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**CHAPTER 2:01  
ELECTORAL ACT\***

*Acts 7/1990, 7/1992, 22/1992;12/1997 (s. 3); 21/1997, 22/2001 (s. 4) †.*

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\* Reprinted as amended as at the 1st September, 2003, i.e., as amended by s. 3 of the General Laws Amendment Act, 1997 (No. 12 of 1997) and by the Local Authorities Election Laws Amendment Act, 1997 (No 12 of 1997), both of which came into operation on the 7th November, 1997, and by s. 4 as read with Part I of the Schedule to the Criminal Penalties Amendment Act, 2001 (No. 22 of 2001), which came into operation on the 20th May, 2002.  
The amendments made by the General Laws Amendment Act, 2002 (No. 2 of 2002) have **not** been incorporated, because that Act was declared null and void by the Supreme Court.

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**AN ACT to provide for the appointment and functions of an Election Directorate; to provide for the procedure and conditions of service of members of the Electoral Supervisory Commission; to provide for a Registrar-General of Elections and constituency registrars; to make provision for the registration of voters and for the lodging of objections thereto; to provide for the preparation and maintenance of voters rolls; to prescribe the residence qualifications of voters and the procedure for the nomination and election of candidates to and the filling of vacancies in Parliament; to provide for the conduct of elections and the proceedings which may be taken against undue elections; to make provision for elections to the office of President; to provide for offences and penalties, and for the prevention of corrupt or illegal practices in connection with elections; to make provision for the hearing and determination of election petitions; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 28th March, 1990.]

PART I  
PRELIMINARY

**1 Short title**

This Act may be cited as the Electoral Act [*Chapter 2:01*].

**2 Application**

This Act shall apply to—

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

(Section as substituted by s. 2 of Act 21 of 1997.)

**3 Interpretation**

(1) In this Act—

“**chief**” has the meaning given thereto in the Chiefs and Headmen Act [*Chapter 29:01*] but does not include a deputy chief;

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

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

“**claimant**” means a person who—

- (a) has completed a claim form; or
- (b) has submitted a written application in terms of subsection (2) of section *twenty-four*;

“**committee room**” does not include any house, room or premises occupied by a candidate at an election as a dwelling by reason only of the candidate transacting therein or thereon business with his agents in relation to that election;

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

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

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

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

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

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

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

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

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

**“election”** means—

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

as the case may be;

(Definition as amended by s. 3 of Act 21 of 1997.)

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

**“Election Directorate”** means the Election Directorate appointed in terms of section *four*;

**“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 behalf or in his interests, but does not include the sum deposited with his nomination paper in terms of subsection (1) of section *forty-seven* or any moneys expended or expenses incurred by or in the interests of a party of which he is a member if they do not relate directly to him;

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

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

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

**“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;

**“mobile polling station”** means a polling station referred to in subsection (3) of section *fifty-one*;

**“money”** includes any pecuniary reward;

**“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 *ninety-four*;

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

“**party**” means any political organization;

“**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 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;

“**polling agent**” means a person appointed in terms of section *eighty-six* as a polling agent;

“**polling day**”, in relation to—

- (a) an election to Parliament, means any day fixed in terms of paragraph (b) of subsection (2) of section *thirty-eight*;
- (b) an election to the office of President, means any day fixed in terms of paragraph (b) of subsection (1) of section *ninety-four*;

“**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 seventeen*;

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

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

“**Registrar-General**” means the Registrar-General of Elections referred to in section *fifteen*;

“**Secretary**” means the Secretary of the Ministry for which the Minister is responsible;

“**Speaker**” means the Speaker of Parliament;

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

“**voters roll**” means—

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

as the case may be, prepared and maintained under this Act by the Registrar-General.

(Definition as substituted by s. 3 of Act 21 of 1997.)

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

(3) A house, room or premises shall not be deemed to be a committee room by reason only of the fact that a candidate in an election or an agent of such candidate addresses therein or thereon voters, committee men or others.

PART II  
ELECTION DIRECTORATE

#### 4 Appointment and functions of Election Directorate

(1) There shall be an Election Directorate appointed in terms of this section, which shall be responsible for—

- (a) co-ordinating the activities of Ministries and departments of Government in regard to the delimitation of constituencies, the registration of voters, the conduct of polls and all other matters connected with elections; and
- (b) giving instructions and making recommendations to—
  - (i) the Registrar-General in regard to the exercise of his functions under this Act; and
  - (ii) other persons in the employment of the State or of a local authority for the purpose of ensuring the efficient, proper, free and fair conduct of elections; and

(Subparagraph as amended by s. 4 of Act 21 of 1997.)

- (c) generally, ensuring that elections are conducted efficiently, properly, freely and fairly.

(2) The Election Directorate shall consist of—

- (a) a chairman, who shall be appointed by the President for his ability and experience in administration or his professional qualifications or for his suitability otherwise for appointment; and
- (b) the Registrar-General; and
- (c) not fewer than two nor more than ten other members, who shall be appointed by the Minister.

(3) The chairman and other members of the Election Directorate appointed in terms of subsection (2) shall hold office for such period as may be fixed on their appointment.

#### 5 Allowances payable to members of Election Directorate

Members of the Election Directorate shall be paid such allowances as may be prescribed.

PART III

ELECTORAL SUPERVISORY COMMISSION: PROCEDURE AND CONDITIONS OF SERVICE OF MEMBERS

#### 6 Interpretation in Part III

In this Part—

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

“**member**” means a member of the Commission.

#### 7 Conditions of office of members

(1) Subject to this Part, a member shall hold office for such period, not exceeding five years, as the President may fix on his appointment.

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

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

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

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

President may specify, and thereupon the enactment concerned shall so apply to the conditions of service of the member concerned.

### **8 Disqualification for appointment as member**

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

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

or

- (c) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—
  - (i) in Zimbabwe of a criminal offence; or
  - (ii) outside Zimbabwe of an offence, by whatever name called, which, if committed in Zimbabwe, would have been a criminal offence;

and sentenced to a term of imprisonment without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon.

### **9 Vacation of office by member**

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

### **10 Removal of members from office**

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

### **11 Staff of Commission**

(1) At the request of the Commission, the Minister may assign to the Commission such members of the Public Service employed in his Ministry as may be necessary to perform secretarial and administrative functions for the Commission.

(2) The person for the time being performing the functions of secretary of the Commission may attend meetings of the Commission but shall not vote on any question before the Commission.

### **12 Meetings and procedure of Commission**

(1) Subject to this section and to sections 61 and 114 of the Constitution, the Commission shall meet for the dispatch of business and adjourn, close and otherwise regulate its meeting and proceedings as it thinks fit.

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

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

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

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

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

### **13 Remuneration and expenses of members**

A member of the Commission shall be paid—

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

### **14 Duties of Registrar-General towards Commission**

The Registrar-General—

- (a) shall provide the Commission with such reports relating to the registration of voters and the conduct of elections as the Commission may from time to time require;
- (b) shall generally keep the Commission informed on all matters relating to the exercise of his functions in terms of this Act;
- (c) may refer to the Commission for its advice any matters relating to the registration of voters and the conduct of elections;
- (d) may attend meetings of the Commission, but shall not vote on any question before the Commission.

### **14A Functions of Commission regarding local authority elections**

(1) In regard to elections to the governing bodies of local authorities, the Commission—

- (a) shall supervise—
  - (i) the conduct of every general election of councillors to a municipal council; and
  - (ii) the conduct of every election to the office of mayor of a municipality; and
  - (iii) the registration of voters on any voters' roll prepared for an election referred to in subparagraph (i) or (ii);
- (b) may, if the Commission considers it necessary or desirable in the public interest, supervise—
  - (i) the conduct of any election; and
  - (ii) the registration of voters on any voters' roll;that is not specified in paragraph (a).

(2) Section *fourteen* shall apply, *mutatis mutandis*, in relation to any election or registration of voters supervised by the Commission in terms of subsection (1) as if the reference therein to the Registrar-General were a reference to the town clerk, secretary or other chief executive officer of the local authority concerned.

(Section as inserted by s. 3 of Act 12 of 1997)

## PART IV

## REGISTRAR-GENERAL OF ELECTIONS AND CONSTITUENCY REGISTRARS

**15 Registrar-General of Elections**

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

(2) The Registrar-General shall exercise such functions as are imposed or conferred upon the Registrar-General by or under this Act and, in the exercise of his functions, the Registrar-General shall not be subject to the direction or control of any person or authority other than the Electoral Directorate, but shall have regard to any report or recommendation of the Electoral Supervisory Commission.

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

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

)Paragraph as inserted by s. 5 of Act 21 of 1997.)

**16 Constituency registrars and other officers**

(1) For each constituency there shall be—

- (a) a constituency registrar; and
- (b) a deputy constituency registrar; and
- (c) one or more assistant constituency registrars;

who shall be members of the Public Service.

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

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

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

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

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

(3) For the purposes of keeping his voters roll in terms of this Act, the constituency registrar may use the claim forms or the forms referred to in subsection (2) of section *twenty-four* which have been submitted by claimants or the forms submitted for transfer of registration.

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

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

(2) A person inspecting the voters roll for a constituency may, without payment, make copies thereof or extracts therefrom during office hours.

(3) A constituency registrar may, whenever he considers it to be desirable, have the voters roll for his constituency printed, and any person may obtain from the Controller of Printing and Stationery, on payment of such charges and subject to such conditions as may be prescribed, copies of any voters roll so printed.

(4) Where the voters roll for any constituency has been printed in terms of subsection (3) immediately before a general election or by-election or election to the office of President, and it contains the names of the voters who will be entitled to vote at that election, the Registrar-General may publish a notice in the *Gazette* declaring that the printed voters roll shall be used for the purposes of the identification of voters at that election.

## **19 Powers to demand information**

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

- (a) to demand from any claimant any information necessary to enable him to ascertain whether the claimant is qualified to be registered as a voter or to ascertain his place of residence;
- (b) to demand from any person any information necessary to enable him 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 complete a prescribed form of claim in accordance with section *twenty-one* within such reasonable period as he may specify.

## **PART V**

### **RESIDENCE QUALIFICATIONS OF VOTERS**

## **20 Residence qualifications**

(1) In order to have the requisite residence qualifications to be registered as a voter in a particular constituency, a claimant must be resident in that constituency at the date of his claim:

Provided that, if a claimant satisfies the Registrar-General that, for reasons related to his place of origin, political affiliations or otherwise, it is appropriate for the claimant to be registered as a voter in a constituency in which he is not resident, the claimant may be registered as a voter in that constituency.

(2) For the purposes of subsection (1), a claimant shall be deemed to be residing in a constituency while he 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 name retained on such roll if, for a continuous period of twelve months, he has ceased to reside in that constituency.

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

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

PART VI  
REGISTRATION OF VOTERS

**21 Claims for registration**

(1) Any person who wishes to be registered as a voter on the voters roll for any constituency shall complete the appropriate prescribed claim form and lodge it with the constituency registrar for that constituency:

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

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

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

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

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

(6) Notwithstanding any other provision of this section, the Registrar-General may direct any constituency registrar to register on the voters roll for his constituency any person or class of persons who—

- (a) is or are registered in terms of the National Registration Act [*Chapter 10:17*]; and
- (b) the Registrar-General is satisfied is or are qualified to be registered in terms of this Act;

and the registration of any such person in accordance with any such direction shall be valid in all respects as if that person had completed a claim form and lodged it with the constituency registrar concerned in terms of subsection (1).

**22 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 reasons related to his place of origin, political affiliations or otherwise, to be registered in another constituency in which he is not resident;

may apply in the prescribed form for the transfer of his name to the voters roll for that other constituency and shall submit with his application the voters registration card, if any, issued to him.

(2) An application in terms of subsection (1) shall be signed by the voter and sent to the constituency registrar for the constituency for which he is registered:

Provided that an application for a transfer to a constituency in which the applicant is not resident shall be sent to the Registrar-General for his approval.

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

(4) On receipt of an application in terms of subsection (1) in which the applicant seeks transfer to a constituency in which he is resident, the constituency registrar, if satisfied that the applicant is entitled to the transfer, shall—

- (a) remove the applicant's name from the voters roll for his constituency; and
- (b) forward the applicant's name and particulars to the constituency registrar for the constituency to which the applicant has applied to be transferred.

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

(6) If, on receipt of an application in terms of subsection (1) in which the applicant seeks transfer to a constituency in which he is not resident, the Registrar-General is satisfied that it is appropriate for the applicant to be registered in that constituency, he may direct—

- (a) the constituency registrar for the constituency in which the applicant is registered to remove the applicant's name from the voters roll for his constituency and forward the applicant's name and particulars to the constituency registrar for the constituency to which the applicant has applied to be transferred; and
- (b) the constituency registrar of the constituency to which the applicant has applied to be transferred, on receipt of the applicant's name and particulars forwarded to him in terms of paragraph (a), to register the applicant on the voters roll for his constituency and, as soon as he has done so, to notify the voter thereof;

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

### 23 Voters registration cards

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

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

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

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

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

### 24 New registration of voters

(1) The President may at any time, by proclamation in the *Gazette*, order that there shall be an entirely new registration of voters and in such proclamation shall fix—

- (a) the day upon which such new registration shall begin; and
- (b) the latest day upon which claims and applications for registration shall be received, which day shall be not less than six months after the day fixed in terms of paragraph (a).

(2) Any person who, immediately before the day of publication of a proclamation in terms of subsection (1), is registered as a voter on the voters roll for any constituency shall be entitled to be registered on the new voters roll for that constituency without completing a claim form but merely on submission of a written application in the prescribed form to the constituency registrar for the constituency in which he was so registered.

(3) Where, during the period between the dates fixed in terms of paragraphs (a) and (b) of subsection (1), a person described in—

- (a) paragraph (a) of subsection (2) of section *thirty-two* or the spouse of such person is residing outside his constituency in terms of paragraph (a) or (e) of that subsection; or
- (b) paragraph (b), (c) or (d) of subsection (2) of section *thirty-two* or the spouse of such person is residing outside Zimbabwe in terms of paragraph (b), (c), (d) or (e) of that subsection;

such person may, in his written application in terms of subsection (2), describe as his residential address for the purposes of registration on the new voters roll the place at which he was residing

immediately before he ceased to reside in his constituency and he shall be entitled, subject to this Act, to have his name registered on the new voters roll for the constituency in which such place of residence is situated.

(4) A person who, immediately before the day of publication of a proclamation in terms of subsection (1), was registered with the approval of the Registrar-General in a constituency in which he was not resident may, in his written application in terms of subsection (2), provide the address which he provided in terms of subsection (2) of section *twenty-one* or subsection (3) of section *twenty-two*, as the case may be, and he shall be entitled, subject to this Act, to have his name registered on the new voters roll for the constituency in which such address is situated.

## PART VII

### OBJECTIONS TO REGISTRATION OF VOTERS

#### 25 Objections by constituency registrar

(1) If a constituency registrar has reason to believe that—

- (a) a claimant is not entitled to be registered; or
- (b) a claimant is not entitled to be registered on the voters roll on which he has claimed to be registered; or
- (c) a voter registered on a voters roll is not qualified for registration on that voters roll;

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

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

(2) A notice of objection in terms of subsection (1) shall be in the prescribed form and shall set forth—

- (a) the grounds of objection; and
- (b) that, unless notice of appeal is given within a time stated therein, being not less than seven days, or the constituency registrar, on representations made by the person to whom the objection relates, withdraws his 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 or the constituency registrar does not withdraw his objection, the constituency registrar shall reject the claim, register the claimant on the appropriate voters roll or strike the voter's name off the voters roll, as the case may be;
- (b) notice of appeal is duly given—
  - (i) the constituency registrar shall, unless he withdraws his objection, forthwith set down the objection for hearing before a designated magistrate of the province in which the claimant or voter resides; and
  - (ii) the designated magistrate shall appoint a day and place for the hearing, the day so appointed being not more than thirty days after the date of receipt of the notice of appeal.

(4) The constituency registrar shall give written notice to the appellant of the day and place appointed for the hearing.

(5) A notice of appeal shall be accompanied by the sum of fifty dollars as a deposit.

(6) The appellant may withdraw his appeal on written notice to the constituency registrar and—

- (a) if the objection has been set down in terms of subsection (3) for hearing, the constituency registrar shall notify the designated magistrate of such withdrawal; and
- (b) the sum deposited in terms of subsection (5) shall be forfeited and the money paid into the Consolidated Revenue Fund unless the constituency registrar is satisfied that there was good reason for the appeal and the withdrawal thereof and has authorized the refund of such sum.

## 26 Objections by voters

(1) A voter may object to the retention of any name on the voters roll of the constituency in which he himself is registered.

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

- (a) in writing, setting forth the grounds of the objection; and
- (b) lodged in duplicate with the constituency registrar; and
- (c) accompanied by the prescribed deposit.

(3) If an objection in terms of subsection (1) is lodged—

- (a) the constituency registrar shall forthwith set down the objection for hearing before a designated magistrate of the province in which the person to whom the objection relates resides; and
- (b) the designated magistrate shall appoint a day and place for the hearing, the day so appointed being not more than thirty days after the date of lodging of the objection.

(4) The constituency registrar shall—

- (a) give written notice to the person lodging the objection and to the person to whom the objection relates of the day and place appointed for the hearing; and
- (b) send with such notice to the person to whom the objection relates a copy of the objection, setting forth the grounds thereof.

(5) Notwithstanding anything in this section, if the constituency registrar receives an objection in terms of subsection (1) during the period of thirty days immediately prior to the polling day or first polling day, as the case may be, fixed for an election in the constituency in which the person to whom the objection relates is registered, he 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 withdraw his objection on written notice to the constituency registrar and—

- (a) the constituency registrar shall notify the person to whom the objection relates and the designated magistrate of such withdrawal; and
- (b) the sum deposited in terms of paragraph (c) of subsection (2) shall be forfeited to the Consolidated Revenue Fund unless the constituency registrar is satisfied that there was good reason for the objection and the withdrawal thereof and has authorized the refund of such sum; and
- (c) no further proceedings shall be taken in relation to that objection.

## 27 Hearing and determination of objections by designated magistrate and procedure thereon

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

- (a) the person lodging the objection may appear either in person or by an agent appointed in writing under his hand;
- (b) the person to whom the objection relates may—
  - (i) appear either in person or by an agent appointed in writing under his hand; or
  - (ii) forward by post addressed to the designated magistrate a statement in writing, signed by him and witnessed by another voter of the same constituency, setting

forth his reasons for his claim or for remaining on the voters roll, as the case may be;

- (c) if the person lodging the objection does not appear as provided in paragraph (a), the designated magistrate shall disallow the objection unless the person to whom the objection relates has, in writing, admitted the validity of the objection;
- (d) if the person to whom the objection relates has, in writing, admitted the validity of the objection, the designated magistrate shall direct the constituency registrar—
  - (i) in the case of a claim for registration as a voter, to reject the claim or to register the voter on the correct voters roll;
  - (ii) in the case of an objection to a registered voter, to strike his name off the voters roll or to place it on the correct voters roll;
- (e) if the person lodging the objection appears as provided in paragraph (a), the designated magistrate shall hear and determine the objection and may direct the constituency registrar—
  - (i) in the case of a claim, to register the claimant or reject the claim; or
  - (ii) in the case of an objection to a registered voter, to retain his name on the voters roll, to place it on the correct voters roll or to strike it off the voters roll;

as he 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 authorized agent, the designated magistrate may, if he considers it necessary, adjourn the hearing for the attendance of that party in person and may make an order requiring his attendance accordingly;
- (h) if the designated magistrate holds that an objection is frivolous or vexatious, he may make such order as to costs as he thinks fit.

(2) The designated magistrate may order the forfeiture and the payment into the Consolidated Revenue Fund of—

- (a) the sum deposited in terms of subsection (5) of section *twenty-five* if—
  - (i) the appellant or his duly authorized agent fails to appear on the date appointed for the hearing and fails to lodge with the clerk of the court of the designated magistrate, within twenty-four hours after that date, a reasonable excuse for such failure to appear; or
  - (ii) he has disallowed the appeal and held that the grounds of appeal were frivolous or vexatious;
- (b) the sum deposited in terms of paragraph (c) of subsection (2) of section *twenty-six* if—
  - (i) the person lodging the objection 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 has held that the grounds of objection were frivolous or vexatious;

and if he makes no such order the deposit shall be returned to the depositor.

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

- (1) If, on the hearing of an objection in terms of section *twenty-five* or *twenty-six*—
  - (a) the nature of the claim or objection is such that the designated magistrate is doubtful as to the proper decision to be given upon it, he may draw up a statement of the facts and state a question for decision and 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 person lodging the objection and the person to whom the objection relates and any other party interested shall be entitled to be heard in person or represented by a legal practitioner in argument upon the question stated in the case.

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

(a) may call for further information, if he thinks fit, from the designated magistrate who transmitted it; and

(b) shall give such decision thereon as appears to him right and proper;

and there shall be no appeal from the decision of 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 thinks fit.

### **29 Posting of names of persons objected to**

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

## **PART VIII**

### **MISCELLANEOUS PROVISIONS RELATING TO REGISTRATION OF VOTERS**

#### **30 Removal of duplications**

(1) The various constituency registrars shall from time to time compare the several voters rolls with a view to ensuring that no person is registered as a voter—

(a) more than once on the voters roll for any one constituency; or

(b) on the voters rolls for more than one constituency.

(2) Subject to subsection (3), if a constituency registrar is satisfied that a voter is registered—

(a) more than once on the voters roll for his constituency, he shall remove the name where it occurs on the second or any subsequent occasion;

(b) on the voters roll for his constituency and on the voters roll for any other constituency, he shall remove the name of the voter from his voters roll unless he is satisfied that the voter is entitled to be registered on his voters roll rather than on the other voters roll.

(3) A constituency registrar shall not remove the name of a voter in terms of subsection (2) unless section *twenty-five* is complied with, and that section and sections *twenty-seven* and *twenty-eight* shall apply, *mutatis mutandis*, as though the constituency registrar were taking an objection in terms of subsection (1) of section *twenty-five*.

#### **31 Removal from voters roll on disqualification or death**

(1) Subject to subsection (2), if a constituency registrar is satisfied that a voter whose name is registered on a voters roll has become disqualified for registration as a voter or is dead, he shall remove his name therefrom.

(2) A constituency registrar shall not remove the name of a voter in terms of subsection (1)—

(a) on the grounds of disqualification, unless section *twenty-five* is complied with; or

(b) on the grounds of death, unless a notice has been published in the *Gazette* setting forth that unless notice of appeal is given to him within a time stated in the notice, being not less than seven days, or the constituency registrar, on representations made by any person, withdraws his objection, the voter's name will be removed from the roll;

and sections *twenty-five*, *twenty-seven* and *twenty-eight* shall apply, *mutatis mutandis*, as though the constituency registrar were taking an objection in terms of subsection (1) of section *twenty-five*.

### 32 Removal from voters roll owing to absence

(1) Subject to subsection (3), if a constituency registrar is satisfied that a voter registered on a voters roll—

- (a) has been absent from his constituency for a period of twelve months or longer and is not a voter who was registered with the approval of the Registrar-General in a constituency in which he was not resident; or
- (b) has left Zimbabwe with the intention of residing permanently outside Zimbabwe;

he shall remove such voter's name therefrom.

(2) In determining the period of absence of any person for the purposes of subsection (1), no account shall be taken of any period during which the person—

- (a) resides outside his constituency while he is a Vice-President, Minister, Provincial Governor or Deputy Minister; or
- (b) is occupied in the discharge of his duties outside Zimbabwe while in the service of the State; or
- (c) resides temporarily outside Zimbabwe by reason of—
  - (i) his service with an international organization of which Zimbabwe is or was at the time a member; or
  - (ii) his 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 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 constituency for the purpose of being with his spouse if such spouse is a person referred to in paragraph (a), (b), (c) or (d).

(3) A constituency registrar shall not remove the name of a voter in terms of subsection (1) unless he has sent to the voter written notice of objection, to which a form of notice of appeal has been annexed.

(4) The proviso to subsection (1) of, and subsections (2) to (6) of, section *twenty-five* and sections *twenty-seven* and *twenty-eight* shall apply, *mutatis mutandis*, in relation to the exercise by a constituency registrar of his powers in terms of subsection (1) as though he were taking an objection in terms of subsection (1) of section *twenty-five*.

### 33 Registration of voter no longer disqualified

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

### 34 Additional powers to alter voters rolls

(1) In addition to other powers of alteration conferred by this Part, a voters roll may be altered by the constituency registrar as follows—

- (a) at any time—
  - (i) by correcting any obvious mistake or omission; or

- (ii) by changing, on the written application of a voter, the original name or address of the voter to an altered name or address;
  - (b) at any time except during the period between the issue of a proclamation referred to in section *thirty-eight* or *thirty-nine* and the close of polling at the election fixed by any such proclamation, by striking out the name of any person, on proof that he has become qualified for and has secured registration on another voters roll.
- (2) In the case of an alteration in terms of paragraph (b) of subsection (1), a notice of the fact in the prescribed form shall forthwith be sent to the voter by the constituency registrar.

### 35 How alterations to be made

All alterations made by a constituency registrar in terms of this Act 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.

### 36 Documents required in connection with registration exempt from stamp duty

No stamp duty shall be charged upon any declaration made or any authorization in writing issued for the purpose of any provision of this Act relating to the registration of voters or the revision of rolls.

## PART IX

### 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 is required by this Act to do; or
  - (b) having obtained possession of a claim form signed by any other person for the purpose of being delivered to the constituency registrar, fails so to deliver it within a period of seven days calculated from the day on which he 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 in terms of paragraph (a) or (b) of section *nineteen*—
    - (i) without just cause, fails to give any such information as he possesses or unreasonably delays in giving the same; or
    - (ii) furnishes information which he 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 *nineteen*; 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 any other person procures the registration of himself or any other person on a voters roll for a constituency, knowing that he or such other person is not entitled to be registered on that voters roll or is already registered thereon; or
  - (g) by himself 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 six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.\*

(3) Any person who—

(a) by duress, including threats to invoke any unnatural means whatsoever and reference to such unnatural means; or

(b) by any fraudulent device or contrivance;

causes or induces any person or attempts to cause or induce any person or any group of persons or persons generally to refrain from registering or taking steps to register as a voter or voters, as the case may be, 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 X

### PROCLAMATION OF GENERAL ELECTIONS OR BY-ELECTIONS

#### 38 General elections

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

(2) For the purposes of the election of members of Parliament, other than chiefs, the President shall fix—

(a) a place or places at which, and a day or days, not less than fourteen nor more than twenty-one days after the day of publication of the proclamation referred to in subsection (1), on which a nomination court shall sit in terms of section *forty-six* to receive nominations of candidates for election as members of Parliament; and

(b) a day or days, not less than twenty-one nor more than forty-five days after the nomination day or last nomination day, as the case may be, fixed in terms of paragraph (a), on which a poll shall be taken if a poll becomes necessary in terms of paragraph (c) of subsection (17) of section *forty-six* for the election of members of Parliament; and

(c) a day on which the voters rolls for that election shall be regarded as closed for the purpose of accepting the registration of voters who may vote at the election, which day may be on or after the day of publication of the proclamation referred to in subsection (1) or not more than thirty-one days before that day.

(3) For the purposes of the election of chiefs the President shall fix times and places at which and a day or days, not earlier than the nomination day fixed in terms of paragraph (a) of subsection (2) and not later than fourteen days after the polling day or last polling day, as the case may be, fixed in terms of paragraph (b) of subsection (2), on which electoral colleges shall meet in terms of Part XI.

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

#### 39 Vacancies and by-elections

(1) A vacancy in the membership of Parliament which exists otherwise than by reason of a dissolution of Parliament shall, subject to this section, be notified to the President in writing by the Speaker.

(2) Whenever the Speaker has reason to believe that a vacancy exists in the membership of Parliament by reason of paragraph (j), (k) or (p) of subsection (1) of section 41 or section 42 of the Constitution, he shall publish a notice in the *Gazette* declaring that, in his opinion, the vacancy exists.

(3) A notice referred to in subsection (2) shall state the cause of the vacancy to which the notice relates.

(4) The Speaker shall not publish a notice referred to in subsection (2) unless he has been informed in writing of the vacancy by two persons, one of whom shall be the Minister and the other a member of Parliament.

(5) If, within fourteen days of the publication of a notice referred to in subsection (2), an application is not presented to the High Court for an order declaring that the person to whom the notice relates has not ceased to be a member of Parliament, the registrar of the High Court shall forthwith give notice of that fact to the Speaker, who shall notify the President as is provided in subsection (1).

(6) Subsection (5) shall apply, *mutatis mutandis*, if—

(a) after presenting an application referred to in that subsection, the petitioner does not prosecute his application within the period fixed by or under the rules of court relating to the High Court; or

(b) after hearing the application, the High Court confirms the declaration of the Speaker.

(7) The Minister shall be the respondent on the trial of an application referred to in subsection (5).

(8) If, after hearing an application referred to in subsection (5), the High Court makes an order declaring that the petitioner has not ceased to be a member of Parliament, the registrar of the High Court shall forthwith give notice of that fact to the Speaker, who shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

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

(a) he has been notified in terms of this section of a vacancy in the membership of Parliament; or

(b) a declaration is made by the Minister 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;

issue a proclamation ordering a new election to fill the vacancy in the same manner, *mutatis mutandis*, as is provided in section *thirty-eight* in regard to a general election, and the provisions of this Act shall apply accordingly.

## PART XI

### ELECTION OF CHIEFS TO PARLIAMENT

#### 40 Electoral colleges

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

(a) the Council of Chiefs referred to in section 18 of the Chiefs and Headmen Act [*Chapter 29:01*] shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President in terms of subsection (3) of section *thirty-eight* for the purpose of electing two chiefs to be members of Parliament; and

(b) each provincial assembly of chiefs referred to in section 16 of the Chiefs and Headmen Act [*Chapter 29:01*] shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President in terms of subsection (3) of section *thirty-eight* for the purpose of electing one chief to be a member of Parliament to represent the province for which the provincial assembly is established.

#### 41 Presiding officers

For the purposes of the nomination and election of chiefs to Parliament, the Minister shall appoint a member of the Public Service to be the presiding officer of each electoral college referred to in section *forty*.

#### 42 Quorum of electoral colleges

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

#### 43 Nomination of chiefs as candidates

(1) At every meeting of an electoral college the presiding officer shall call for nominations of candidates for election to fill any vacancies in the membership of Parliament that are to be filled by the electoral college concerned.

(2) Every candidate for election to Parliament as a chief in terms of this Part shall be nominated by one chief who is a member and present at the meeting of the electoral college concerned and seconded by another chief who is a member and present at the meeting of the electoral college.

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

(4) If at a meeting of the electoral college which is the Council of Chiefs—

(a) only two candidates have been duly nominated, the presiding officer shall declare such candidates to have been duly elected as members of Parliament with effect from the day of such declaration, and shall notify the Minister and cause to be published in the *Gazette* notice of the names of the candidates and the day with effect from which they were declared so elected;

(b) more than two candidates have been duly nominated, a poll shall take place in accordance with this Part.

(5) If at a meeting of an electoral college which is a provincial assembly of chiefs—

(a) only one candidate has been duly nominated to represent the province concerned, the presiding officer shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the day of such declaration, and shall notify the Minister and cause to be published in the *Gazette* notice of the name of such candidate and the day with effect from which he was declared so elected;

(b) more than one candidate has been duly nominated to represent the province concerned, a poll shall take place in accordance with this Part.

#### 44 Conduct of poll for election of chief

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

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

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

(4) The presiding officer shall make, before the meeting of the electoral college is reconvened in terms of subsection (3), a declaration of secrecy before a commissioner of oaths and no stamp duty shall be charged on such declaration.

(5) During the period that the meeting has been adjourned the presiding officer shall, in the presence of the candidates, seal a ballot box for each candidate which is clearly labelled with the name of such candidate.

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

(a) the presiding officer shall conduct a secret poll in relation to the vacancies to be filled by the electoral college;

(b) each member of the electoral college shall be entitled to one vote in relation to each member of Parliament to be elected by the electoral college;

(c) no member of the electoral college shall cast more than one vote for one candidate;

- (d) after the members of the electoral college have voted the presiding officer shall, in the presence of the members and the candidates, cause the votes to be counted;
- (e) after the counting of the votes the presiding officer shall prepare a list with the candidate or candidates who received the greatest number of votes at the top of the list and the rest of the candidates in descending order according to the number of votes cast for each and, subject to paragraph (f), shall—
  - (i) in the case of the electoral college which is the Council of Chiefs, declare the two candidates whose names appear first and second on the list to have been duly elected as members of Parliament with effect from the day of such declaration;
  - (ii) in the case of an electoral college which is a provincial assembly of chiefs, declare the candidate whose name appears at the top of the list to have been duly elected as a member of Parliament with effect from the day of such declaration;
- (f) if two or more candidates have received the same number of votes and the addition of a vote would entitle any of those candidates to be declared elected, the presiding officer shall arrange for a fresh vote to be taken in respect of those candidates, with each member of the electoral college being allowed one vote, and the candidate who, at the second poll, receives the greatest number of votes shall be declared to have been duly elected as a member of Parliament with effect from the day of such declaration:

Provided that, if after the fresh vote has been taken one or more vacancies have still not been filled because two or more candidates have received the same number of votes, the presiding officer shall, in the presence of the members of the electoral college and the candidates, draw lots for the purpose of determining which candidate or candidates shall be deemed to be duly elected and, after the drawing of the lots, he shall declare the candidate or candidates concerned to have been duly elected as a member or members of Parliament, as the case may be, with effect from the day of such declaration.

(7) Any declaration by the presiding officer under this section shall be final and subject to reversal only on petition in terms of Part XXIII to the High 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 Minister and cause to be published in the *Gazette* notice of the names of the candidates declared to have been duly elected as members of Parliament and the day with effect from which they were declared so elected.

## PART XII

### APPOINTED MEMBERS OF PARLIAMENT

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

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

## PART XIII

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

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

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

- (a) shall be signed by not fewer than ten persons who are registered on the voters roll for the constituency for which the candidate seeks election and shall be countersigned with the acceptance of the candidate or his election agent; and

- (b) may specify a distinctive symbol which the candidate wishes to appear on the ballot paper in conjunction with his name; and
- (c) may, if the candidate is to stand for or be sponsored by any party, specify that fact, together with the name of the party and an abbreviation of such name which the candidate wishes to appear on the ballot paper.

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

(3) Nomination papers in respect of candidates for election as members of Parliament may be lodged with the constituency registrars for the constituencies concerned at any time after the publication of the proclamation 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 agent shall provide the constituency registrar with an address, including where possible a telephone number, where the candidate may be contacted during the period between nomination day and polling day or the last polling day, as the case may be, in the election concerned.

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

(6) The constituency registrar shall in open court—

- (a) announce whether any candidate has lodged his nomination paper before the sitting of the court and, if so, the name of every such candidate; and
- (b) receive any further nominations for election as a member of Parliament for the constituency for which he is the constituency registrar.

(7) No nomination paper shall be received by the constituency registrar 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 election agent is present in the court and ready to submit a nomination paper in respect of the candidate, the constituency registrar shall give him an opportunity to do so.

(8) The constituency registrar shall examine every nomination paper lodged with him which has not been previously examined by him in order to ascertain whether it is in order and shall give any candidate or his election agent an opportunity to rectify any defect not previously rectified and may adjourn the sitting of the court for that purpose from time to time:

Provided that the sitting shall not be adjourned to any other day that is not a nomination day.

(9) If, on examining a nomination paper which specifies that the candidate concerned is to stand for or be sponsored by a party, the constituency registrar is doubtful that such fact is true, the constituency registrar may require the candidate or his election agent to produce proof as to such fact, and may adjourn the sitting of the court for that purpose from time to time:

Provided that the court shall not be adjourned to any other day that is not a nomination day.

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

- (a) if he considers that any symbol or abbreviation specified therein 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 recognized symbol or abbreviation of any party, other than the party, if any, for which the candidate concerned is standing or which is sponsoring him;

as to be likely to cause confusion;

or

- (b) if any symbol specified therein 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 party and the constituency registrar has reason to believe that that fact is not true; or
- (d) if in his opinion the nomination paper is for any other reason not in order;

and subsection (19) shall apply.

(11) Without derogation from section *one hundred and fifty-five*, the constituency registrar shall not reject any nomination paper—

- (a) solely on account of any minor variation between the name of any person as it appears on the nomination paper and as it appears on the voters roll, if the constituency registrar is reasonably satisfied that the variation is due to an error; or
- (b) on account of any other imperfection in the nomination paper if the constituency registrar is satisfied that there has been substantial compliance with this section.

(12) The constituency registrar shall in open court announce the name of every candidate who has been duly nominated.

(13) The sitting of the nomination court in terms of this section shall end immediately after the announcement in terms of subsection (12) and after the close of the sitting no candidate shall be entitled or permitted to lodge a nomination paper.

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

(15) A candidate shall not be regarded as duly nominated for a constituency if—

- (a) his nomination was not lodged in terms of this section with the constituency registrar for the constituency in which the candidate seeks election; or
- (b) his nomination paper has not been signed and countersigned in accordance with subsection (1) or is otherwise not properly completed; or
- (c) the deposit referred to in subsection (1) of section *forty-seven* was not lodged with his nomination paper; or
- (d) he is not qualified for election at that election; or
- (e) he has been duly nominated for election for another constituency for which the poll has not taken place.

(16) If, at the close of the sitting of the appropriate nomination court the same person has been duly nominated for more than one constituency, his nomination for all the constituencies for which he has been duly nominated shall be void.

(17) If, at the close of the sitting of the nomination court—

- (a) no person has been duly nominated for election for the constituency, the constituency registrar shall report the fact to the Minister and to the Secretary to Parliament;
- (b) only one person has been duly nominated for election for the constituency, the constituency registrar shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the polling day or last polling day, as the case may be, fixed in terms of paragraph (b) of subsection (2) of section *thirty-eight* and shall notify the Minister and cause to be published in the *Gazette* notice of the name of the candidate declared so elected and the day with effect from which he was declared so elected:

Provided that if, by virtue of an appeal in terms of subsection (19), an additional candidate is to be regarded as duly nominated, the constituency registrar shall revoke his declaration in terms of this paragraph and shall notify the Minister and 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 Part XIV.

(18) Any voter registered on any voters roll may—

(a) before the sitting of the nomination court, at the office of the constituency registrar and during office hours, inspect any nomination paper lodged with the constituency registrar;

(b) after the close of the sitting and during such period as may be prescribed, inspect any nomination paper at such time and subject to such conditions as may be prescribed.

(19) If a nomination paper has been rejected in terms of subsection (10) or been regarded as void by virtue of subsection (16)—

(a) the constituency registrar shall forthwith notify the candidate or his election agent, giving reasons for his decision; and

(b) the candidate shall have the right of appeal from such decision to a judge of the High Court in chambers and such judge may confirm, vary or reverse the decision of the constituency registrar and there shall be no appeal from the decision of that judge; and

(c) if no appeal in terms of paragraph (b) is lodged within four days after the receipt of notice of the decision of the constituency registrar, the right of appeal of the candidate shall lapse and the decision of the constituency registrar shall be final; and

(d) if an appeal 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 Part XIV shall be held;

and if he does so, the constituency registrar shall cause notice thereof to be published in the *Gazette*.

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

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

(2) If a poll takes place and the number of valid votes cast for an unsuccessful candidate is less than one-fifth of the number of valid votes cast for the successful candidate, the sum deposited by or on behalf of the unsuccessful candidate shall be forfeited and the money paid into the Consolidated Revenue Fund.

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

If a poll becomes necessary in terms of paragraph (c) of subsection (17) of section *forty-six*, the constituency registrar 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 thinks fit the situation of and hours specified in terms of section *fifty-three* 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 nomination at any time before polling day 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 registrar, signed by the candidate personally.

(3) Where a candidate has withdrawn his nomination in terms of this section, the sum deposited by or on his behalf in terms of section *forty-seven* shall be forfeited and the money paid into the Consolidated Revenue Fund.

(4) If, as a result of the withdrawal of a candidate in terms of this section, only one candidate remains duly nominated for election for the constituency concerned, the constituency registrar shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the polling day or last polling day, as the case may be, fixed in terms of paragraph (b) of subsection (2) of section *thirty-eight* and shall notify the Minister and cause to be published in the *Gazette* notice of the name of the candidate declared so elected and the day with effect from which he was declared so elected:

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

(5) If, after the withdrawal of a candidate in terms of subsection (1), two or more candidates remain duly nominated for election for the constituency concerned, the constituency registrar shall take all such steps as are reasonably practicable to ensure that—

- (a) the withdrawal is brought to the attention of voters in the constituency; and
- (b) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.

**50 Death of candidate**

(1) If—

- (a) the Minister is satisfied that a duly nominated candidate for election for a constituency died before the poll commenced or, if the poll has commenced, before the close thereof; or
- (b) the proceedings relating to an election for a constituency have been stopped in terms of subsection (2);

the Minister shall, so far as concerns that constituency, declare that all proceedings relating to that election are void and all proceedings relating to that election shall be commenced afresh in the same manner as if a vacancy had occurred:

Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the proceedings were declared void, if such candidate or his election agent notifies the constituency registrar in writing of his intention to remain a candidate.

(2) If a constituency registrar is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he shall stop all proceedings relating to that election and forthwith notify the Minister.

**PART XIV****PREPARATION FOR AND VOTING AT POLL****51 Polling stations**

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

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

Provided that—

- (i) there shall be at least one polling station at a place within the boundaries of the constituency concerned;
- (ii) no polling station shall be established as a polling station for more than one constituency.

(3) A constituency registrar may provide for mobile polling stations that can be moved from place to place in his constituency.

(4) Additional polling stations may be established or provided for in terms of this section at any time, whether before or after the commencement of the poll.

(5) A constituency registrar—

(a) shall cause a notice of—

- (i) the places at which fixed polling stations are to be established; and
- (ii) the hours during which the fixed polling stations will be open;

to be published on each day during the polling period in a newspaper circulating in the constituency concerned and in such other manner as he thinks fit; and

(b) may make known, in such manner as he thinks fit, the places to be visited by a mobile polling station during the polling period.

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

(1) For any election the constituency registrar shall arrange for the obtaining of voting compartments and ballot boxes and shall provide papers, including ballot papers, instruments for marking ballot papers with the official mark, seals and other necessary things and shall do such other acts and things and make such arrangements to facilitate the taking of the poll as he may 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 Consolidated Revenue Fund.

(2) The constituency registrar—

- (a) shall appoint sufficient presiding officers, polling officers and counting officers for the purposes of the poll; and
- (b) may appoint a polling officer to act as presiding officer during such periods as the presiding officer is absent from the polling station.

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

(1) A fixed polling station shall be open during such hours as the constituency registrar may fix:

Provided that such a polling station shall be open for at least eight hours continuously on each polling day.

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

(3) If a constituency registrar has provided mobile polling stations, he may fix the hours during which each such station is proposed to be open at each place where it will stop on a polling day.

(4) 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—

- (a) is inside the room, tent, vehicle or other place in which the ballot box is placed; or
- (b) in his opinion, was in the immediate precincts of the polling station before the proposed closing of the polling station and was prevented from entering the room, tent, vehicle or other place in which the ballot box is placed owing to congestion therein;

to record his vote before closing the polling station.

(5) Unless specific hours have been fixed in terms of subsection (3), the presiding officer of a mobile polling station may permit any voter to record his vote at that polling station at any time on any polling day and at any place where such polling station is.

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

(1) Not more than thirty minutes before the commencement of the poll on the first polling day at any polling station the presiding officer shall—

- (a) satisfy himself that the ballot box to be used at the polling station is empty; and
- (b) show the interior of the empty ballot box to such persons entitled 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 Registrar-General.

(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, *mutatis mutandis*, 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 *seventy-two*.

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

- (a) at the close of the poll on each polling day close and seal the aperture in the ballot box used at the polling station; and
- (b) break the seal and open the aperture only at the commencement of the poll on the next succeeding polling day;

in accordance with instructions issued by the Registrar-General and in the presence of such persons entitled 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 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 polling station until it is delivered to the appropriate constituency registrar.

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

(1) The presiding officer and other officers at the polling station shall—

- (a) keep order thereat and regulate the number of voters to be admitted at a time; and
- (b) exclude all other persons other than the Registrar-General, the constituency registrar, a deputy constituency registrar or assistant constituency registrar, the candidates or their election agents, the police on duty and such other classes of persons as may be prescribed.

(2) Save as is provided in subsection (1), the presiding officer may require any person, other than a person actually recording his 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).

(3) The powers conferred by subsections (1) and (2) 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.

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

(5) For the purposes of the application of this section to a mobile polling station, the term “polling station” shall include an area indicated or demarcated by the presiding officer at any place where the mobile polling station is stationary for the purposes of taking a poll thereat.

## 56 Number of votes and identification of voters

(1) At an election for a member of Parliament—

- (a) every voter registered on the voters roll for the constituency concerned shall be entitled to vote;
- (b) subject to sections *fifty-seven* and *fifty-eight*, a voter shall not be entitled to vote more than once for a candidate who has been duly nominated for that constituency.

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

(3) Unless otherwise directed by the Registrar-General, the presiding officer shall require an applicant for a ballot paper to produce his voters registration card and if that card—

- (a) shows that the applicant is registered as a voter on the voters roll for the constituency; and
- (b) does not bear any indication that the applicant has previously received a ballot paper or postal ballot paper for the election;

he shall mark or otherwise deal with that card in a manner directed by the Registrar-General and shall hand the applicant a ballot paper:

Provided that—

- (i) an applicant who has received a postal ballot paper for that election and who hands it, together with the form of declaration of identity and the covering envelope and the postal ballot envelope received therewith, to the presiding officer for cancellation may be handed a ballot paper;
- (ii) if the Registrar-General has made a declaration in terms of subsection (4) of section *eighteen* in relation to that election, it shall not be necessary for an applicant to produce his voters registration card;
- (iii) an applicant who has, in terms of section 7 of the National Registration Act [*Chapter 10:17*], been issued with a notice or identity document may produce that notice or identity document instead of a voters registration card, and if he does so this subsection shall apply, *mutatis mutandis*, in respect of that notice or identity document, as the case may be, as if it were a voters registration card.

(4) A presiding officer, if so directed by the Registrar-General—

- (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 Registrar-General to ascertain whether or not he has previously received a ballot paper at that election, and if the applicant refuses to submit to such examination or if such examination shows that the applicant has previously received such a ballot paper, the presiding officer shall not hand him a ballot paper;
- (b) after handing an applicant a ballot paper in terms of subsection (3), shall mark him in the manner specified by the Registrar-General.

(5) Any person who refuses to be marked in terms of paragraph (b) of subsection (4) shall be guilty of an offence and liable to a fine not exceeding level four.

## 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 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 nomination paper in terms of paragraph (c) of subsection (1) of section *forty-six*; and
  - (iv) such other particulars as may be prescribed;
- (b) before the ballot paper is handed to the applicant, the presiding officer shall mark the ballot paper with the official mark;
- (c) when the person claiming the vote has received the ballot paper he shall—
- (i) take the paper to the compartment provided for the purpose; and
  - (ii) then signify the candidate for whom he desires to vote by secretly placing a cross in the rectangle opposite the name of that candidate or, if there is more than one such rectangle, in the rectangle nearest to the right-hand side of the ballot paper; and
  - (iii) then fold the ballot paper so that the official mark is visible and the names of the candidates and the cross made by him are not visible and, having held up the ballot paper so that the presiding officer can recognize the official mark, drop the ballot paper in the ballot box placed in front of the presiding officer:

Provided that, if he has spoiled the ballot paper, he may return it to the presiding officer in terms of section *fifty-eight* and shall deal with the second ballot paper given to him in accordance with this paragraph.

### **58 Spoilt ballot papers**

If a voter inadvertently spoils a ballot paper, he may return it to the presiding officer who shall, if satisfied of the inadvertence, give him another ballot paper and retain the 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 physically incapacitated or illiterate voters**

(1) At the request in person of a voter who cannot read or write or who is incapacitated by blindness or other physical cause from voting in the manner provided in section *fifty-seven*, the presiding officer shall cause the vote of such voter to be there and then marked on a ballot paper in the manner directed by the voter and the ballot paper to be placed in the ballot box, and if the directions of the voter as to the manner in which the vote is to be marked on the ballot paper are not sufficiently clear to enable the vote to be so marked without further directions from the voter, the presiding officer may cause such questions to be put to the voter as, in his opinion, are necessary to elicit such further directions.

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

**60 Procedure at close of poll**

(1) In this section—

“**spoilt ballot paper**” means a spoilt ballot paper which has been returned in terms of section *fifty-eight*.

(2) A presiding officer shall, immediately after the close of the poll, in the presence of such candidates and their election agents as are present—

- (a) close and seal the aperture in the ballot box and affix his seal thereto and permit any such candidates and election agents to affix their seals thereto; and
- (b) make up into separate packets sealed with his own seal and with the seals of those candidates and election agents, if any, who desire to affix their seals—
  - (i) the unused and spoilt ballot papers and counterfoils of the unused ballot papers placed together;
  - (ii) the counterfoils of the used ballot papers, including the counterfoils of the spoilt ballot papers;
  - (iii) the list of votes marked by the presiding officer;
  - (iv) the postal ballot papers and the declarations of identity delivered to him by voters;

and shall forthwith deliver or cause to be delivered the ballot box and the packets to the constituency registrar.

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

## PART XV

## VOTING BY POST

**61 Applications for postal ballot papers**

(1) For the purposes of subsection (2), a person shall be deemed to have resided in his constituency during any period—

- (a) in which he resided outside his constituency while he was a Vice-President, Minister, Provincial Governor or Deputy Minister; or
- (b) occupied in the discharge of his duties outside Zimbabwe while in the service of the State; or
- (c) in which he resided temporarily outside Zimbabwe by reason of—
  - (i) his service with an international organization of which Zimbabwe is or was at the time a member; or
  - (ii) in the employment of—
    - 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 attendance at a university or other educational institution; or
- (d) during which he resided outside Zimbabwe on account of ill-health or disability; or
- (e) during which he, being the spouse of a person referred to in paragraph (a), (b), (c) or (d), was absent from his constituency for the purpose of being with his spouse.

(2) When an election is to take place in a constituency, a voter ordinarily resident in Zimbabwe who is resident in that constituency or was, within twelve months of the polling day or first polling day, as the case may be, fixed in relation to that constituency, resident therein and—

- (a) has good reason to believe that he will not be in the constituency on any such polling day during polling hours; or
- (b) has good reason to believe that on account of ill-health, infirmity or other like cause or his duty as a member of a disciplined force he will be prevented from attending at a polling station on any such polling day; or
- (c) resides more than twenty kilometres from the nearest polling station for that constituency;

may apply to the constituency registrar for that constituency for a postal ballot paper.

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

- (a) in the prescribed form; and
- (b) signed by the applicant in the presence of a competent witness and accompanied by the voters registration card of the applicant; and
- (c) delivered by hand or by registered post so as to reach the constituency registrar concerned not later than noon of the day before the polling day or first polling day, as the case may be, fixed in relation to the constituency concerned:

Provided that—

- (i) failure to register an application sent by post shall not invalidate the application;
- (ii) if the Registrar-General has made a declaration in terms of subsection (4) of section *eighteen* in relation to that election, it shall not be necessary for an applicant to submit his voters registration card;
- (iii) if, in terms of subsection (3) of section *twenty-three*, the applicant has not been furnished or issued with a voters registration card, he shall submit with his application the notice in writing or identity document issued in terms of section 7 of the National Registration Act [*Chapter 10:17*] or a copy of such notice or identity document certified by a competent witness.

(4) A voter shall not lose his residential qualifications for the purposes of subsection (2) solely by reason of an alteration of the boundaries of the constituency in which he resides or has resided, where such alteration has resulted from a delimitation of constituencies carried out within a period of twelve months before the polling day or first polling day, as the case may be, fixed in relation to that constituency in the election to which his application for a postal ballot paper relates.

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

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

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

(6) The constituency registrar shall number in consecutive order all applications for postal ballot papers received by him and all such applications shall be kept by the constituency registrar and shall be open for public inspection, without fee, until the declaration of the result of the poll, when they shall be dealt with in terms of section *seventy*.

## 62 Issue of postal ballot papers

(1) If the constituency registrar is satisfied, in regard to an application received by him not later than noon on the day before the polling day or first polling day, as the case may be, fixed in relation to the constituency, that—

- (a) it has been properly completed and signed by the applicant and is properly witnessed; and

- (b) the name of the applicant is on the voters roll for the constituency and the application is otherwise in order;

he shall issue to him a postal ballot paper in the manner provided in this section.

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

(3) The constituency registrar shall enter or cause to be marked upon the prescribed form of declaration of identity the number of the ballot paper issued to the applicant.

(4) The constituency registrar shall then place in an envelope addressed to the applicant at the address to which he has, in his application for the postal ballot paper, requested that the ballot paper be sent—

- (a) the ballot paper; and
- (b) the form of declaration of identity; and
- (c) an envelope addressed to the constituency registrar; and
- (d) a smaller envelope marked “Ballot Paper Envelope” bearing the number of the ballot paper.

(5) The constituency registrar shall then effectively close the envelope addressed to the applicant and—

- (a) deliver it to the nearest post office for registration and dispatch; or
- (b) hand it to the applicant upon signature by the applicant of a receipt therefor;

and the constituency registrar shall keep the receipt signed by the applicant or the receipt for such registration, as the case may be:

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

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

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

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

(1) A voter to whom a postal ballot paper has been issued shall not be entitled to vote at a polling station in the constituency in which he is registered unless he first delivers to the presiding officer for cancellation such ballot paper, together with the form of declaration of identity and all envelopes received therewith.

(2) The constituency registrar may, if he considers it desirable, before the polling day or first polling day, as the case may be, send to the presiding officer of every polling station in the constituency a list of persons to whom postal ballot papers have been issued.

### **65 Voting by post**

(1) The following directions for voting by post shall be substantially observed by every person to whom a postal ballot paper has been issued—

- (a) before marking the ballot paper the voter shall produce before a competent witness—
  - (i) the ballot paper issued to him showing the number thereon; and
  - (ii) the declaration of identity; and
  - (iii) the envelope in which he has received the ballot paper;
- (b) the voter shall sign the declaration of identity in the presence of the competent witness who shall, if satisfied as to the identity of the voter, sign the declaration of identity in his own handwriting and add the title under which he acts as a competent witness;

- (c) the voter shall signify the candidate for whom he wishes to vote by secretly placing on the ballot paper a cross in accordance with subparagraph (ii) of paragraph (c) of section *fifty-seven*, and no other person except the competent witness shall be present and the voter shall not allow the competent witness to see how he has voted;
- (d) immediately after voting the voter shall, in the presence of the competent witness but without disclosing how he has voted, place the marked ballot paper in the ballot paper envelope, effectively close that envelope and place it, together with the declaration of identity, in the covering envelope and effectively close the covering envelope;
- (e) the voter shall then dispatch the covering envelope by registered post without delay, or hand it to the constituency registrar who, when it is so handed to him, shall issue a receipt for it:

Provided that—

- (i) the failure to register any such envelope shall not invalidate the vote;
- (ii) where the voter is a member of a disciplined force and has received his ballot paper in the manner specified in the proviso to subsection (5) of section *sixty-two*, he may transmit the envelope to the constituency registrar through his commanding officer and such commanding officer shall convey or cause to be conveyed the covering envelope to the returning officer by the most expeditious means consistent with safety;
- (iii) at the request in person of a voter who cannot read or write or who is incapacitated by blindness or other physical cause from voting in the manner provided in this subsection, the competent witness may mark the vote of the voter on the ballot paper in the manner directed by the voter.

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

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

## **66 Postal ballot boxes**

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

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

(3) At the time and place notified the constituency registrar shall show the postal ballot box open and empty to such candidates and election agents as are present and it shall then be sealed with the seal of the constituency registrar and the seals of such candidates and agents as wish to affix their seals and shall be marked “Postal Ballot Box” with the name of the constituency, and the constituency registrar shall make provision for the safe custody of such ballot box.

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

## **67 Opening of postal ballot boxes**

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

(2) The constituency registrar shall give to each candidate or his election agent at least twenty-four hours' notice in writing of the time and place at which he will open the postal ballot box and the envelopes contained therein.

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

- (a) the constituency registrar and such counting officers as he may consider necessary; and
- (b) the candidates and one election agent for each candidate and such other persons as may be prescribed:

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

(4) When the postal ballot box has been opened, the constituency registrar shall count and note the number of envelopes and shall then open each covering envelope separately, examine the declaration of identity and compare the number thereon with the number on the ballot paper envelope.

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

(6) If the constituency registrar is not satisfied that the declaration of identity has been duly signed and witnessed, he shall endorse the declaration of identity "Vote Rejected" and shall attach thereto the ballot paper envelope without opening such envelope or, if there is no such envelope, the ballot paper.

(7) If the constituency registrar finds that the numbers on the declaration of identity and on the ballot paper envelope do not agree or if the envelope has no number on it, he shall open the envelope and, if the number of the ballot paper agrees with the number on the declaration of identity, he shall mark the ballot paper with the official mark and place the ballot paper in the ballot box referred to in section *sixty-nine*.

(8) In every case in which the number on the ballot paper does not agree with the number on the declaration of identity, the constituency registrar shall replace the ballot paper in the ballot paper envelope, if any, attach such envelope or ballot paper, as the case may be, to the declaration of identity and endorse the declaration of identity "Vote Rejected".

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

(10) A declaration of identity not accompanied by a ballot paper and a ballot paper not accompanied by a declaration of identity shall be marked "Rejected".

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

(12) Where a ballot paper envelope or a ballot paper is found in terms of this section to be accompanied by a written statement of a competent witness in terms of subsection (3) of section *sixty-five*, and the constituency registrar is not satisfied from the statement that the competent witness was entitled in terms of that section to mark the ballot paper, the constituency registrar shall endorse the declaration of identity "Vote Rejected" and shall attach thereto—

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

## **68 Rejected declarations of identity**

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

- (a) declaration of identity which he proposes to reject on the ground that it has not been properly signed and witnessed; and
- (b) written statement of a competent witness in terms of subsection (3) of section *sixty-five*, where the constituency registrar proposes to reject the vote concerned on the ground that the competent witness was not entitled to mark the ballot paper concerned;

and, if a candidate or agent objects to his decision, the returning officer shall add to the endorsement on the relevant declaration of identity the words “Rejection Objected To”.

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

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

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

(2) If the number on the ballot paper envelope—

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

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

(4) The constituency registrar shall show to the candidates and their election agents present every written statement of a competent witness in terms of subsection (3) of section *sixty-five*, where the constituency registrar proposes to reject the vote concerned on the ground that the competent witness was not entitled to mark the ballot paper concerned, and, if a candidate or election agent objects to his decision, the constituency registrar shall add to the endorsement on the relevant ballot paper the words “Rejection Objected To”.

### **70 Safe-keeping of documents**

(1) The constituency registrar shall, immediately after the declaration of the result of the poll, seal in a packet—

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

(2) Where—

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

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

### 71 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 by bribery or intimidation to record his 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 is convicted of that offence by the High Court, be declared by the High Court to be disqualified for voting at an election for a period not exceeding five years.\*

(2) Any person who—

- (a) makes or induces any other person to make a false statement in an application for a postal ballot paper or in a written statement in terms of subsection (3) of section *sixty-five*; or
- (b) fails to deliver or post forthwith an envelope containing or purporting to contain a ballot paper entrusted to him by a voter for the purpose of delivering or posting it to a constituency registrar;

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

## PART XVI

### PROCEDURE AFTER CLOSE OF POLL

### 72 Procedure on receipt of ballot boxes after poll

(1) The constituency registrar shall receive into his custody the ballot boxes and the sealed packets mentioned in section *sixty* and shall, as soon as practicable after he has received all the ballot boxes and sealed packets, make arrangements for verifying the statements in terms of subsection (3) of section *sixty* and counting the votes given at the poll and, for that purpose, shall give notice in writing to each candidate or his election agent of the time and place where he will—

- (a) verify the said statements; and
- (b) count the votes.

(2) At the verification of the statements referred to in subsection (1) and at the counting of the votes the following persons and no others may be present—

- (a) the constituency registrar and such counting officers as he may consider necessary and such other persons as may be prescribed; and
- (d) the candidates and one election agent for each candidate:

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

(3) At the time and place notified for the verification of the statements referred to in subsection (1) and in the presence of such persons referred to in paragraph (a) of subsection (2) and candidates and their election agents as are present, the constituency registrar shall adopt the following procedure in relation to each ballot box and the sealed packets received by him therewith—

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

- (c) he shall then verify the statement given by the presiding officer in terms of subsection (3) of section *sixty* by comparing with it the number of ballot papers in the ballot box and the unused and spoilt ballot papers;
  - (d) he shall then re-seal, after examination, each of the packets opened by him and shall, after complying with section *seventy-four*, report to the Registrar-General the result of such verification and shall on request allow a candidate or election agent of a candidate to copy the report before it is sent.
- (4) When the constituency registrar has—
- (a) completed the verification of the statements, whether or not he has found them to be correct; and
  - (b) verified the postal ballot papers as provided in Part XV;

he shall, in the presence of such persons referred to in paragraph (a) of subsection (2) and candidates and their election agents as are present, mix together in one container all the ballot papers contained in each of the ballot boxes, including the ballot box mentioned in paragraph (a) of subsection (2) of section *sixty-nine*, so that it is impossible to determine from which ballot box a particular ballot paper was taken.

### 73 Counting and rejection of votes

(1) At the time and place notified by the constituency registrar the votes shall be counted in the manner provided by this Part and the regulations.

(2) Subject to subsections (3) and (4), the constituency registrar shall reject and not count any ballot paper—

- (a) which does not bear the official mark of a presiding officer or the constituency registrar; or
- (b) which bears no mark other than the official mark mentioned in paragraph (a); or
- (c) which does not indicate with certainty the candidate for whom the voter intended to vote.

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

(4) If the aggregate of the ballot papers which do not bear the official mark of a presiding officer or the constituency registrar—

- (a) does not exceed five *per centum* of the votes cast at the election; and
- (b) together with all the other ballot papers referred to in subsection (4) of section *seventy-two* does not exceed the total number of ballot papers issued by the presiding officers and the constituency registrar for that constituency;

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

(5) If the constituency registrar—

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

### 74 Determination and declaration of result of poll

(1) Subject to subsection (2), after the counting is completed the constituency registrar shall forthwith declare the candidate who has received—

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

to be duly elected as a member of Parliament with effect from the day of such declaration.

(2) When an equality of votes is found to exist between two or more candidates and the addition of one vote would entitle any of the candidates to be declared elected, the constituency registrar shall at once communicate the fact to the Registrar-General who shall, as soon as possible thereafter, arrange for the determination of the candidate to whom such one additional vote shall be deemed to have been given by the drawing of lots by the Registrar-General in the presence of a judge of the Supreme Court or the High Court, and shall thereafter declare the candidate so determined to be duly elected as a member of Parliament with effect from the day of such declaration.

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

- (a) the 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 able to be present.

(4) A declaration by the constituency registrar or the Registrar-General under this section shall be final, subject to reversal on petition to the High Court that such declaration be set aside or to the proceedings relating to that election being declared void under subsection (1) of section *forty-two*.

#### **75 Secrecy of voting to be maintained**

A constituency registrar shall, while counting the ballot papers for the purpose of the verification of the statements under section *seventy-two* and while counting the votes, take such precautions as may be appropriate to prevent any person from seeing the number printed on any ballot paper.

#### **76 Notification of result of election**

(1) As soon as the constituency registrar has, under this Part, declared a candidate to be duly elected, he shall, without delay, transmit by telegram in the prescribed form to the Registrar-General, who shall transmit to the Minister and to the Secretary to Parliament, the names of the person declared duly elected, the day with effect from which he was declared elected, the number of votes received by the respective candidates and the number of rejected ballot papers.

(2) The information referred to in subsection (1) shall be confirmed by notice in writing which is signed by the constituency registrar and sent to the Registrar-General by the first postal delivery after the transmission of the telegram.

#### **77 Minister to cause names of candidates elected to be published in *Gazette***

As soon as the names of the persons declared duly elected for the several constituencies have been received by the Minister, he 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.

#### **78 Custody and disposal of ballot and other papers**

(1) As soon as may be after polling day or the last polling day, as the case may be, in his constituency, the constituency registrar shall enclose in separate sealed packets the counted and rejected ballot papers.

(2) A constituency registrar shall not open any—

- (a) sealed packet containing—
  - (i) counterfoils of used and spoilt ballot papers; or
  - (ii) postal ballot papers and declarations of identity;that has been delivered to him in terms of subsection (2) of section *sixty*; or

- (b) sealed packet containing documents referred to in subsection (1) or (2) of section *seventy*;  
or
- (c) packet that has been re-sealed by him after examination in terms of paragraph (d) of subsection (3) of section *seventy-two*; or
- (d) sealed packet containing counted or rejected ballot papers;

while such packet remains in his custody.

(3) As soon as may be after polling day, the constituency registrar shall transmit to the Registrar-General in separate packets—

- (a) all the packets referred to in subsection (2); and
- (b) the statement in terms of subsection (3) of section *sixty* and the report of the result of the verification thereof;

and shall endorse on each packet a description of its contents and the date of the election to which it relates.

(4) The Registrar-General shall retain for six months all the documents referred to in subsection (2) and then, unless otherwise directed by an order of the High Court, shall cause them to be destroyed.

(5) No person shall open any packet referred to in subsection (2) or permit any such packet to be opened, except in terms of an order of the High Court, which may be granted by the High 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.

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

Provided that an order which authorizes 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 has voted and his vote has been declared by the High Court to be invalid.

(7) Every person who carries into effect any order of the High Court referred to in subsection (5) which authorizes 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 has voted and his vote has been declared by the High Court to be invalid.

(8) Where an order is made for the production by the Registrar-General of any document in his possession relating to a specified election, the production by him 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 Registrar-General shall be evidence of such papers being what they are stated to be by the endorsement.

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

## PART XVII

### GENERAL PROVISIONS RELATING TO POLLS

#### **79 Constituency registrars and other persons to make declaration of secrecy**

Every constituency registrar, presiding officer, polling officer, counting officer, candidate or agent of a candidate authorized to attend at the polling station or at the verification of the statements or at the counting of votes shall, before the opening of the poll, make a declaration of secrecy—

- (a) if he is a constituency registrar, before a commissioner of oaths; or
- (b) in any other case, before a commissioner of oaths or the constituency registrar;

and no stamp duty shall be charged on such declaration.

**80 Offences in relation to ballot papers and ballot boxes**

- (1) Any person who—
- (a) forges or counterfeits or fraudulently destroys a ballot paper or the official mark on a ballot paper; or
  - (b) without due authority supplies any ballot paper to any person; or
  - (c) without due authority puts into a ballot box any paper or thing other than the ballot paper which he is authorized 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 registrar at such election or, if the constituency registrar is indicted or charged, in the Registrar-General.

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

(1) Every officer, candidate and election or polling 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 authorized 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 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 ballot paper after he 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 vote.

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

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

**82 Persons wilfully failing in their duties guilty of offence**

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

**83 Abrogation of elections**

(1) Where the President has reason to believe that, by reason of actual or threatened intimidation or violence or any other cause, it is unlikely that a free and fair election can be held in any constituency, he may, after consultation with the Electoral Supervisory Commission, order the abrogation of the election in that constituency.

(2) The Minister shall cause notice of any order made in terms of subsection (1) to be published in the *Gazette* and in such other manner as he thinks appropriate.

- (3) Where the President has ordered the abrogation of an election in any constituency—
- (a) all proceedings relating to that election shall be terminated immediately upon the order being made, and everything done in relation to that election prior to the order shall be void;
  - (b) the President shall, as soon as circumstances permit a free and fair election to be held in the constituency, issue a proclamation ordering an election to be held in the constituency in the same manner, *mutatis mutandis*, as is provided in section *thirty-eight* in regard to a general election, and the provisions of this Act shall apply accordingly.

## PART XVIII

### ELECTION EXPENSES AND ELECTION AGENTS

#### **84 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 and the use of telephones;
- (d) one central committee room, which may consist of two or more adjoining rooms;
- (e) public meetings and hiring of halls or premises therefor;
- (f) one election agent for the candidate and no more;
- (g) a number of polling agents within the constituency concerned not exceeding such number as may be prescribed;
- (h) a number of clerks not exceeding such number as may be prescribed and the same number of messengers;
- (i) miscellaneous expenses not exceeding in the whole three thousand dollars, and not being expenses incurred in respect of any matter 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;
- (j) personal expenses;
- (k) 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 one thousand dollars.

#### **85 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 election agent and shall forthwith notify in writing the full names and address of his election agent to the constituency registrar, and the constituency registrar shall forthwith give public notice of the full names and address of the election agent so appointed.

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

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

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

- (b) if the candidate appoints an election agent in terms of paragraph (a) he shall forthwith give public notice, by an advertisement in a newspaper circulating in the constituency, of the full names and address of the election agent so appointed.
- (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 election agent does not appoint another election agent;

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

### 86 Polling agents

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

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

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

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

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

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

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

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

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

(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 by his election agent, either by himself or through a polling agent:

Provided that the inability under this section to enforce such a contract against the candidate shall not relieve the candidate from the consequences of any corrupt practice or illegal practice having been committed by his agent.

(3) An election agent shall, where a poll is to be held, send to the constituency registrar not later than three days before polling day or the earliest polling day, as the case may be, a list containing the full names and address of every person employed by him 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 number on such roll.

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

### **88 All payments in respect of expenses to be made through agent and all expenditure to be disclosed**

(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 election agent of the candidate, whether acting in person or by a polling 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 election agent and not otherwise.

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

### **89 Receipts for election expenses**

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

### **90 Claims for election expenses**

(1) Every claim against a candidate at an election or his election agent in respect of any election expenses which is not sent in to the 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, an 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, an 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 an election agent, in the case of any claim sent in to him 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 thinks fit, bring an action for a disputed claim in any competent court and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court 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 election agent.

(7) The court, on application by the person making the claim referred to in subsection (1) or by the candidate or his election agent, may, if cause is shown to its satisfaction, by order, give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any election expenses, although sent in after the 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 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 an 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 be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

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

(1) The candidate at an election may pay any personal expenses incurred by him on account of or in connection with or incidental to that election, to an amount not exceeding five thousand dollars, but any further expenses so incurred shall be paid by or through his election agent.

(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 election agent within the time limited by section *ninety* for sending in claims a written statement of the amount of personal expenses paid by him under this section, giving the principal details of expenditure.

(4) Any person, if so authorized in writing by the election agent of the candidate, may pay any necessary stationery, postage, telegrams 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 election agent.

(5) A person who has made any payment in terms of subsection (4) shall send to the election agent, within the time limited by section *ninety* 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.\*

### **92 Claims by election agents**

This Part shall apply to a claim by an election agent for his remuneration and to the payment thereof in the same manner as if he 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 XIX**

### **PROVISIONS RELATING TO ELECTIONS TO OFFICE OF PRESIDENT**

#### **93 When election to office of President to be held**

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

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

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

#### 94 Notice of election to office of President

(1) Not later than ten days after the commencement of the period referred to in paragraph (a) or (b) of subsection (1) of section *ninety-three*, the Registrar-General shall publish in the *Gazette* a notice announcing—

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

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

#### 95 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 name; and
- (d) may, if the candidate is to stand for or to be sponsored by any party, specify that fact, together with the name of the party and an abbreviation of such name which the candidate wishes to appear on the ballot paper.

(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 party concerned with authority to certify that the candidate is to stand for or to be sponsored by that party.

(3) Subject to this section, section *forty-six* shall apply, *mutatis mutandis*, in relation to the nomination of candidates for election to the office of President.

#### 96 Deposit on nomination

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

(2) If a poll takes place and the number of valid votes cast for an unsuccessful candidate is less than one-fifth of the number of valid votes cast for the successful candidate, the sum deposited by or on behalf of the unsuccessful candidate shall be forfeited and the money paid into the Consolidated Revenue Fund.

#### 97 Publication of names of Presidential candidates

As soon as practicable after the day fixed for the sitting of a nomination court in terms of paragraph (a) of subsection (1) of section *ninety-four*, the Registrar-General 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.

## 98 Withdrawal of candidature

(1) A nominated candidate for election as President may, by notice in writing addressed to the Registrar-General, withdraw his 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 Registrar-General shall cause the withdrawal to be published in the *Gazette* and in all newspapers of mass circulation in Zimbabwe.

(3) Where a candidate for election as President has withdrawn his candidature in terms of this section, the sum deposited by or on his behalf in terms of subsection (1) of section *ninety-six* shall be forfeited and the money paid into the Consolidate Revenue Fund.

## 99 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 Registrar-General; or
- (b) no candidate nominated for election as President is qualified in terms of subsection (1) of section 28 of the Constitution for election as President; or
- (c) a candidate nominated for election as President dies on or before the day on which the poll in the election is to be taken; or
- (d) a candidate nominated for election as President who would otherwise have been entitled to be declared duly elected as President dies after the poll has begun in the election to the office of President, but before he has been declared duly elected as President;

the Registrar-General shall forthwith publish in the *Gazette* a notice announcing in the same manner, *mutatis mutandis*, as is provided in section *ninety-four* the sitting of a new nomination court, and thereafter the provisions of this Part shall apply accordingly.

## 100 Procedure when poll to be taken

(1) If a poll becomes necessary in terms of subsection (2) of section *one hundred and one*, the Registrar-General shall, as soon as practicable after the day fixed for the sitting of the nomination court in terms of paragraph (a) of subsection (1) of section *ninety-four*—

- (a) by notice published in the *Gazette*, notify—
  - (i) the names of the candidates in alphabetical order of surnames; and
  - (ii) the polling day or days; and
- (b) notify by such means as he thinks fit the situation of and the hours specified for the opening and closing of each polling station in each constituency.

## 101 Determination and declaration of result of election to office of President

(1) Where only one candidate for President is validly nominated at the close of the day on which a nomination court sits in terms of paragraph (a) of subsection (1) of section *ninety-four*, the Registrar-General shall declare such candidate to be duly elected as President without the necessity of a poll.

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

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

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

(5) If, after a second election held in terms of subsection (3), the two candidates referred to in subsection (4) receive an equal number of votes, Parliament shall, as soon as practicable after the

declaration of the result of that election, meet as an electoral college and elect one of the two candidates as President by secret ballot and without prior debate.

(6) The result of an election to the office of President held in terms of subsection (5) shall be declared by the Speaker who shall forthwith publish such result in the *Gazette* and in such other manner as he considers necessary to give sufficient publicity to the result.

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

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

### **102 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 High Court within thirty days of the declaration of the result of the election in respect of which the petition is presented, by any person—

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

(2) If, on the trial of an election petition presented in terms of subsection (1), the High 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 election; or
- (b) that the President was not duly elected, the registrar of the High Court shall forthwith give notice of that fact to the Registrar-General who shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

(3) A declaration by the High 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 thirty-one*, *one hundred and thirty-two*, subsections (3), (4), (5), (6), (7) and (8) of section *one hundred and thirty-six*, sections *one hundred and thirty-seven*, *one hundred and forty*, *one hundred and forty-one*, subsection (2) of section *one hundred and forty-two* and *one hundred and forty-three* shall apply, *mutatis mutandis*, to an election petition presented in terms of subsection (1).

### **103 Application of Parts XIV, XV, XVI and XVII**

Subject to this Part, the provisions of Parts XIV, XV, XVI and XVII, other than section *eighty-three*, shall apply, *mutatis mutandis*, to an election to the office of President.

## PART XIXA \*

### PROVISIONS RELATING TO LOCAL AUTHORITY ELECTIONS

#### *Preliminary*

### **103A Application of Part XIXA**

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.

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\* Part inserted by s. 6 of Act 21 of 1997.

**103B Interpretation in Part XIXA**

- (1) Subject to section *three*, 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 shall be construed as a reference to such office or premises in the council area concerned as he may determine.

*Qualifications of voters and preparation of voters rolls***103C Qualifications of voters in local authority elections**

- (1) Subject to this Part, every person who—
  - (a) is qualified in terms of paragraph 3 of Schedule 3 to the Constitution for registration as a voter on the common roll; and
  - (b) is resident within a council area;shall be entitled to be enrolled on a voter's roll prepared for the council area.
- (2) Subject to section *twenty*, a person shall be regarded as resident in a council area if—
  - (a) in relation to any Communal Land within the council area, he 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 is ordinarily resident therein or thereon.
- (3) If a claimant satisfies the Registrar-General that, for reasons related to his place of origin or otherwise, it is appropriate for him to be registered as a voter in a council area in which he is not resident, the claimant may be registered as a voter in that council area:

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

**103D First voters roll**

- (1) Subject to this Part, before the date fixed for the coming into being of a council, the Registrar-General shall draw up—
  - (a) in the case of a municipal council, the first voters roll to be used in elections of councillors and elections to the office of mayor; and
  - (b) in the case of any other council, the first voters roll to be used in elections for councillors.
- (2) For the purpose of preparing a voters roll in terms of subsection (1), the Registrar-General may—
  - (a) cause to be transferred to that roll the names of persons—
    - (i) who are registered on the common roll of a constituency falling wholly or partly within the council area concerned; and
    - (ii) who the Registrar-General knows or has reason to believe are entitled to be enrolled on the voters roll;
  - or
  - (b) direct that the common roll of a constituency falling wholly or partly within the council area concerned, or any part of that common roll, shall constitute the voters roll for the council area, where the Registrar-General knows or has reason to believe that the voters concerned are entitled to vote in elections held in that area, and thereupon that common roll or part thereof, as the case may be, shall constitute the voters roll concerned; or

- (c) may enrol any person or class of persons who—
  - (i) is or are registered in terms of the National Registration Act [*Chapter 10:17*]; and
  - (ii) the Registrar-General is satisfied is or are entitled to be enrolled on that roll in terms of this Act.

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

### 103E Preparation of subsequent voters rolls

- (1) Subject to this section—
  - (a) in each year in which a general election of councillors or an election to the office of mayor is to be held, the Registrar-General shall prepare a voters roll containing the names of persons entitled to be enrolled thereon on the date fixed in terms of paragraph (d) of subsection (1) of section *one hundred and three L* 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 shall prepare a voters roll containing the names of persons entitled to be enrolled thereon in terms of section *one hundred and three C*.
- (2) Instead of preparing a voters roll in terms of subsection (1), the Registrar-General may—
  - (a) prepare—
    - (i) a supplementary voters roll containing the names, in alphabetical order of surnames, of persons who are entitled to be enrolled on the voters roll concerned but who are not enrolled thereon; and
    - (ii) a removals list containing the names, in alphabetical order of surnames, of all persons whose names appear on the existing voters roll for the area concerned but who are no longer qualified to be enrolled thereon;

or

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

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

(4) Subsections (2) and (3) of section *one hundred and three D* shall apply, *mutatis mutandis*, in relation to any roll or list prepared or updated in terms of this section.

### 103F Inspection of voters rolls

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

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

- (a) notify that a copy of the voters roll is open for inspection in terms of subsection (1); and
- (b) call upon any person who—
  - (i) claims that he should be enrolled on the voters roll, to apply for enrolment in terms of section *twenty-one* or to apply to the Registrar-General for the rectification of the voters roll as soon as possible; or

- (ii) has any objection to the enrolment of a person whose name appears on the voters roll, to lodge his objection as soon as possible in terms of Part VII.

*Qualifications for election*

**103G 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 is a member of another local authority, other than a local authority which—
  - (i) will be abolished on or before the date he 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 is a member of Parliament; or
- (c) in terms of the law in force in any country, he 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 creditors which has not been rescinded or set aside;

or

- (d) during the five years immediately preceding the date of his proposed nomination as a candidate, he 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 has been convicted of an offence involving dishonesty in connection with any funds or other property of the council concerned or any other local authority; or
- (f) subject to subsection (3), he 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 would assume office if elected; or
- (g) subject to subsections (4) and (5), he 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 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 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 functions as a councillor or, having been dismissed in terms of either of those sections, he 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 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 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;
- (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 is in the continuous and regular employment of the State in respect of which he receives a wage or salary;
- (b) by virtue of the fact that—
  - (i) he is in receipt of a pension which is payable by the State; or
  - (ii) he 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 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 is a consultant whose services are not wholly retained by the State; or
  - (v) he 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 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 is employed, with the concurrence of the Public Service Commission, has certified in the prescribed form that any of his duties as a councillor, should he be elected, would not conflict with his duties as an employee of the State.

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

### **103H Qualifications and disqualifications for election as mayor**

- (1) Any person who—
  - (a) is a citizen of Zimbabwe; and
  - (b) has attained the age of forty years; and
  - (c) is, and has been for the three years immediately preceding the election, ordinarily resident in the council area concerned; and
  - (d) holds academic or professional qualifications to at least the following levels—
    - (i) a general certificate of education with passes in at least five subjects, including English, at Ordinary Level; and
    - (ii) either—

- A. a general certificate of education with passes in at least two subjects at Advanced Level; or
- B. a post-Ordinary Level qualification in any profession or calling obtained after pursuing at least two years of studies;

and

- (e) has a working knowledge of either the Shona or the Ndebele language; and
- (f) is not disqualified in terms of subsection (2) or (3);

shall be qualified for election as mayor of a municipality.

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

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

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

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

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

*When elections to be held*

**103I When election of councillors to be held**

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

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

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

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

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

(4) A by-election to fill—

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

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

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

**103J When election to office of mayor to be held**

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

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

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

**103K Postponement of elections**

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

- (a) to enable a voters roll to be prepared or updated; or
  - (b) for any other reason, to enable the election to be held properly in accordance with this Act;
- the Minister may, by notice in the *Gazette*, postpone the election to such later date as he may specify in the notice:

Provided that—

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

*Conduct of elections***103L Notice of election and nomination day**

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

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

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

**103M 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 authorized agent indicating his consent to the nomination.

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

(3) 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 Registrar-General shall forthwith give notice in a newspaper and post a notice at his 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, *mutatis mutandis*, 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 Registrar-General shall forthwith, by notice in a newspaper and posted at his 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.

**103N 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 candidacy by means of written notification to the Registrar-General, signed by the candidate personally.

(2) Where the Registrar-General is notified of a candidate's withdrawal after the posting of a notice in terms of paragraph (b) of subsection (3) of section *one hundred and three M*, and—

- (a) the number of remaining candidates is equal to or less than the number of vacancies to be filled at the election, the Registrar-General 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 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 Registrar-General 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, *mutatis mutandis*, 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 Registrar-General 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.

### **103O 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 Registrar-General 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;

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 agent notifies the Registrar-General in writing of his intention to remain a candidate.

### **103P Entitlement to vote and number of votes a voter may cast**

(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 satisfies the presiding officer of the polling station concerned as to his identity, notwithstanding that there may be a minor variation between his 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.

### **103Q Drawing of lots to determine result of election**

If after the counting of votes has been completed an equality of votes is found to exist between two or more candidates and the addition of one vote would entitle any of the candidates to be declared elected, the Registrar-General shall, before two or more of the candidates and their agents, determine the candidate or candidates to whom such one additional vote shall be deemed to have been given by the drawing of lots, and shall thereafter declare the candidate or candidates so determined.

**103R Declaration and publication of result of election**

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

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

- (a) the candidates, if any, who are deemed in terms of paragraph (a) of subsection (3) of section *one hundred and three M* or paragraph (a) of subsection (2) of section *one hundred and three N* to have been elected; and
- (b) the candidates who have been elected or are deemed to have been elected by a poll and the number of votes given to each such candidate.

**103S Expenses of elections**

(1) Subject to this section, the necessary expenses of any election in terms of this Part, including any fees payable to any person appointed for the purpose of the election, shall be paid out of the funds of the council concerned.

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

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

*General***103T 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 Minister 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 Minister shall give notice of any direction in terms of subsection (1) in the *Gazette* and in a newspaper.

**103U 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, *mutatis mutandis*, to elections to which this Part applies as if any references therein to a constituency registrar were references to the Registrar-General.

## PART XX

## CORRUPT PRACTICES

**104 Treating**

(1) Any person who corruptly by himself or by any other person, whether before, during or after an election, directly or indirectly, gives or provides or pays wholly or in part the expenses of giving or providing, any food, drink, entertainment, lodging or provisions to or for any person—

- (a) for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at an election; or

- (b) on account of such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at an election;

shall be guilty of the offence of treating 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) Any voter who corruptly accepts or takes any food, drink, entertainment, lodging or provisions supplied by a person guilty of an offence in terms of subsection (1) shall also be guilty of the offence of treating 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.\*

(3) The giving, providing, accepting or taking of such food, drink, entertainment, lodging or provisions as are reasonably necessary to enable voters to attend any meeting or rally shall not amount to a contravention of this section.

### 105 Undue influence

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

- (a) makes use of or threatens to make use of any force, violence or restraint or any unnatural means whatsoever upon or against any person; or
- (b) inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person; or
- (c) does or threatens to do anything to the disadvantage of any person;

in order to induce or compel that person—

- (i) to sign a nomination paper or refrain from signing a nomination paper; or
- (ii) to vote or refrain from voting;

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.\*

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

- (a) makes use of or threatens to make use of any force, violence or restraint upon or against any person; or
- (b) inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person; or
- (c) does or threatens to do anything to the disadvantage of any person;

on account of that person—

- (i) having signed or refrained from signing a nomination paper; or
- (ii) having voted or refrained from voting at any election;

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.\*

(3) Any person who by abduction, duress, threats to invoke any unnatural means whatsoever or references to such unnatural means or by fraudulent device or contrivance—

- (a) impedes or prevents the exercise of his vote by a voter; or
- (b) compels, induces or prevails upon a voter either to vote or to refrain from voting at an election;

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.\*

### 106 Bribery

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

- (a) gives, lends or procures or agrees to give, lend or procure or offers 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 for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at an election; or
- (g) after an election receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at an election; or
- (h) conveys or transfers any property or pays any money to any person for the purpose of enabling him to be registered as a voter, thereby to influence his vote at a future election, or pays any money on behalf of a voter for the purpose of inducing him to vote or refrain from voting;

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.

### 107 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 *sixty-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.\*

### 108 Illegal transportation of voters

(1) Any person who corruptly conveys any other person or causes any other person to be conveyed to any constituency for the purpose of enabling or assisting that other person to vote unlawfully in that constituency, shall be guilty of the offence of illegally transporting voters 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) If, in any proceedings in respect of a contravention of subsection (1), it is proved that—

- (a) a candidate for election or an office-bearer of any party or group conveyed any person or caused any person to be conveyed to any constituency in which that other person was not entitled to vote; and
- (b) within forty-eight hours thereafter the person so conveyed applied unlawfully for a ballot paper at a polling station in the constituency to which he was conveyed;

the candidate or office-bearer shall be deemed, unless the contrary is proved, to have corruptly conveyed the person or caused him to be conveyed for the purpose of enabling or assisting him to vote unlawfully in the constituency to which he was conveyed.

### 109 Penalties for corrupt practices

(1) ...

[Subsection repealed by s. 4 of Act 22/2001.]

(2) ...

[Subsection repealed by s. 4 of Act 22/2001.]

(3) Any person convicted of a corrupt practice by the High Court may, in addition to any other punishment, be declared to be incapable, for a period not exceeding five years from the date of his conviction, of—

- (a) being registered as a voter or voting at an election; or
- (b) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution, and, if he holds any such office, the High Court may declare that that office shall be vacated by him as from the date of his conviction.

## PART XXI

### ILLEGAL PRACTICES

#### 110 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.\*

#### 111 Unauthorized election expenses

Any person who, without the express or implied authority of a candidate or his election agent, incurs election expenses in relation to that candidate shall be guilty of an illegal practice 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.\*

**112 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.\*

**113 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 knew that he 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.§

**114 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 a corrupt practice in terms of this section 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.§

**115 Betting prohibited**

(1) In this section—

“bet” means to stake any money by or on behalf of any person or, expressly or impliedly, to undertake or promise or agree to stake by or on behalf of any person any money.

(2) Any person who bets on any event or contingency of or 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.\*

**116 Bills and placards to have names of printer and publisher**

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

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

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

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

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

(4) Any person who prints, publishes or posts, or causes to be printed, published or posted, any printed matter referred to in subsection (3) which does not bear upon the face thereof the names and addresses of the printer and publisher shall be guilty of an illegal practice and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment unless he proves that such failure was due to inadvertence.\*

(5) The proprietor and the publisher of a newspaper shall cause the word “advertisement” to be printed as a headline to each article or paragraph in his newspaper containing electoral matter, the insertion of which is, or is to be, paid for or for which any reward or compensation or promise of reward or compensation is, or is to be, made.

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

(7) No candidate shall issue or distribute any document, including any bill, placard, poster, pamphlet, circular or card, which contains any facsimile or imitation of a ballot paper and advises or purports to advise any person as to the manner in which such person should record his vote, unless the candidate has first obtained from the constituency registrar for the constituency concerned a certificate, in duplicate, stating that, in his opinion, such document contains no representation likely to mislead a voter as to his rights.

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

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

### 117 Prohibited symbols

(1) The President 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 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 liable to a fine not exceeding 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 party; or

(ii) an agent or supporter of a candidate;

he shall be deemed to have contravened the subsection in order to further the objects or activities of the 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.

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

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

- (a) convoke or take part in any gathering of more than twelve persons; or
- (b) canvass for votes; or
- (c) utter slogans; or
- (d) distribute leaflets or pamphlets for or on behalf of any candidate or party; or
- (e) organize 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.\*

### **119 Premises licensed for sale of liquor not to be used for certain purposes**

(1) No person shall hire, let or use—

- (a) any premises on which the sale, by wholesale or retail, of any intoxicating liquor is authorized by a licence, whether the licence is for consumption of liquor on or off the premises; or
- (b) any premises where any intoxicating liquor is sold or is supplied to members of a club, society or association, other than a permanent political club;

or any part of any such premises, as a committee room or for any meeting of voters for the purpose of promoting or procuring the election of a candidate at an election or in connection with arrangements made by any person or party with reference to an election.

(2) Any agreement entered into in contravention of subsection (1) shall be void.

(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.\*

(4) Nothing in this section shall apply to any part of premises if—

- (a) such part has an entrance separate from any other part of the premises from which any intoxicating liquor is sold or supplied; and
- (b) any door giving direct access from either of such parts to the other is kept shut and locked during the holding of any committee meeting or meeting of voters.

### **120 Procuring prohibited persons to vote and false statements regarding withdrawal of candidates**

(1) Any person who votes or induces or procures any person to vote at an election, knowing that he 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 five or to imprisonment for a period not exceeding six months 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 election be rendered void for any illegal practice under this section committed by his agent other than his election agent.

### **121 Obstruction of voters**

Any person who, at an election, wilfully obstructs a voter, either at the polling station or on his way thereto or therefrom, 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.\*

### **122 Philanthropical societies not to devote funds for political purposes**

(1) It shall not be lawful for any philanthropical society or body to devote any of its funds for political purposes.

(2) If a philanthropical society or body contravenes subsection (1), the president or chairman and the secretary or other officer of such society or body 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.\*

### **123 General penalties for illegal practices**

(1) ...

[Subsection repealed by s. 4 of Act 22/2001.]

(2) 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 conviction, of—

- (a) being registered as a voter or of voting at an election; or
- (b) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution, and, if he holds any such office, the High Court may declare that that office shall be vacated by him as from the date of his conviction.

## PART XXII

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

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

Subject to sections *one hundred and twenty*, *one hundred and twenty-five* and *one hundred and twenty-six*—

- (a) if upon the trial of an election petition the High Court certifies to the Minister that any corrupt practice or illegal practice has been committed with reference to the election the subject of the petition, by or with the knowledge and consent or approval of the candidate returned at that election, or by or with the knowledge and consent or approval of any of his agents, the election of that candidate shall be void, and a fresh election shall thereupon be held;
- (b) if a candidate or his election agent is found at the said trial to have committed any corrupt practice or illegal practice, that candidate or agent may be declared by the High 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 holds any such office, the High Court may declare that that office shall be vacated by him as from the date of the finding.

### **125 When election not void**

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

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

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

- (1) When it appears to the High Court, either on application or upon an election petition, that—
  - (a) any act or omission of a candidate at an election or of his 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 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 High 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 High 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.

### **127 Hearing of person before he is found guilty 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 High Court to have been guilty of any corrupt practice or illegal practice, the High Court shall cause notice to be given to such person and, if he appears in pursuance of the notice, shall give him an opportunity of being heard and of calling evidence to show why no such finding should be recorded against him.

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

Any person charged with—

- (a) a corrupt practice may, if the circumstances warrant such a finding, be found guilty of an illegal practice; or
- (b) an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

**129 Time within which proceedings must be commenced**

(1) Proceedings against a person in respect of a corrupt practice or illegal practice or any other offence under this Part shall be commenced within six months after the offence is alleged to have been committed or within three months after the report of the High Court, if any, under section *one hundred and thirty-six*, whichever period last expires:

Provided that no proceedings shall be commenced after the lapse of one year from the date on which the offence is alleged to have been committed.

(2) For the purposes of subsection (1), the issue of a summons, warrant, writ or other process shall, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, be deemed to be the commencement of the proceedings, but, save as aforesaid, the service or execution of such process on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceedings.

**130 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 XXIII

## ELECTION PETITIONS

**131 Interpretation in Part XXIII**

In this Part—

“**respondent**” means the member of Parliament whose election or qualification for membership is complained of in an election petition.

**132 Who may present election petition**

(1) A petition complaining of an undue return or an undue election of a member of Parliament by reason of want of qualification, disqualification, corrupt practice, illegal practice, irregularity or any other cause whatsoever may be presented to the High Court—

- (a) by any person claiming to have had a right to be elected at that election; or
- (b) by any person alleging himself to have been a candidate at such election; or
- (c) by a registered voter in the constituency concerned.

(2) Whenever in a petition referred to in subsection (1) the seat is claimed for some person other than the petitioner, such person shall be a party to the petition as a co-petitioner.

**133 Provisions governing election petitions**

(1) An election petition shall be—

- (a) presented by lodging it with the registrar of the High Court; and
- (b) signed by the petitioner or all of the petitioners if more than one.

(2) An election petition shall be presented within thirty days after the day on which the result of the election has been notified in terms of this Act:

Provided that, if the return or election is questioned upon an allegation of an illegal practice, the petition may be presented, if the election petition specifically alleges a payment of money or some other act to have been made or done since that day by the member or an agent of the member or with the privity of the member or his 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 High Court, being not less than one thousand dollars, for the payment of all costs, charges and expenses that may become payable by the petitioner—

- (a) to any person summoned as a witness on his behalf; and
- (b) to the respondent;

shall be given by or on behalf of the petitioner.

(4) Security given in terms of subsection (3) shall be by recognizance entered into by the petitioner and sureties not exceeding four in number in a form approved by the registrar of the High Court, which recognizance shall be signed in the presence of the registrar of the High Court or a magistrate.

### **134 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 usual or last known dwelling or place of business.

### **135 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 thirty-three* 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 High Court and if the objection is allowed—

- (a) the petitioner may, within a further period to be fixed by the High Court not exceeding ten days, remove the objection by a deposit of such sum of money as may be considered necessary by the High Court to make the security sufficient;
- (b) if the petitioner does not remove the objection in the manner specified in paragraph (a), no further proceedings shall be heard on the petition.

(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.

### **136 Provisions as to trial of election petition**

(1) An election petition shall be tried by the High Court in open court.

(2) If, on the trial of an election petition praying the High Court to determine that some person other than the respondent is entitled to be declared duly elected in place of the respondent, it is proved that any person who voted for the respondent—

- (a) was bribed or treated or subjected to undue influence by the respondent or anyone on behalf of the respondent; or
- (b) was guilty of personation or of an illegal practice or was not qualified or was disqualified as a voter at the election;

the vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election.

(3) At the conclusion of the trial of an election petition the High Court shall determine whether the respondent was duly elected or whether any, and if so what, person other than the respondent was or is entitled to be declared duly elected, and if the High Court determines that—

- (a) the respondent was duly elected, such election shall be and remain as valid as if no petition had been presented against his election;
- (b) the respondent was not duly elected but that some other person was or is entitled to be declared duly elected—
  - (i) the respondent shall forthwith be deemed to have vacated his seat; and
  - (ii) the High Court shall forthwith certify its determination to the Minister and the Speaker and the Minister shall thereupon, by notice published in the *Gazette*, declare such other person duly elected with effect from the day of the determination of the High Court;
- (c) the respondent was not duly elected and that no other person was or is entitled to be declared duly elected—
  - (i) the seat of the respondent shall forthwith become vacant; and
  - (ii) the High Court shall forthwith certify its determination to the Speaker, and the Speaker shall notify the President that the vacancy has occurred and the cause of such vacancy.

(4) Where a charge is made in an election petition of a corrupt practice or illegal practice having been committed at the election to which the petition refers, the High Court shall, in addition to the certificate in terms of subsection (3), at the same time report in writing to the Speaker—

- (a) whether any corrupt practice or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of a candidate at that election or by or with the knowledge and consent any of his agents, and the nature of such corrupt practice or illegal practice; and
- (b) the names of all persons who have been proved at the trial to have been guilty of any corrupt practice or illegal practice; and
- (c) whether corrupt practices or illegal practices have, or whether there is reason to believe corrupt practices or illegal practices have, extensively prevailed at the said election.

(5) The High Court may, in addition to the certificate required in terms of subsection (3), at the same time make a special report to the Speaker as to any matter arising in the course of the trial, including the commission or possible commission of any corrupt practice or illegal practice, where the High 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 High Court under this section shall, as soon as possible, be presented by the Speaker to Parliament.

(7) Where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the action from all or a portion of the costs thereof, then—

- (a) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *bona fide* made by any member of the Public Service, it may, after sufficient notice to the Minister to show cause to the contrary, make such order as to the payment from the Consolidated Revenue Fund of the costs of the action or portion thereof as it thinks fit;
- (b) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function *mala fide* made by any member of the Public Service, it may, after sufficient notice to such member of the Public Service to show cause to the contrary, make such order as to the payment by such member of the Public Service 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 High Court shall suspend such determination or decision until the abandonment or the final determination or dismissal of the appeal.

### **137 Procedure where High Court reports cases of corrupt practices or illegal practices**

If the High Court states in the report on the trial of an election petition that any person has or may have been guilty of a corrupt practice or illegal practice or that there is reason to believe that corrupt practices or illegal practices have extensively prevailed at the election to which the petition refers—

- (a) that statement, with the evidence taken at the trial, shall be transmitted by the registrar of the High Court to the Attorney-General with a view to the institution of any prosecution proper to be instituted in the circumstances; and
- (b) the report shall, so far as it concerns any such person, be transmitted by the registrar of the High Court to the Registrar-General.

### **138 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 High Court may examine any witness or any person in court, even though such witness or person is not called or examined by any party to the petition;
- (c) after any examination 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 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 seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.\*

### **139 Witnesses not excused from answering incriminating questions**

(1) No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt practice or illegal practice at or connected with an election then forming the subject of inquiry, on the ground of privilege or on the ground that the answer thereto may incriminate or tend to incriminate himself.

(2) If any witness fully answers to the satisfaction of the High Court every question relating to any matter mentioned in subsection (1) which he is required by the High Court to answer, and the answer to which may incriminate or tend to incriminate him, he shall be absolutely freed and discharged from all liability to prosecution, either at the public instance or at the instance of any private party, for any offence under this Act, committed by him prior to the time of his giving his evidence and at or in relation to the election concerned or in relation to which the witness may have been so examined, and the witness shall be entitled to receive from the High Court under the hand of the registrar thereof a certificate stating that he is so freed and discharged from all liability to prosecution as aforesaid.

(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 thirty-eight*, be admissible in evidence against him in any criminal or civil proceedings to which he is a party.

### **140 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.

**141 Withdrawal of election petition**

(1) An election petition shall not be withdrawn without the leave of the High Court and after such notice has been given as the High Court may direct.

(2) On the hearing of the application for withdrawal, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the High Court to be substituted as a petitioner for the petitioner who desires to withdraw.

(3) The High Court may, if it thinks fit, substitute as a petitioner any applicant in terms of subsection (2), and may further, if the proposed withdrawal has been, in the opinion of the High Court, induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may become payable by the substituted petitioner and that the original petitioner shall be liable to pay such costs.

(4) If no order in terms of subsection (3) is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within fourteen days after the order of substitution.

(5) Subject to subsections (3) and (4), a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities as the original petitioner.

(6) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

(7) When there are more petitioners than one, no application to withdraw a petition shall be made without the consent of all the petitioners.

**142 Election petition abated on death of petitioner**

(1) An election petition shall be abated 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 abatement 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 abatement, apply to the High Court to be substituted as a petitioner, and the High 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.

**143 Position when respondent does not oppose election petition**

A respondent who has given notice that he does not intend to oppose the election petition shall not, without the leave of the High 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 High Court shall, in all cases in which such notice has been given, report the same to the Speaker.

**144 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 High Court may determine, regard being had to—

- (a) the disallowance of any costs, charges or expenses which may, in the opinion of the High Court, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent; and
- (b) the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

(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 behalf or to the respondent any sum certified to be due to him for his costs, charges or expenses; and
- (b) the default is proved to the satisfaction of the High Court;

every person who has entered into a recognizance relating to the petition shall be held to have made default in his said recognizance, and the registrar of the High Court shall thereupon certify such recognizance to be forfeited, and execution may thereupon, by leave of the High Court, be sued out thereon at the suit of any such witness or respondent as occasion may require.

## PART XXIV

### GENERAL

#### **145 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 thirty-eight* in respect of that evidence, the incapacitated person may apply to the High 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 incapacity shall from that time cease, and the incapacity shall cease accordingly.

#### **146 No person required to divulge how he 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 has voted.

#### **147 Evidence as to holding of election**

Upon any charge of a corrupt practice or illegal practice or any other offence against this Act alleged to have been committed at or in connection with an election, the certificate of the constituency registrar 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.

#### **148 Certificate of member's death**

Whenever a registrar of births and deaths registers the death of a member of Parliament he shall forthwith, in writing, inform the Minister and the Registrar-General thereof and the Registrar-General shall thereupon, in writing, notify the Speaker.

#### **149 When non-compliance with this Act invalidates election**

An election shall be set aside by the High Court by reason of any mistake or non-compliance with the provisions of this Act if, and only if, it appears to the High 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.

**Note by Law Reviser.** The word "and" between the two paragraphs of section 149 should be "or". It was "or" in the predecessor provision (section 142 of Act 7/1990) and has never been amended, by Act of Parliament or otherwise; the change from "or" to "and" is attributable to an error in the preparation of the 1996 Revised Edition

#### **150 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.\*

**151 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 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 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 authorized 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 Registrar-General or to a constituency registrar.

(4) Any person who contravenes subsection (1), (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. §

**152 How public notice may be given and documents served**

(1) A public notice required to be given by the Registrar-General, a constituency registrar 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 Minister 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 last known place of residence or any place of residence stated on a voters roll as his 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.

**153 When appointed date falls on Saturday, Sunday or public holiday**

Whenever under this Act anything is required to be commenced, concluded or done on a particular day, and that day happens to fall on a Saturday, Sunday or a public holiday, such thing shall be commenced, concluded or done on the day next succeeding the Sunday or public holiday or, if the last-mentioned day is also a Saturday or Sunday or public holiday, then on the day next succeeding the Sunday or public holiday:

Provided that the President may, by statutory instrument, declare that this section shall not apply in relation to anything specified in the notice.

**154 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.

**155 General penalty**

Where no penalty is expressly provided for an offence under this Act or for the contravention of any provision thereof, the offender 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.\*

## 156 Rules of 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 High Court.

(2) The rules in terms of subsection (1) may make provision for—

- (a) the practice and procedure to be observed in the hearing of election petitions;
- (b) service of an election petition on the respondent;
- (c) priority of set down for the hearing of an election petition.

(3) Rules of court made in terms of subsection (1) shall be referred to the Electoral Supervisory Commission and shall be submitted to the Minister responsible for the administration of the High Court Act [*Chapter 7:06*] for his approval and, if so approved, shall be published in the *Gazette* and all such rules shall be laid before Parliament as soon as may be after the publication thereof.

## Regulations

(1) The Minister may by regulation prescribe all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations in terms of subsection (1) may provide for—

- (a) any matter for which it is expressly provided in this Act that regulations may be made;
- (b) the form of any document to be used in the carrying out of the provisions of this Act;
- (c) the duties of constituency registrars and polling officers where the electoral officer has made a declaration in terms of subsection (4) of section *eighteen*, 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 cards 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) penalties for contraventions thereof, not exceeding the maximum penalty mentioned in section *one hundred and fifty-five*.

(3) The Minister shall consult the Minister responsible for local government before making regulations in terms of subsection (1) in respect of elections to which Part XIXA applies.

(Subsection as inserted by s. 7 of Act 21 of 1997.)

## 158 Regulatory powers of President

(1) Notwithstanding any other provision of this Act but subject to subsection (2), the President may make such statutory instruments as he 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.

(2) Statutory instruments made in terms of subsection (1) may provide for—

- (a) suspending or amending any provision of this Act or any other law in so far as it applies to any election;
- (b) altering any period specified in this Act within which anything connected with, arising out of or resulting from any election must be done;

- (c) validating anything done in connection with, arising out of or resulting from any election in contravention of any provision of this Act or any other law;
- (d) empowering any person to make orders or give directions in relation to any matter connected with, arising out of or resulting from any election;
- (e) penalties for contraventions of any such statutory instrument, not exceeding the maximum penalty referred to in section *one hundred and fifty-five*.