies on Commission*

5. On the death of, or vacation of office by, a Commissioner, the President and the Committee on Standing Rules and Orders shall take the steps required by the Constitution to fill the vacancy as soon as possible.

*Deputy Chairperson of Commission*

6.(1) The President shall designate one of the Commissioners as Deputy Chairperson of the Commission.

(2) The Deputy Chairperson of the Commission shall perform the Chairperson's functions whenever the Chairperson is for any reason unable to perform them.

(3) The Deputy Chairperson of the Commission may at any time resign his or her office as such by giving one month's written notice thereof to the President.

(4) Whenever the office of Deputy Chairperson of the Commission falls vacant, the President shall fill the vacancy within a reasonable time.

*Remuneration and expenses of Commissioners*

7. (1) Commissioners shall be paid—

- (a) such remuneration, if any, as the President, with the agreement of the Minister responsible for finance, may from time to time fix for Commissioners generally; and
- (b) such allowances, if any, as the Minister, with the agreement of the Minister responsible for finance, may from time to time fix to meet any reasonable expenses incurred by Commissioners in connection with the business of the Commission.

(2) *[Repealed]*.

**PART III**

**PROCEDURE OF COMMISSION**

*Meetings and procedure of Commission*

8. (1) The Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Commission shall meet at least six times in each year.

(2) Five Commissioners shall constitute a quorum for the conduct of the business of the Commission.

(3) The Chairperson of the Commission—

- (a) may at any time convene a special meeting of the Commission; and
- (b) shall convene a special meeting of the Commission on the written request of—
  - (i) the Minister, within such period as the Minister may specify; or
  - (ii) not fewer than two Commissioners, not later than fourteen days after his or her receipt of such request.

(4) Written notice of any special meeting convened in terms of subparagraph (3) shall be sent to each Commissioner not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the Chairperson, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

(5) No business shall be discussed at a special meeting convened in terms of subparagraph (3) other than—

- (a) such business as may be determined by the Chairperson of the Commission, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (3)(a); or
- (b) the business specified in the request for the meeting, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (3)(b).

(6) The Chairperson or, in his or her absence, the Deputy Chairperson shall preside at all meetings of the Commission:

Provided that, if the Chairperson and the Deputy Chairperson are both absent from a meeting of the Commission, the Commissioners present may elect one of their number to preside at that meeting as Chairperson.

(7) All acts, matters or things authorised or required to be done by the Commission may be decided by a majority vote at a meeting of the Commission at which a quorum is present.

(8) Subject to paragraph 10, at all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission and, in the event of an equality of votes, the Commissioner presiding at the meeting shall have a casting vote in addition to a deliberative vote.

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

Provided that, if a Commissioner requires that such proposal be placed before a meeting of the Commission, this subparagraph shall not apply to such proposal.

#### *Committees of Commission*

9.(1) For the better exercise of its functions, the Commission may establish one or more committees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the Commission from itself exercising that function, and the Commission may amend or rescind any decision of the committee in the exercise of that function.

(2) The Commission may appoint persons other than Commissioners to be members of a committee established under subparagraph (1):

Provided that every committee must have a Commissioner for its chairperson.

(3) The Chairperson of the Commission or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Commission.

(5) Subject to this paragraph, paragraph 8(2) to (9) shall apply, with any necessary changes, to committees and their members as they apply to the Commission and to Commissioners.

#### *Commissioners to disclose certain connections and interests*

11.(1) In this paragraph—

“relative”, in relation to a Commissioner, means the Commissioner’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

(a) if a Commissioner—

- (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or
- (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner’s private interests coming or appearing to come into conflict with his or her functions as a Commissioner; or
- (iii) knows or has reason to believe that a relative of his or hers—

- A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or
- B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner; or
- C. is a member or office-bearer of a political party whose conduct is under consideration by the Commission;

or

- (b) if for any reason the private interests of a Commissioner come into conflict with his or her functions as a Commissioner;

the Commissioner shall forthwith disclose the fact to the Commission.

(3) A Commissioner referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) A Commissioner who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable—

- (a) to a fine not exceeding level ten or, where quantifiable, a fine equivalent to the extent of the pecuniary advantage obtained by the Commissioner from the Commission as a direct result of his or her contravention, whichever is the greater; or
- (b) to imprisonment for a period not exceeding twelve months; or to both such fine and such imprisonment.

#### *Minutes of proceedings of Commission*

11.(1) The Commission shall cause minutes of all proceedings of and decisions taken at every meeting of the Commission to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Commission or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

#### *Execution of contracts and instruments by Commission*

12. Any agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose.

### **PART IV**

#### **FINANCIAL PROVISIONS RELATING TO COMMISSION**

#### *Financial year of Commission*

13. The financial year of the Commission shall be the period of twelve months ending on the 31st December in each year.

#### *Accounts of Commission*

14.(1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than three months after the end of each financial year, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.



*Audit of Commission's accounts and internal auditor*

15.(1) Subject to the Public Finance Management Act [Chapter 22:19] (No. 11 of 2009), the Commission shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [Chapter 27:12].

(2) The accounts kept by the Commission in terms of paragraph 14(1) shall be examined by the auditors appointed in terms of subparagraph (1).

(3) The auditors appointed in terms of subparagraph (1) shall make a report to the Commission and the Minister on the statement of accounts prepared in terms of paragraph 14(2), and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's affairs.

(4) In addition to the report referred to in subparagraph (3), the Minister may require the Commission to obtain from its auditors appointed in terms of subparagraph (1) such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider expedient, and the Commission shall forthwith comply with any such requirement.

*Internal auditor*

16(1) Section 80 of the Public Finance Management Act [Chapter 22:19] (Act No. 11 of 2009) shall apply with necessary changes to the appointment of an internal auditor to the Commission in all respects as if the Commission were a Ministry or department of a Ministry.

(2) The functions of the internal auditor shall be –

(a) to monitor the financial administration and procedures of the commission to ensure that –

- (i) proper accounting and bookkeeping transactions and procedures are carried out; and
- (ii) proper accounting records are maintained; and
- (iii) adequate internal checks and controls are maintained; and
- (iv) the assets of the Commission are properly accounted for; and

(v) all instructions and directives issued in terms of section 6 of the Public Finance Management Act [Chapter 22:19] (Act No. 11 of 2009) are complied with;

and

(b) to assess the effectiveness of any projects undertaken by the Commission; and

(c) to perform any other function that may be assigned to him or her by the Chief Elections Officer.

(3) In the performance of his or her functions, the internal auditor –

- (a) shall have free access at all reasonable times to any records, books, vouchers, documents and resources under the control of the Commission; and
- (b) shall have direct access to the chief Elections Officer; and
- (c) may cause search to be made in and extracts to be taken from any record, book, voucher or documents of the Commission;
- (d) may call upon any member of the staff of the Commission to give, and shall be entitled to receive without undue delay from that member, any explanations and information the internal auditor may reasonably require to enable him or her to perform his or her functions.

(4) If at any time it appears to the internal auditor that an offence has been committed in relation to --

--

(a) the collection, receipt, custody, control or payment of any funds of the Commission; or

(b) the receipt, custody, control, issue, sale, transfer or delivery of any Commission property or State property assigned to the Commission;

he or she shall immediately bring the matter to the notice of the Commission, the Chief Elections Officer and any one of the persons approved by the Minister to be the Commission's external auditors in terms of paragraph 15 (1).

(5) Whenever the internal auditor has completed any internal audit programme, he or she shall prepare a report on the financial administration and accounting system of the Commission, and may

include in such report any instances of hindrance or obstruction he or she has encountered in the discharge of his or her duties, and shall transmit copies of such reports to the Commission, the Chief Elections Officer and any one of the persons approved by the Minister to be the Commission's external auditors in terms of paragraph 15(1).

*Powers of auditors*

17. (1) An auditor referred to in paragraph 15 shall be entitled at all reasonable times to require to be produced to him or her all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any Commissioner or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purposes of his or her audit.

(2) Any Commissioner or employee or agent of the Commission who fails without just cause to comply with a requirement of an auditor in terms of subparagraph (1) 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.

*Statement of accounts of and auditor's report to be laid before House of Assembly*

18. The Minister shall, within six months after the end of each financial year, lay before the House of Assembly the Commission's statement of accounts and auditor's report for that financial year.

**SEVENTH SCHEDULE (Section 45 A)**

**ELECTION OF SENATORS TO REPRESENT PERSONS WITH DISABILITIES**

*Interpretation in Seventh Schedule*

1. In this Schedule -

"candidate to represent persons with a disability" means a person nominated in accordance with this Part for election as one of the two Senators referred to in section 120(1)(d) of the Constitution, and who is himself or herself a person with a disability;

"Electoral College for Persons with a Disability" means the electoral college constituted in terms of paragraph 3 ;

"Electoral College delegate" means a member of the Electoral College for Persons with a Disability;

"National Disability Board" the Board constituted under the Disabled Persons Act [Chapter 17:01];

"person with a disability" means a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting the person from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society.

*Election of Senators to represent persons with disabilities*

2.(1) Without delay after the calling of a general election, the Commission shall call upon the National Disability Board to draw up a provisional list of Electoral College delegates who will constitute the Electoral College for Persons with a Disability.

(2) The list and the persons on the list must conform to the following requirements

- (a) every the person on the list must be a person with a disability; and
- (b) half of all the persons on the list must be women; and
- (c) every person on the list must be a person who is willing (in person or through an authorised proxy) to be an Electoral College delegate; and
- (d) every person on the list must be registered as a voter or must not be disqualified under the Fourth Schedule to the Constitution for registration as a voter; and
- (e) four of the persons on the list must be nominated by the National Disability Board itself.

(3) Immediately after (or at any time before) being called upon by the Commission to draw up a provisional list of Electoral College delegates, the Minister, in consultation with the Minister responsible for administering Disabled Persons Act [Chapter 17:01] shall by notice in a Statutory Instrument prescribe the names and other relevant particulars of any of the following associations or institutions which may submit in the prescribed form proposed nominations of Electoral College delegates-

- (a) any association registered under Private Voluntary Organisations Act [Chapter 17:05] whose constitution mandates it to assist in any way persons with a disability of any description;
- (b) any educational, philanthropic or health institution recognised by the Ministry responsible for education or the Ministry responsible for health as being an institution that provides services or assistance to persons with a disability of any description;
- (c) any trust not registered under Private Voluntary Organisations Act [Chapter 17:05] but constituted under a notarial deed of trust which-
  - (i) mandates the trustees to assist in any way persons with a disability of any description; and
  - (ii) has operated in Zimbabwe in pursuance of the foregoing mandate for at least twelve months before the convocation of the Electoral College for Persons with a Disability.

(4) The prescribed form referred to in subsection (3) must require the prescribed association or institution-

- (a) to nominate four (two women and two men) Electoral College delegates, in the case of an association referred to in subsection (3)(a)), or two (one woman and one man) Electoral College delegates, in the case of an institution or trust referred to in subsection (3)(b) or (c); and
- (b) to furnish sufficient particulars about the person or persons so nominated to enable the Commission to ascertain whether the proposed participant qualifies to be an Electoral College participant; and
- (c) contain a declaration by or on behalf of the proposed nominee that he or she agrees to be so nominated, signed by the nominee or by the authorised representative of the nominating association or institution .

*Constitution and meeting of Electoral College for Persons with a Disability*

3.(1) On a prescribed date the Commission shall, through one or more of its Commissioners, meet with the chairperson or deputy chairperson of the National Disability Board (or, in the absence of both of the foregoing, any member of the National Disability Board nominated by the chairperson) to-

- (a) jointly scrutinise the provisional list of Electoral College delegates ensure compliance with the requirements of section 45A(2); and
- (b) delete from the list any person not so compliant to arrive at a final list of Electoral College delegates; and
- (c) agree on a time, venue and programme for, and the quorum for, and procedure and method of voting at, the meeting of the Electoral College for Persons with a Disability:

Provided that whatever voting method is agreed for the purposes of this paragraph shall be simple, accurate, verifiable, secure and transparent and otherwise comply with the principles of democratic elections set out in section 3 and in section 155 of the Constitution.

(3) Any disagreement between the Commission and the National Disability Board arising from a meeting under subsection (2) shall be referred to the chairperson of the Commission, whose decision on the issue shall be final.

(4) The sole item of business at the meeting of the Electoral College for Persons with a Disability shall be to elect the two Senators referred to in section 120(1)(d) of the Constitution, for which purpose-

- (a) the Commission shall appoint one or more employees of the Commission to be returning officers for the election and generally to conduct and supervise the election in accordance the manner agreed under subsection (2)(c) or in the manner prescribed; and
- (b) two separate ballots or separate series of ballots shall be held, one for the election of a female Senator referred to in section 120(1)(d) of the Constitution, and another for the election of a male Senator; and
- (c) any Electoral College delegate may be assisted by any other person to participate in and vote at the Electoral College, or be represented by an authorised proxy; and
- (d) any Electoral College delegate may-
  - (i) nominate any other Electoral College participant to be a candidate for a Senatorship referred to in section 120(1)(d) of the Constitution, who-
    - A. is of or over the age of forty years; and
    - B. is not disqualified under subsection (5).and may vote for such candidate, but may not nominate or vote for himself or herself; or
  - (ii) nominate any person other than an Electoral College delegate to be a candidate for a Senatorship referred to in section 120(1)(d) of the Constitution, so long as that person-
    - A. conforms to the requirements applicable to an Electoral College delegate under section 45A(2)(a) and (d); and
    - B. has, before the voting, indicated to the Commission his or her willingness to be a candidate; and
    - C. is of or over the age of forty years; and
    - D. is not disqualified under subsection (5).

(5) No candidate shall be nominated who-

- (a) within five years before the election, vacated a seat in the Senate or the National Assembly in terms of section 129(1)(i) of the Constitution through having been convicted of an offence; or
- (b) is a party-list candidate for election to the Senate or National Assembly, or is nominated for election as a constituency member of the National Assembly.

(6) As soon as possible after the end of balloting for candidates under this Part, the returning officer or officers that conducted the ballot shall inform the Commission, in writing, of the names of the candidates who have been duly elected, and the Chief Elections Officer shall thereupon-

- (a) notify the President of the Senate, in writing, of the names of the elected candidates; and
- (b) cause the names of the elected candidates to be published in the *Gazette*.

(7) The Commission shall reimburse the Electoral College participants for any reasonable expenses incurred by them in connection with this Part.

## **EIGHTH SCHEDULE (Section 45C(5) and 45I(1))**

### **GENERAL DESCRIPTION OF PROPORTIONAL REPRESENTATION FORMULA AND EXAMPLES**

#### **PART I**

##### **GENERAL DESCRIPTION OF PROPORTIONAL REPRESENTATION FORMULA USED IN PART XIA**

1. In this Schedule, "participating party" means a political party that has nominated party-list candidates for the Senate, National Assembly or (non-metropolitan) provincial council as the case may be.

2. The provincial elections officer shall, after determining the number of votes which have been cast for each of the candidates of the participating parties in the constituencies within the electoral province-

- (a) ascertain the total number of votes cast for the participating parties; and
- (b) allocate in accordance with paragraph (3) to the participating parties, seats in the Senate, National Assembly or provincial council as the case may be.

3. A quota shall be determined by dividing the total number of votes obtained by those participating parties for that electoral province which have not been eliminated in terms of paragraph (2)(b) by the number of seats being contested, namely-

- (a) six in respect of the Senate;
- (b) six in respect of the National Assembly;
- (c) ten in respect of a provincial council.

4. The number of seats to be allocated to each participating party shall be determined in two stages as follows—

- (a) in the first stage, each political party is allocated a seat for each number of votes that constitute the quota;
- (b) in the second stage, if after the allocation determined in terms of paragraph (a), the number of seats allocated to the participating parties is-
  - (i) less than the number of seats being contested by one seat, allocate that seat to the participating party with the greatest number of unallocated votes;
  - (ii) less than the number of seats being contested by two or more seats, allocate the seats to an equal number of participating parties determined in the order of the party having the greatest number of unallocated votes.

#### **PART II**

##### **NATIONAL ASSEMBLY ELECTIONS (EXAMPLE)**

1. A party that has not filed a party-list nomination for election to the National Assembly is not eligible to be allocated seats in the National Assembly.

2. Parties that nominated party-list candidates are referred to below as "participating parties". In this example, seven parties, A, B, C, D, E, F and G are the parties that nominated party-list candidates for the National Assembly elections. The electoral district has three constituencies namely X, Y and Z.

3. The provincial elections officer must list the participating parties on a table similar to the one in the example below, starting with the party that received the most votes and ending with the party that received the least and showing the votes cast for the participating parties in each of the constituencies. In this example, 236 634 votes were cast for the participating parties as shown below.

| Party | Number of votes per constituency |        |        | Total<br>number of<br>votes |
|-------|----------------------------------|--------|--------|-----------------------------|
|       | X                                | Y      | Z      |                             |
| A     | 32 049                           | 16 000 | 41300  | 89 349                      |
| B     | 25 000                           | 17 069 | 7 800  | 49 869                      |
| C     | 20 040                           | 10 007 | 10 500 | 40 547                      |
| D     | 15 020                           | 7 040  | 10 004 | 32 064                      |
| E     | 12 030                           | 8 012  | 1900   | 21942                       |
| F     | 325                              | 425    | 903    | 1 653                       |
| G     | 205                              | 404    | 601    | 1 210                       |
| Total | 104 669                          | 58 957 | 73 008 | 236 634                     |

Party A received a total of 89 349 votes in the three constituencies which constitute the electoral district.

4. Next, the provincial elections officer must determine the quota by dividing the total number of votes cast for the participating parties by the number six (the number of seats) with any fraction obtained being disregarded.

In this example, the quota is 39 439 (236 634 divided by 6).

5 Next, the number of votes cast for each of the remaining political parties is divided by the quota to determine the number of seats to be provisionally allocated to each party and to ascertain the number of votes which remain unallocated thereafter as shown below.

| Party | Total<br>number of votes | Votes divided by quota                |                      |
|-------|--------------------------|---------------------------------------|----------------------|
|       |                          | Provisional<br>allocation<br>of seats | Unallocated<br>votes |
| A     | 89 349                   | 2                                     | 10 471               |
| B     | 49 869                   | 1                                     | 10 430               |
| C     | 40 547                   | 1                                     | 1 108                |
| D     | 32 064                   |                                       | 32 064               |
| E     | 21 942                   |                                       | 21942                |
| F     | 1 653                    |                                       | 1653                 |
| G     | 1 210                    |                                       | 1 210                |
| Total | 236 634                  | 4                                     | 78 878               |

Quota: 39 439

In respect of party A, 89 349 divided by the quota of 39 439 gives two seats which are equal to 78 878 votes leaving a remainder of 10 471 unallocated votes. The provisional allocation of seats is A 2, B 1 and C 1, a total of four seats, leaving two of the six seats unallocated.

6. Next, if after the allocation of the seats from the division of the votes cast by the quota, less than ten seats have been allocated, the provincial elections officer will allocate the remaining seats to the parties with the greatest number of unallocated votes.

In this example, the two parties with the highest number of unallocated votes are D with 32 064 and E with 21 942. The two remaining seats are allocated one each to the two parties as shown below.

| <i>Party</i> | <i>Number of votes</i> | <i>Votes divided by quota</i>          |                          | <i>Seats from unallocated votes</i> |
|--------------|------------------------|----------------------------------------|--------------------------|-------------------------------------|
|              |                        | <i>Provisional allocation of seats</i> | <i>Unallocated votes</i> |                                     |
| A            | 89 349                 | 2                                      | 10 471                   |                                     |
| B            | 49 869                 | 1                                      | 10 430                   |                                     |
| C            | 40 547                 | 1                                      | 1 108                    |                                     |
| D            | 32 064                 |                                        | 32 064                   | 1                                   |
| E            | 21 942                 |                                        | 21 942                   | 1                                   |
| F            | 1 653                  |                                        | 1 653                    |                                     |
| G            | 1 210                  |                                        | 1 210                    |                                     |

7. The provincial elections officer will then declare the final allocation of seats. In this example A is allocated 2, B 1, C 1 and D 1 and E 1 as shown below.

| <i>Party</i> | <i>Number of votes</i> | <i>Votes divided by quota</i>          |                          | <i>Seats from unallocated votes</i> | <i>Final allocation of seats</i> |
|--------------|------------------------|----------------------------------------|--------------------------|-------------------------------------|----------------------------------|
|              |                        | <i>Provisional allocation of seats</i> | <i>Unallocated Votes</i> |                                     |                                  |
| A            | 89 349                 | 2                                      | 10 471                   |                                     | 2                                |
| B            | 49 869                 | 1                                      | 10 430                   |                                     | 1                                |
| C            | 40 547                 | 1                                      | 1 108                    |                                     | 1                                |
| D            | 32 064                 |                                        | 32 064                   | 1                                   | 1                                |
| E            | 21 942                 |                                        | 21 942                   | 1                                   | 1                                |
| F            | 1 653                  |                                        | 1 653                    |                                     |                                  |
| G            | 1 210                  |                                        | 1 210                    |                                     |                                  |
| Total        | 236 634                | 4                                      | 78 878                   | 2                                   | 6                                |

PART III  
SENATE ELECTIONS (EXAMPLE)

1. A party that has not filed a party-list nomination for election to the Senate is not eligible to be allocated seats in the Senate.

2. Parties that nominated party-list candidates are referred to below as "participating parties". In this example, seven parties, A, B, C, D, E, F and G are the parties that nominated party-list candidates for the Senate elections. The electoral district has three constituencies namely X, Y and Z.

3. The provincial elections officer must list the participating parties on a table similar to the one in the example below, starting with the party that received the most votes and ending with the party that received the least and showing the votes cast for the participating parties in each of the constituencies. In this example, 236 634 votes were cast for the participating parties as shown below.

| <i>Party</i> | <i>Number of votes per constituency</i> |          |          | <i>Total number of votes</i> |
|--------------|-----------------------------------------|----------|----------|------------------------------|
|              | <i>X</i>                                | <i>Y</i> | <i>Z</i> |                              |
| A            | 32 049                                  | 16 000   | 41 300   | 89 349                       |
| B            | 25 000                                  | 17 069   | 7 800    | 49 869                       |
| C            | 20 040                                  | 10 007   | 10 500   | 40 547                       |
| D            | 15 020                                  | 7 040    | 10 004   | 32 064                       |
| E            | 12 030                                  | 8 012    | 1 900    | 21 942                       |
| F            | 325                                     | 425      | 903      | 1 653                        |
| G            | 205                                     | 404      | 601      | 1 210                        |
| Total        | 104 669                                 | 58 957   | 73 008   | 236 634                      |

Party A received a total of 89 349 votes in the three constituencies which constitute the electoral district.

4. Next, the provincial elections officer must determine the quota by dividing the total number of votes cast for the participating parties by the number six (the number of seats) with any fraction obtained being disregarded.

In this example, the quota is 39 439 (236 634 divided by 6).

5. Next, the number of votes cast for each of the remaining political parties is divided by the quota to determine the number of seats to be provisionally allocated to each party and to ascertain the number of votes which remain unallocated thereafter as shown below.

| <i>Party</i> | <i>Total number of votes</i> | <i>Votes divided by quota</i>          |                          |
|--------------|------------------------------|----------------------------------------|--------------------------|
|              |                              | <i>Provisional allocation of seats</i> | <i>Unallocated votes</i> |
| A            | 89 349                       | 2                                      | 10 471                   |
| B            | 49 869                       | 1                                      | 10 430                   |
| C            | 40 547                       | 1                                      | 1 108                    |
| D            | 32 064                       |                                        | 32 064                   |
| E            | 21 942                       |                                        | 21 942                   |
| F            | 1 653                        |                                        | 1 653                    |
| G            | 1 210                        |                                        | 1 210                    |
| Total        | 236 634                      | 4                                      | 78 878                   |

Quota: 39 439



In respect of party A, 89 349 divided by the quota of 39 439 gives two seats which are equal to 78878 votes leaving a remainder of 10 471 unallocated votes. The provisional allocation of seats is A 2, B 1 and C 1, a total of four seats, leaving two of the six seats unallocated.

6. Next, if after the allocation of the seats from the division of the votes cast by the quota, Less than ten seats have been allocated, the provincial elections officer will allocate the remaining seats to the parties with the greatest number of unallocated votes.

In this example, the two parties with the highest number of unallocated votes are D with 32 064 and E with 21 942. The two remaining seats are allocated one each to the two parties as shown below.

| <i>Party</i> | <i>Number of votes</i> | <i>Votes divided by quota</i>          |                          | <i>Seats from unallocated votes</i> |
|--------------|------------------------|----------------------------------------|--------------------------|-------------------------------------|
|              |                        | <i>Provisional allocation of seats</i> | <i>Unallocated votes</i> |                                     |
| A            | 89 349                 | 2                                      |                          |                                     |
| B            | 49 869                 | 1                                      | 10 430                   |                                     |
| C            | 40 547                 | 1                                      | 1 108                    |                                     |
| D            | 32 064                 |                                        | 32 064                   | 1                                   |
| E            | 21942                  |                                        | 21942                    | 1                                   |
| F            | 1 653                  |                                        | 1653                     |                                     |
| G            | 1 210                  |                                        | 1 210                    |                                     |
| Total        | 236 634                | 4                                      | 78 878                   | 2                                   |

7. The provincial elections officer will then declare the final allocation of seats.

In this example A is allocated 2, B 1, C 1 and D 1 and E 1 as shown below.

| <i>Party</i> | <i>Number of votes</i> | <i>Votes divided by quota</i>          |                          | <i>Seats from unallocated votes</i> | <i>Final allocation of seats</i> |
|--------------|------------------------|----------------------------------------|--------------------------|-------------------------------------|----------------------------------|
|              |                        | <i>Provisional allocation of seats</i> | <i>Unallocated votes</i> |                                     |                                  |
| A            | 89 349                 | 2                                      | 10 471                   |                                     | 2                                |
| B            | 49 869                 | 1                                      | 10 430                   |                                     | 1                                |
| C            | 40 547                 | 1                                      | 1 108                    |                                     | 1                                |
| D            | 32 064                 |                                        | 32 064                   |                                     | 1                                |
| E            | 21942                  |                                        | 21 942                   | 1                                   | 1                                |
| F            | 1 653                  |                                        | 1 653                    | 1                                   |                                  |
| G            | 1210                   |                                        | 1 210                    |                                     |                                  |
| Total        | 236 634                | 4                                      | 78 878                   | 2                                   | 6                                |

PART IV  
PROVINCIAL COUNCIL ELECTIONS (EXAMPLE)

1. A party that has not filed a party-list nomination for election to the provincial council is not eligible to be allocated seats in the provincial council.

2. Parties that nominated party-list candidates are referred to below as "participating parties". In this example, seven parties, A, B, C, D, E, F and G are the parties that nominated party-list candidates for the provincial council elections. The electoral district has three constituencies namely X, Y and Z.

3. The provincial elections officer must list the participating parties on a table similar to the one in the example below, starting with the party that received the most votes and ending with the party that received the least and showing the votes cast for the participating parties in each of the constituencies. In this example, 236 634 votes were cast for the participating parties as shown below.

| Party        | Number of votes per constituency |        |        | Total<br>number of<br>votes |
|--------------|----------------------------------|--------|--------|-----------------------------|
|              | X                                | Y      | Z      |                             |
| A            | 32 049                           | 16 000 | 41 300 | 89 349                      |
| B            | 25 000                           | 17 069 | 7 800  | 49 869                      |
| <b>C</b>     | 20 040                           | 10 007 | 10 500 | 40 547                      |
| D            | 15 020                           | 7 040  | 10 004 | 32 064                      |
| E            | 12 030                           | 8 012  | 1 900  | 21 942                      |
| F            | 325                              | 425    | 903    | 1 653                       |
| G            | 205                              | 404    | 601    | 1 210                       |
| <b>Total</b> | 104 669                          | 58 957 | 73 008 | 236 634                     |

Party A received a total of 89 349 votes in the three constituencies which constitute the electoral district.

4. Next, the provincial elections officer must determine the quota by dividing the total number of votes cast for the participating parties by the number ten (the number of seats) with any fraction obtained being disregarded.

In this example, the quota is 23 663 (236 634 divided by 10).

5. Next, the number of votes cast for each of the remaining political parties is divided by the quota to determine the number of seats to be provisionally allocated to each party and to ascertain the number of votes which remain unallocated thereafter as shown below.

| Party        | Total<br>number of votes | Votes divided by quota                |                      |
|--------------|--------------------------|---------------------------------------|----------------------|
|              |                          | Provisional<br>allocation of<br>seats | Unallocated<br>votes |
| A            | 89 349                   | 3                                     | 18 360               |
| B            | 49 869                   | 2                                     | 2 543                |
| <b>C</b>     | 40 547                   | 1                                     | 16 884               |
| <b>D</b>     | 32 064                   | 1                                     | 8 401                |
| E            | 21 942                   |                                       | 21 942               |
| F            | 1 653                    |                                       | 1 653                |
| G            | 1 210                    |                                       | 1 210                |
| <b>Total</b> | 236 634                  | 7                                     | 70 993               |

Quota: 23 663

In respect of party A, 89 349 divided by the quota of 23 663 gives three seats which are equal to 70 989 votes leaving a remainder of 18 360 unallocated votes. The provisional allocation of seats is 3, B 2, C 1 and D1, a total of seven seats, leaving three of the ten seats unallocated.

6. Next, if after the allocation of the seats from the division of the votes cast by the quota, less than ten seats have been allocated, the provincial elections officer will allocate the remaining seats to the parties with the greatest number of unallocated votes.

In this example, the two parties with the highest number of unallocated votes are E with 21 942, A with 18 360 and C with 16 884. The three remaining seats are allocated one each to the three parties as shown below.

| Party | Number of votes | Votes divided by quota          |                   | Seats from unallocated votes |
|-------|-----------------|---------------------------------|-------------------|------------------------------|
|       |                 | Provisional allocation of seats | Unallocated votes |                              |
| A     | 89 349          | 3                               | 18 360            | 1                            |
| B     | 49 869          | 2                               | 2 543             |                              |
| C     | 40 547          | 1                               | 16 884            | 1                            |
| D     | 32 064          | 1                               | 8 401             |                              |
| E     | 21942           |                                 | 21942             | 1                            |
| F     | 1 653           |                                 | 1 653             |                              |
| G     | 1210            |                                 | 1 210             |                              |
| Total | 236 634         | 7                               | 70 993            | 3                            |

7. The provincial elections officer will then declare the final allocation of seats. In this example A is allocated 4, B 2, C 2 and D 1 and E 1 as shown below.

| Party | Number of votes | Votes divided by quota            |                   | Seats from unallocated votes | Final allocation of seats |
|-------|-----------------|-----------------------------------|-------------------|------------------------------|---------------------------|
|       |                 | Provisionally allocation of seats | Unallocated votes |                              |                           |
| A     | 89 349          | 3                                 | 18 447            | 1                            | 4                         |
| B     | 49 869          | 2                                 | 2 601             |                              | 2                         |
| C     | 40 547          | 1                                 | 16 913            | 1                            | 2                         |
| D     | 32 064          | 1                                 | 8 430             |                              | 1                         |
| E     | 21 942          |                                   | 21942             | 1                            | 1                         |
| F     | 1 653           |                                   | 1 653             |                              |                           |
| G     | 1210            |                                   | 1210              |                              |                           |
| Total | 236 634         | 7                                 | 71196             | 3                            | 10                        |

**NINTH SCHEDULE (Section 4)**

**NOMINATION FORM FOR PRESIDENTIAL AND NATIONAL ASSEMBLY CONSTITUENCY CANDIDATES**

**ELECTORAL ACT [CHAPTER 2:13]  
(Section 46(1))**

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**NOMINATION PAPER — PRESIDENTIAL CANDIDATE**

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**NOTE:** Aspiring candidate should produce:

1. a birth certificate together with National Registration Identity Card. Please attach photocopies of the said documents.
2. a passport-size photograph.

---

We, the undersigned voters registered on voters rolls for constituencies within the provinces listed hereunder, hereby nominate:

..... I/D No.....  
(full names in block letters)  
of .....  
(full address in block letters)

as a candidate for election to the office of President.

**A. HARARE:**

1. Full names. ....  
(Block letters)

National Registration No..... of Residential Address .....

Signature ..... Date .....

Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

2. Full names .....  
(Block letters)

National Registration No.. ..

Signature ..... Date .....

Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

3. Full names .....  
(Block letters)

National Registration No.....

Signature ..... Date .....  
Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

4. Full names .....  
(Block letters)

National Registration No. ....  
Signature ..... Date .....  
Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

5. Full names .....  
(Block letters)

National Registration No. ....  
Signature ..... Date .....  
Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

6. Full names .....  
(Block letters)

National Registration No. ....  
Signature ..... Date .....  
Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

7. Full names .....  
(Block letters)

National Registration No. ....  
Signature ..... Date .....  
Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

8. Full names .....  
(Block letters)

National Registration No. ....  
Signature ..... Date ..... Signed in  
the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

9. Full names .....  
(Block letters)

National Registration No. .... Signature  
..... Date .....  
Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

10. Full names .....  
(Block letters)

National Registration No. ....

Signature ..... Date .....

Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

11. Full names .....  
(Block letters)

National Registration No. ....

Signature ..... Date .....

Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

12. Full names .....  
(Block letters)

National Registration No. ....

Signature ..... Date .....

Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

#### NOTE BY VERITAS

The form then goes to repeat the above layout for each of the other nine provinces, concluding with J. Midlands. These pages have been omitted from this document to save space. The final part of the form is as follows:

#### DECLARATION BY OR ON BEHALF OF CANDIDATE

.....  
(full name of candidate, in block letters)

.....  
(address of candidate, in block letters)

1. The candidate is qualified for election in terms of subsection (1) of section 28 of the Constitution.
2. Each of the persons nominating the candidate signed this nomination paper in the presence of the candidate or his/her election agent or his/her authorized representative.
3. The candidate accepts the above nomination as a candidate for election to the office of President.

Date ..... Signature .....

Candidate/Candidate's Chief Election Agent

**DISTINCTIVE SYMBOL AND PARTY NAME AND ABBREVIATION**

*(This part is to be completed if the candidate wishes a distinctive symbol and/or Party identification to appear on the ballot.)*

**1. Distinctive Symbol**

The candidate wishes the following symbol to appear on the ballot paper in conjunction with his name:

|                                             |
|---------------------------------------------|
| <p><i>(Show drawing of symbol here)</i></p> |
|---------------------------------------------|

Short description of symbol .....

**2. Party Identification**

The candidate will be standing for or be sponsored by the following party

*(full name of party in block letters)*

and wishes the following abbreviation of the party's name to appear on the ballot paper in conjunction with his name: .....

*(Block letters)*

Signature .....

*Candidate\*/Candidate's Election  
Agent\**

**3. Party authorization** (to be completed by at least two designated political party office-bearers if the candidate has indicated that he/she wishes the abbreviation of a party's name to appear on the ballot paper in conjunction with his/her name)

We, .....

*(full names)*

being the .....

*(state office held)*

on the .....

*(full name of political party)*

and, as such, duly authorized in terms of the constitution of the party, certify that the candidate to whom this nomination paper relates will stand for, or be sponsored by, the party.

Date .....

Signature .

\* Delete whichever does not apply.

*Note: This form must be accompanied by a passport-sized photograph of the candidate.*

---

NOMINATION FORM FOR NATIONAL ASSEMBLY  
CONSTITUENCY CANDIDATES

ELECTORAL ACT [CHAPTER 2:13]  
(Section 46(1))

NOMINATION FORM: MEMBER OF NATIONAL ASSEMBLY

**NOTE:** Aspiring candidate should produce:

1. a birth certificate together with National Registration Identity Card. Please attach photocopies of the said documents.
2. a passport-size photograph.

We, the undersigned voters registered in the .....  
constituency, hereby nominate:

..... I/D No.....  
(full names in Block letters)

of .....  
(full address in Block letters)

as a candidate for election to represent the said constituency in the National Assembly.

1. Full names .....  
(Block letters)

|          |              |         |
|----------|--------------|---------|
| National | Registration | No..... |
| Lof      | Residential  | Address |

Signature ..... Date.....

Signed in the presence of .....  
(Candidate/Chief Election Agent/Authorized Representative)

**NOTE BY VERITAS**

**The form provides for 10 nominators. It then continues:**

*Note:-* Extra nominations may be made in anticipation of any nominator being found to be disqualified from making any nomination.

DECLARATION BY OR ON BEHALF OF CANDIDATE

..... of  
(full name of candidate, in block letters)

.....  
(address of candidate date, in block letters)

Candidate's telephone No. ....



I certify that:

1. The candidate is enrolled as a voter in the ..... constituency.
2. The candidate has been ordinarily resident in Zimbabwe for a period of not less than five years during the period of twenty years immediately preceding the date of this nomination paper.
3. The candidate is not disqualified for election in terms of paragraph 2 of Schedule 3 to the Constitution.
4. Each of the persons nominating the candidate signed this nomination paper in the presence of the candidate or his or her chief Election Agent or his or her authorized representative.
5. The candidate accepts the nomination as a candidate for election to Parliament.

Date ..... Signature .....

*Candidate/ Candidate's Chief Election Agent*

(FINAL PAGE)

#### DISTINCTIVE SYMBOL AND PARTY NAME AND ABBREVIATION

(This part is to be completed if the candidate wishes a distinctive symbol and/or Party identification to appear on the ballot)

1. *Distinctive Symbol*

The candidate wishes the following symbol to appear on the ballot paper in conjunction with his/her name:

*(Show drawing of symbol here)*

Short description of symbol: .....

2. *Party Identification*

The candidate will be standing for or be sponsored by the following party

.....  
*(full name of Party in block letters)*

and wishes the following abbreviation of the Party's name to appear on the ballot paper in conjunction with his/her name .....

.....  
*(Block letters)*

Signature.....

*Candidate\*/Candidate's Chief Election Agent\**

3. *Party authorization* (to be completed by at least two designated political party office-bearers if the candidate has indicated that he/she wishes the abbreviation of a party's name to appear on the ballot paper in conjunction with his/her name)

We, .....  
(full names)

being the .....  
(state office held)

on the .....  
(full name of political party)

and, as such, duly authorized in terms of the constitution of the party, certify that the candidate to whom this nomination paper relates will stand for, or be sponsored by, the party.

Date .....

.....  
*Signature*

*\* Delete whichever does not apply*

*Note. This form must be accompanied by a passport-sized photograph of the candidate.*

---

## APPENDIX

For the convenience of readers

This Appendix sets out the text of sections 42 and 44 of the Electoral Amendment Act, 2012 (No. 3 of 2012).

**Section 42** did not come into operation on 28th September 2012 with the rest of Act 3/2012. It will come into operation after the 2013 general elections on a date to be fixed by the Zimbabwe Electoral Commission in terms of section 42(2). The section provides for numerous amendments to the principal Act, designed to introduce polling station voters rolls and polling-station-based voting when the Zimbabwe Electoral Commission is ready to implement that system.

**Section 44** repealed the Zimbabwe Electoral Commission Act with effect from 28th September 2012, but also saved statutory instruments made and other things done in terms of that Act.

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### 42 Amendments to Cap. 2:13 regarding polling station voters rolls

(1) Part IV (“Registrar-General of Voters and Constituency Registrars”) of the principal Act is amended by the insertion after section 22 of the following section—

#### “22A Polling station voters rolls

(1) The Commission shall—

(a) subject to section 51, determine—

(i) the places where polling stations are to be situated within each ward and constituency for the purposes of all elections in terms of this Act; and

(ii) the areas within the ward or constituency concerned that are to be served by each such polling station;

and

(b) subject to Parts IV and V, prepare a voters roll for each polling station area determined in terms of paragraph (a)(ii), on which roll shall be entered the names of all registered voters ordinarily resident within the area.

(2) The Commission shall consult all interested parties when determining the location of polling stations and their areas for the purposes of subsection (1).

(3) Notwithstanding any other provision of this Act, where a voters roll has been prepared for a polling station area—

(a) voters who are registered on that roll shall cast their votes in any election at the polling station for whose area the roll was prepared, unless they are permitted by this Act to vote by post<sup>24</sup>;

(b) the provisions of this Act applicable to or in respect of constituencies and wards, and constituency and ward voters rolls, shall apply, with any necessary changes, to or in respect of the polling station area and such voters roll.”.

(2) When the Commission is satisfied that voters rolls for all polling station areas have been prepared in accordance with the section 22A set out in subsection (1), the Commission shall publish a notice in the *Gazette* fixing the date on which this section shall come into operation.

Provided that the date so fixed must be a date after that on which the first general elections are held after the promulgation of this Act.

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<sup>24</sup>

Words “or to cast a special vote” at the end of section 22A(3)(a) deleted by paragraph 5 of Part VI of First Schedule to Act 3/2016.

(3) On the date that the Commission has published a notice bringing section 22A into operation, the following consequential amendments to the principal Act as amended by this Act shall apply and come into operation—

- (a) in section 21 (“Inspection of voters rolls and provision of copies”), repeal subsection (8) and substitute—

“(8) For the purposes of any election the Chief Elections Officer shall, through the appropriate constituency elections officer, supply to every polling station sufficient copies of the voters roll for each polling station area determined in terms of section 22A(1)(a)(ii).”;

- (b) in section 74 (“Issue of postal ballot papers”)—

- (i) in subsection (1), repeal paragraph (c) and substitute—

“(c) a smaller envelope marked “Ballot Paper Envelope” on the back of which shall be written the name of the voter, his or her voter registration number, and the constituency and ward in which, and the address of the polling station at which, he or she is registered.”;

- (ii) in subsection (4), repeal paragraph (c) and substitute—

“(c) the constituency and ward in which, and the address of the polling station at which, the person is registered.”;

- (iii) in subsection (5), delete “constituency centre” and substitute “polling station”;

- (c) in section 76 (“Distribution of postal ballots by Chief Elections Officer and ward elections officers”)—

- (i) repeal subsection (5) and substitute—

“(5) Upon receipt of the ballot paper envelopes dispatched in terms of subsection (4), the constituency elections officer shall forthwith distribute each ballot paper envelope to the presiding officer of the polling station indicated on the back of the envelope, together with an accompanying note indicating the number of envelopes that are sent.”;

- (ii) in subsection (6) delete “ward elections officer” and substitute “presiding officer”;

- (d) in section 77 (“Postal ballot boxes”)—

- (i) in subsection (1) delete “ward elections officer” and substitute “presiding officer”;

- (ii) in subsection (2) delete “ward elections officer” and substitute “presiding officer”;

- (iii) in subsection (3) delete “ward elections officer” wherever it occurs and substitute “presiding officer”;

- (iv) in subsection (4) delete “ward elections officer” and substitute “presiding officer”;

- (e) in section 78 (“Opening of postal ballot boxes”)—

- (i) in subsection (1) delete “ward elections officer” and substitute “presiding officer”;

- (ii) in subsection (2) delete “ward elections officer” and substitute “presiding officer”;

- (iii) in subsection (3) —

A. delete from paragraph (a) “voters roll of the ward and is noted as that of a voter to whom a postal ballot paper has been issued, the ward elections officer” and substitute “voters roll of the polling station and is noted as that of a voter to whom a postal ballot paper has been issued, the presiding officer shall”;

B. delete from paragraph (b) “voters roll of the ward and is not noted as that of a voter to whom a postal ballot paper has been issued, the ward elections officer” and substitute “voters roll of the polling station and is not noted as that of a voter to whom a postal ballot paper has been issued, the presiding officer shall”;

- (iii) in subsection (4) delete “ward elections officer” wherever it occurs and substitute “presiding officer”;
- (f) in section 79 (“Safe-keeping of documents”), delete “ward elections officer” and substitute “presiding officer”;
- (g) in section 81D (“Issue or refusal of authorisation to cast special vote”)—
  - (i) in subsection (2) insert the following paragraph after paragraph (c)—

“and

(d) the polling station at which the person is registered;”;
  - (ii) in subsection (3), delete “ward centre” and “in the ward” and substitute “polling station” and “registered at the polling station” respectively;
- (h) in section 81E (“Procedure for special voting”) (6)(b), delete “name of the constituency and ward in which he or she is registered” and substitute “name of the constituency and ward in which, and the address of the polling station at which, he or she is registered”
- (i) in section 81F (“Opening of special ballot boxes”)—
  - (i) in subsection (5), delete “the wards” and substitute “the ordinary polling stations”;
  - (ii) in subsection (6), delete “the wards” and substitute “the ordinary polling stations”
  - (iii) in subsection (7), delete “ward elections officers of the ward” and substitute “presiding officers of an ordinary polling stations”
  - (iv) in subsection (8), delete “ward elections officer of a ward” and substitute “presiding officer of an ordinary polling station”
  - (v) in subsection (9), delete “ward elections officer of the ward” and substitute “presiding officer of the ordinary polling station”
  - (vi) in subsection (10), delete “ward elections officer of the ward” and (wherever it occurs thereafter) “ward elections officer” and substitute “presiding officer of the ordinary polling station” and “presiding officer”;
  - (vii) in subsection (11), delete “ward elections officer of the ward” and substitute “presiding officer of the ordinary polling station”;
  - (viii) in subsection (12), delete “ward centre” and “ward elections officer” and substitute “ordinary polling station” and “presiding officer”;
  - (ix) delete subsections (13) and (14) and substitute—

“(13) The presiding officer shall then examine each envelope from the special ballot box and ensure that the names of the constituency, ward and polling station written on the back of the envelope is that of his or her constituency, ward and polling station.

(14) If the names of the constituency, ward and polling station written on the back of an envelope—

    - (a) are correct, the presiding officer shall cause the envelope to be opened and the ballot paper therein to be placed in a separate package, to be counted along with the votes cast at the ordinary polling station in the election concerned;
    - (b) is not correct, the presiding officer shall endorse the envelope “vote rejected” and place the envelope, unopened, in a separate package.
  - (x) in subsection (15), delete “ward elections officer” wherever it occurs and substitute “presiding officer”;
- (j) in section 81G (“Safe-keeping of documents related to special voting”), by the deletion of “ward elections officer” and the substitution of “presiding officer”.

**44 Repeal of Cap. 2:12 and savings**

(1) Subject to subsection (2), the Zimbabwe Electoral Commission Act [*Chapter 2:12*] (No. 22 of 2004) is repealed.

(2) Notwithstanding subsection (1)—

- (a) all statutory instruments made under the Zimbabwe Electoral Commission Act [*Chapter 2:12*] that were in force immediately before the commencement of this Act shall continue to be in force thereafter until repealed or replaced under section 192;
  - (b) anything made, done or commenced under the Zimbabwe Electoral Commission Act [*Chapter 2:12*] (No. 22 of 2004) which, immediately before the date of commencement of this Act, had effect or was capable of acquiring legal effect shall continue to have effect or be capable of acquiring legal effect son and after that date in all respects as if it had been made, done or commenced, as the case may be, in terms of the appropriate provisions of the principal Act as amended by this Act.
-