

ELECTIONS (AMENDMENT) BILL, 2020

(Bill No. 25 of 2020)

OBJECTS AND REASONS

The Electoral Commission, in 2017, reviewed the electoral legal framework in order to ensure the furtherance of democratic principles, effective representation and the creation of conditions that are conducive to fair electoral competition and after consultation with political parties and civil society representatives, submitted its Recommendations for Reforms in December 2017.

The Recommendations for Reforms have been examined in consultation with the Electoral Commission and it has been considered necessary to amend the laws relating to elections. Hence, based on the Recommendations for Reforms, the Elections Act (Cap 262) is proposed to be amended. Before agreeing to the proposed amendments, the Electoral Commission has also made consultation with, and apprised, the representatives of the registered political parties on the proposed amendments.

Accordingly, the Elections (Amendment) Bill, 2020, amongst other things, proposes to —

- (a) define certain terms “rejected ballot paper”; “spoiled ballot paper”; “total votes cast”; “valid votes cast”; and “votes cast in favour of a candidate”;
- (b) provide for the appointment of Deputy Electoral Officers;
- (c) provide that the staff/officer appointed should be of proven integrity and does not demonstrate partisanship to any person or political party;
- (d) to require the Chief Registration Officer to prepare annually a list of persons per electoral area who have turned or will turn 100 by 31st December of that year and carry out a verification of residence for each of these persons and revise the register of voters accordingly;

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- (e) enable to the Electoral Commission to separate the register of an electoral area into such sections as it finds fit and each shall be certified for the purposes of facilitating alphabetical voting;
 - (f) reduce the number of supporters for the purpose of endorsement for a candidate to 50 supporters for a candidate wishing to stand in a Presidential election and to 10 supporters for a candidate wishing to stand in a National Assembly election;
 - (g) specify that where a candidate uses the name of a person without his knowledge or consent as an endorsement of his nomination, his nomination shall be rejected and the candidates are also required to provide a copy of the National Identity cards of all persons listed as their supporters so as to allow confirmation of genuineness of signatures;
 - (h) substitute section 15A relating to postponment of nomination day so as provide the guidance on process to be followed on the next day;
 - (i) provide for arrangements at the polling stations for a separate queue and voting facility for the aged, pregnant, and those requiring assisted voting process in addition to alphabetical voting so as to minimise the time that vulnerable persons spend at the polling station;
 - (j) provide that only one polling agent for each candidate shall be posted at a separate voting facility (rather than at the station) at any one time;
 - (k) provide that each ballot paper shall be perforated to facilitate removal from stubs and each stub shall have a serial number;
 - (l) provide that a person wishing to vote has to appear personally at a polling station and follows the instructions of the Electoral Officer and also follows the queue according to alphabetical grouping;
 - (m) provide for calling out of the voter's full name and page number and line number where his particulars are found instead of his number and all his particulars;
 - (n) define “incapacitated voter” and to provide the procedure in relation to

assistance extended to such voter for helping him to vote and provide qualifications of a person who can assist him;

- (o) provide for additional steps to procedures to be followed after close of poll and also to provide new procedures to be followed in completing the statement known as the ballot paper account for National Assembly elections and Presidential election and for referendum to ensure that all ballot papers issued to an electoral area including used, unused, spoilt and stamped, and spoilt and unstamped are accounted for;
- (p) provide that the Chief Electoral Officer explains the security features of the ballot papers to the Electoral Officer and the Electoral Officers discloses the security features to the candidates or counting agents prior to opening the first ballot box for counting and other process relating thereto;
- (q) provide that the entering of a person's name on the list of supporters by a candidate without his consent or knowledge is made an offence under section 51 and punishable by imprisonment of three years and a fine of SR20,000;
- (r) require the submission of “statement of the number of persons and the amount of funds received” in place of “statement of funds received” and requiring the Electoral Commission to maintain the records thereof and publish it from time to time;
- (s) insert two new sections to provide for the limit on expenditure by candidates and political parties and to provide for voting record analysis by the Electoral Commission after the expiry of 6 months following an election and to publish it in such manner as it considers appropriate.

The Bill seeks to achieve the above objectives.

Dated this 31st day of July, 2020.

**FRANK D.R. ALLY
ATTORNEYGENERAL**

ELECTIONS (AMENDMENT) BILL, 2020

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ARRANGMENT OF SECTIONS

Sections

1. Short title and commencement
2. Amendment of section 2 of Cap 262
3. Amendment of section 3
4. Amendment of section 5
5. Amendment of section 7
6. Insertion of new section 7A
7. Amendment of section 9
8. Amendment of section 14
9. Amendment of section 15
10. Substitution of new section for section 15A
11. Amendment of section 20
12. Amendment of section 21
13. Amendment of section 23
14. Amendment of section 25
15. Amendment of section 29
16. Amendment of section 34
17. Amendment of section 51
18. Amendment of section 94
19. Insertion of new section 94A
20. Insertion of new section 97A

ELECTIONS (AMENDMENT) BILL, 2020

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**A BILL
FOR**

AN ACT to amend the Elections Act (*Cap 262*).

ENACTED by the President and the National Assembly.

1. This Act may be cited as the Elections (Amendment) Act, 2020 and shall come into operation on such date as the President may, by notice in the *Gazette*, appoint.

Short title and commencement

Amendment of
section 2 of
Cap 262

2. Section 2 of the Elections Act (*Cap 262*) (*hereinafter referred to as the “principal Act”*) is amended —

(a) by inserting after the definition of “Presidential Election”, the following definition —

‘ “rejected ballot paper” means a ballot paper rejected under section 34(2);’;

(b) by inserting after the definition of “Reside”, the following definitions —

‘ “spoiled ballot paper” means a ballot paper which on polling day has not been deposited into the ballot box but has been found by the Electoral Officer to be spoiled, improperly printed or has been spoiled by the voter and handed back to the Electoral Officer in exchange for another ballot paper;

“total votes cast” or “total votes polled” means the total number of ballot papers found in the ballot box at the time of an election or referendum;

“valid votes cast” means the total number of ballot papers found in the ballot box, minus those ballot papers that are unmarked or so improperly marked that in the opinion of the Electoral Officer they cannot be counted and which are classified as rejected ballot papers;

“votes cast in favour of a candidate” means all valid votes cast in favour of a candidate, found in the ballot box at the time of an election.’

Amendment of
section 3

3. Section 3 of the principal Act is amended —

(a) in subsection (1)(d), by repealing the words “Assistant Electoral Officers”, and substituting therefor the words “Deputy Electoral Officers and Assistant Electoral Officers”;

(b) by inserting after subsection (8), the following subsection —

“(9) Every person appointed to the Electoral Commission shall be of proven integrity and shall not demonstrate partisanship to any person or political party.”.

4. Section 5(1) of the principal Act is amended, by inserting after the words “resides in an electoral area”, the words “and possesses a National Identity Card issued in his favour under the National Identity Cards Act (*Cap 294*)”.

Amendment of
section 5

5. Section 7 of the principal Act is amended, by inserting after subsection (4), the following subsection —

Amendment of
section 7

“(4A) For the purpose of subsection (4)(a), —

(a) the Chief Registration Officer shall, on every 31st December, prepare a list of all voters attaining the age of 100, on or before that date, of each electoral area, from the register of voters;

(b) the list prepared under paragraph (a) shall be checked and a verification of residence and presence of all such voters be carried out in accordance with paragraphs 7 and 8 of Chapter I of Schedule 3;

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- (c) if, during the verification under paragraph (b), the voter is found, no action is to be taken and the name of the voter shall remain on the register of voters;
 - (d) if, during the verification under paragraph (b), any such voter is not found, a list of all such voters, containing their identity numbers, names and surnames, date of birth and the page and serial number as they appear in the register of voters, to be prepared for each electoral area and kept at every administrative district and at such other places as may be considered necessary for public reference;
 - (e) a list of voters prepared under paragraph (d) shall be published in the local newspaper, and a copy thereof shall be provided to every political party, indicating that name of such persons shall be deleted from the register unless it is ascertained that they are not yet deceased;
 - (f) any person who is aware that any of the persons listed on the list of voters prepared under paragraph (d) is still alive may make an objection against the deletion within 7 working days from the date of the first publication;
 - (g) if any voter in the list prepared under paragraph (d) is not found to be verified by 31st March, the entry of

such voter shall be removed from the register of voters and the register shall be certified in accordance with section 9(1);

- (h) any person whose name is deleted under this section and who, later transpires, is still alive, is to be reinstated upon a written application made to the Commission and the Commission is satisfied that he is qualified to be registered.”.

6. The principal Act is amended, by inserting after section 7, the following section —

Insertion of new section 7A

Voters’
census

“7A.(1) The Electoral Commission may cause to be conducted a voters' census on such date or period as the Commission may determine.

(2) A notice for voters' census under subsection (1) shall be published in the *Gazette*, containing the date and the period during which the voters' census shall be held.”.

7. Section 9 of the principal Act is amended, by inserting after subsection (2), the following subsections —

Amendment of section 9

“(2A) For the purposes of facilitating the voting process in an election or referendum in alphabetical groupings, the copy of the register of voters as certified under subsection (1) may be divided into such parts as the Electoral Commission deems fit and each section shall be certified.

(2B) In case of any discrepancy in the register of voters divided into different parts

under subsection (2A), the register of voters as certified under subsection (1) shall prevail.”.

Amendment of
section 14

8. Section 14(6) of the principal Act is amended —

- (a) in paragraph (a), by repealing the words “500 persons” and substituting therefor, the words “50 persons”;
- (b) in paragraph (b), by repealing the words “50 persons” and substituting therefor, the words “10 persons”.

Amendment of
section 15

9. Section 15 of the principal Act is amended —

- (a) in subsection (3), after paragraph (b), by inserting the following proviso —

“Provided that where the name of a voter has been entered in the nomination paper as an endorsement for a candidate to stand for election without the consent or knowledge of the voter, the nomination paper of the candidate shall be rejected.”;

- (b) in subsection (4), by repealing the word “and” appearing at the end in paragraph (b) and inserting the word “and” at the end of paragraph (c); and thereafter by inserting the following paragraph —

“(d) a copy of the National Identity Card of each person endorsing the candidate to stand for election;”.

Substitution of
new section for
section 15A

10. Section 15A of the principal Act is amended by repealing it and substituting therefor, the following section —

Adjournment
of nomination
day due to
force majeure

“**15A.**(1) Where proceedings on a nomination day are interrupted or obstructed by *force majeure*, the Chief Electoral Officer or the Electoral Officer, as the case may be, may adjourn the proceedings until the following day, shall affix a notice to that effect in a conspicuous place at the place appointed in the notice under section 14 and shall forthwith notify the Electoral Commission and the Chief Electoral Officer of the adjournment.

(2) Where proceedings are adjourned on a nomination day under subsection (1), the hours of submission of nomination papers on the following day shall be the same as those specified for the nomination day was originally scheduled to take place.”.

11. Section 20 of the principal Act is amended, by repealing subsection (6), and substituting therefore the following subsection —

Amendment of
Section 20

“(6) A candidate may appoint more than one person as a polling agent but not more than one such person shall, at any one time, be posted at a voting facility in a polling station as the polling agent of the candidate.”.

12. Section 21 of the principal Act is amended, by inserting after subsection (3), the following subsection —

Amendment of
Section 21

“(4) The Electoral Officer shall arrange the polling station so as to have a special queue and voting facilities for the aged, pregnant women and voters requiring assistance.”.

Amendment of
section 23

13. Section 23 of the principal Act is amended, by inserting at the end, the following proviso —

“Provided that the ballot paper shall be perforated to facilitate removal from the stub and each stub shall have a serial number.”.

Amendment of
section 25

14. Section 25 of the principal Act is amended —

(a) in subsection (1) —

(i) in paragraph (a) —

(A) by inserting in subparagraph (i), after the words “polling station”, the words “and follow the instructions of the Electoral Officer”;

(B) by inserting after subparagraph (ii), the following subparagraph —

“(iii) follow the queue according to the designated alphabetical grouping in which the voter's surname occurs or as instructed by the Electoral Officer.”;

(ii) by repealing in paragraph (b), subparagraph (i) and substituting therefore the following subparagraph —

“(i) call out the full name of the voter and page number and line number where the voter's particulars are stated in the copy of the register of voters at the polling station.”;

- (b) by repealing in subsection (3), the words “incapacitated by blindness or other physical cause or otherwise or is illiterate, the voter” and substituting therefor the words “An incapacitated voter”;
- (c) by inserting after subsection (3), the following subsections —

(3A) No person shall be selected under subsection (3) to assist an incapacitated voter —

- (a) unless the person has attained the age of 18 years and makes a declaration in the form prescribed by the Electoral Commission;
- (b) if the person is a candidate or a polling or counting agent in the electoral area where the incapacitated voter is a voter;
- (c) for more than 2 incapacitated voter at an election.

(3B) Where an incapacitated voter is not assisted by a person, an Assistant Electoral Officer shall, at the request of the voter and with the authorisation of the Electoral Officer or the designated Assistant Electoral Officer, as the case may be, and in the presence of another Assistant Electoral Officer, cast the vote as directed by the incapacitated voter in accordance with subsection (3).

(3C) For the purposes of subsections (3), (3A) and (3B), the expression “incapacitated

voter” means a registered voter, who is unable by reason of any physical or mental condition or blindness or being illiterate to receive and evaluate information or make or communicate decisions to such extent that the voter lacks capacity to meet essential requirement for physical health or self-care with or without appropriate technological assistance.’.

Amendment of
section 29

15. Section 29 of the principal Act is amended —

(i) in subsection (1), by inserting after paragraph (e), the following paragraphs —

“(f) require each Assistant Electoral Officer to count the number of marks made in the section of the register of voters under his or her control and the number of marks counted for each section of the register of voters used shall be recorded on the last page of that section and also entered in the occurrence book;

(g) reconcile the total tally of all marks against the tally-sheet and the number of ballot papers issued for voting, excluding spoiled ballots, and make an entry in the occurrence book.”;

(ii) by inserting after subsection (2), the following subsections —

“(2A) In case of the National Assembly election, the Electoral Officer shall in complying with subsection (1)(b) —

(a) count the unused ballot papers received from the Electoral

Commission and record the serial numbers;

- (b) count the unused ballot papers received from any other polling station;
- (c) count the ballot papers (in envelopes) received from any other polling station;
- (d) count the spoiled unstamped ballot papers received from any other polling station;
- (e) count the spoilt stamped ballot papers received from any other polling station;
- (f) tally the total number of ballot papers received against the number of printed ballot papers received from the Electoral Commission; and
- (g) send a certified statement to that effect for each electoral area to the Chief Electoral Officer.

(2B) In case of the Presidential election or a referendum, the Electoral Officer shall in complying with subsection (1)(b) —

- (a) count the unused ballot papers received from the Electoral Commission and record the serial numbers;

- (b) count the unused ballot papers received from other any polling station;
- (c) count the ballot papers (in envelopes) received from any other polling station;
- (d) count the spoiled unstamped ballot papers received from any other polling station;
- (e) count the spoilt stamped ballot papers received from any other polling station; and
- (f) send a certified statement to that effect for each electoral area to the Chief Electoral Officer who shall tally and reconcile the ballot papers distributed to all electoral area against the number of printed ballot papers received from the Electoral Commission.”.

Amendment of
section 34

16. Section 34 of the principal Act is amended, by inserting after subsection (1), the following subsections —

- “(1A) The Chief Electoral Officer shall, at the time of delivery of the ballot papers, explain and give in a sealed envelope, the security features of the ballot papers to all Electoral Officers.
- (1B) The Electoral Officer or the Designated Electoral Officer shall, before opening of the first ballot box for sorting and

counting, disclose to candidates, if they are present, and the counting agents of candidates and enumerators who may be present, the security features of the ballot papers in the sealed envelope.

- (1C) No person shall be allowed to copy or take photograph of the security features of the ballot papers in the envelope.
- (1D) A candidate or a counting agent of the candidate may request the Electoral Officer or the Designated Electoral Officer to verify the security features of a ballot paper and the Electoral Officer or the Designated Electoral Officer upon such request verify such ballot paper from the security features in the envelope and record the finding of the verification which shall also be signed by the counting agent in the occurrence book.”.

17. Section 51(1) of the principal Act is amended, by inserting after paragraph (c), the following paragraph —

Amendment of section 51

“(ca) uses the name of voter without the consent or knowledge of the voter to support his or her nomination paper;”.

18. Section 94 of the principal Act is amended —

Amendment of section 94

- (a) by repealing subsection (1);
- (b) in subsection (2), by repealing the words “statement of fund received”, and substituting therefor the words “statement of the number of persons and the amount of fund received”;
- (c) in subsection (3A), by repealing the words “(1) or”;

- (d) by repealing subsections (3B) and (3C) and substituting therefor the following subsections —

“(3B) The Electoral Commission shall, on receipt the consolidated statement under subsection (2), maintain the records of such statements and may, from time to time, issue public reports disclosing the total funds received by each candidate or a political party and the number of persons from whom such funds received.

(3C) Where the total fund from a person exceeds R50,000, the details of the disclosure made in the statement under subsection (2) shall be made public and posted on the website of the Electoral Commission.”.

Insertion of new
section 94A

19. The principal Act is amended, by inserting after section 94, the following section —

Limits on
expenditure
by candidates
and political
parties

“**94A.**(1) Where a registered political party contests the Presidential Election or the National Assembly election in one or more electoral areas, or referendum or a by-election, no expenses exceeding R250,000 multiplied by the number of electoral area contested by the party during the electioneering period, shall be incurred by the registered political party.

(2) Where an independent candidate contests the Presidential Election, no expenses exceeding R250,000 multiplied by the number of electoral area contested by the candidate during the electioneering period, shall be incurred by the candidate or on his or her behalf.

(3) Where at an election a candidate stands in National Assembly election or by-election

in an electoral area being a candidate on behalf of a registered political party or as an independent candidate no expenses exceeding R250,000, during the electioneering period, shall be incurred by the candidate or on his or her behalf.”;

20. The principal Act is amended, by inserting after section 97, the following section —

Insertion of new section 97A

Voting records analysis by Electoral Commission

“**97A.**(1) The Electoral Commission may, at any time after the expiry of 6 months following an election, publish in such manner as it considers appropriate, a report on voting records analysis.

(2) For the purposes of an analysis under subsection (1), the Electoral Commission shall examine the registers of voters and the voting data captured.

(3) The report of analysis shall be shared with all registered political parties and candidates to the election and posted on the website of the Electoral Commission.

(4) Any data published in the report of analysis shall be restricted to issues such as gender and age analysis nationally and according to electoral areas.

(5) No individual information is to be published in the report of analysis.”.