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ELECTORAL LAWS AMENDMENT BILL, 2007

MEMORANDUM

The purpose of this Bill is to amend the Zimbabwe Electoral Commission Act [Chapter 2:12] and the Electoral Act [Chapter 2:13], so as to make provision for various matters arising from the Constitution of Zimbabwe Amendment (No. 17) Act and the Constitution of Zimbabwe Amendment (No. 18) Act.

The individual clauses of the Bill are explained below:

Clause 1

This clause sets out the Bill's short title.

PART II

AMENDMENT OF ZIMBABWE ELECTORAL COMMISSION ACT [CHAPTER 2:12] (NO.22 OF 2004)

Clause 2

This clause will amend section 2 of the Zimbabwe Electoral Commission Act [Chapter 2:12] (No. 22 of 2004) (hereafter in this Part referred to as the "Zimbabwe Electoral Commission Act"), which contains definitions of terms used in the Act. Of note is the substitution of the definition of "Commission" to take account of the fact that the Commission is no longer constituted in terms of the Act, but under the Constitution. Also noteworthy is the repeal of the definition of "election period", which term is used nowhere in the Act.

Clause 3

This clause will repeal sections 3 and 4 of the Zimbabwe Electoral Commission Act (which have become largely redundant by reason of the inclusion of the establishment and functions of the Zimbabwe Electoral Commission in section 61 of the Constitution) and substitute a new sections dealing solely with the additional functions and powers of the Zimbabwe Electoral Commission and matters of its procedure not dealt with in section 61 of the Constitution.

Clause 4

This clause will amend section 8 of the Zimbabwe Electoral Commission Act by deleting a reference to “monitors”, which term will be rendered superfluous by the deletion of all references to monitors in the Electoral Act. It also imposes additional obligations on Commissioners and Commission employees not to divulge confidential information gained through being a Commissioner or an employee of the Commission.

Clause 5

This clause will amend section 9 of the Zimbabwe Electoral Commission Act by excluding from the list of sources of funds of the Zimbabwe Electoral Commission Parliamentary appropriations, which source is already mentioned in section 61(6) of the Constitution. It also permits the Commission to receive donations or grants from any local or foreign source whatsoever, as long as these receive the approval of the Minister.

Clause 6

This clause will insert a new section in the Zimbabwe Electoral Commission Act empowering the Zimbabwe Electoral Commission to invest its surplus moneys in such manner as it may deem fit, after consultation with the Minister.

Clause 7

This clause will amend section 11 of the Zimbabwe Electoral Commission Act in order to make clear that the Chief Elections Officer is the chief executive of the Zimbabwe Electoral Commission.

Clause 8

This clause will amend section 12 of the Zimbabwe Electoral Commission Act by substituting references to “Speaker of Parliament” with references to the “Speaker of the House of Assembly”. Another amendment requires the Commission, as soon as possible after the result of any election or referendum has been announced, and in any event no later than six months thereafter, to submit a report on the conduct thereof to President, the Speaker of the House of Assembly, the Minister and every political party that contested the election or referendum.

Clauses 9, 10 and 11

These clauses amend the provisions of the principal Act concerned with voter education. Clause 9 introduces a definition of “programme of voter education”. Clause 10 will amend section 15 of the Zimbabwe Electoral Commission Act to provide that persons who are convicted for not conducting voter education in the prescribed manner, may not be allowed to conduct voter education for a period of five years. It also substitutes a reference to the Non-Governmental Organisations Act, which was not assented to. Clause 11 imposes certain obligations on the Commission with respect to the provision by it and other persons of programmes of voter education. The Commission must begin its own programme of voter education no later than 90 days before an election. The new section 15B inserted by clause 11 provides the grounds on which the Commission may intervene to ensure that programmes of voter education offered by other persons are accurate, fair and impartial.

Clause 12

This clause will insert a new Part IVA into the Zimbabwe Electoral Commission Act to empower the Commission to regulate the conduct of news media in relation to elections. Part IVA will prevail over any contrary provisions contained in other media laws (see new section 16B). Public broadcasters will have to afford parties and candidates contesting an election free access to their services in accordance with regulations made by the Commission (see new section 16C). The media will have to be impartial when accepting or refusing to accept electoral advertisements (see new section 16D) and will have to publish public statements by the Commission in regard to elections (see new section 16E). Generally, the media will have to be reasonably fair, impartial and restrained in their reporting of elections (see new section 16F). In terms of the new section 16F, the Commission is obligated to monitor the Zimbabwean news media during any election period and report on the coverage of the election by the news media in its post-election report.

Clause 13

This clause will repeal paragraph 11(3) of the First Schedule to the Zimbabwe Electoral Commission Act, which requires the Commission to furnish the Minister with copies of the minutes of its meetings. This provision is felt to compromise the independence of the Commission.

Clause 14

This clause will amend the Second Schedule to the Zimbabwe Electoral Commission Act, in order to dispense with the requirement for the Commission to seek the approval of the Minister in certain matters. In particular, the Commission will not require the approval of the Minister to enter into arrangements connected with its functions with the Government or any Zimbabwean local or other authority. Also, it will not require the approval of the Minister before it advances a loan to any of its employees, so long as the loan does not exceed an amount of six months' wages or salary of the employee concerned.

Clause 15

This clause will make consequential amendments to the long title of the Zimbabwe Electoral Commission Act.

PART III

AMENDMENT OF THE ELECTORAL ACT [CHAPTER 2:13] (NO. 25 OF 2004)

Clause 16

This clause will amend section 4 of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) (hereafter in this Part referred to as the "Electoral Act"), which contains definitions of terms used in the Act. Noteworthy amendments are the following: the redefinition of "constituency" to take into account senatorial as well as House of Assembly constituencies; the amendment of the definition of "proof of residence", the inclusion of definitions for "election period", "local authority area", "local government body" and "ward"; and the repeal of the definition of "monitor".

Clause 17

This clause repeals Part II (concerned with the procedure and conditions of service of the Electoral Supervisory Commission) of the Electoral Act and substitutes it with a new Part II. The existing Part II has been made superfluous by the constitutional abolition of the Electoral Supervisory Commission. In its place the new Part will deal simply with the functions of the Zimbabwe Electoral Commission in relation to observers. The new Part will broaden the category of persons and organisations who may be accredited as observers of elections.

Clause 18

This clause amends section 17 of the Electoral Act in two respects. Firstly, it provides for the increase in the pool of people who may be seconded as staff of the Commission during elections: in addition to persons employed by the Public Service Commission, the Zimbabwe Electoral Commission may call upon the Health Service Board established in terms of the Health Service Act and the responsible authorities of any statutory or local government body to make their employees available for election service. However, employees of the Police Force, Defence Forces or the Prison Service may no longer be seconded as staff of the Commission except where their services are required for the provision of security. The other amendment to this section empowers the Zimbabwe Electoral Commission to designate any constituency elections officer as a “senatorial constituency elections officer”, or to appoint as a “senatorial constituency elections officer” any person seconded to it. These designations or appointments are necessitated by the recent introduction of elections for Senators.

Clause 19

This clause inserts a new section in the Electoral Act to the effect that voter registration is an exercise that is conducted on a continuous basis to ensure that the voters rolls are kept up-to-date.

Clause 20

This clause amends section 18 of the Electoral Act by deleting a redundant reference to the Electoral Supervisory Commission. Also, the Registrar-General of Voters must seek the leave of the Zimbabwe Electoral Commission (not the Minister, as at present) before delegating any of his or her functions to another member of the Public Service

Clause 21

This clause replaces sections 20 and 21 of the Electoral Act by two new sections. The first new section will transfer to the Commission the responsibility for keeping voters rolls, and will indicate what particulars must be recorded in the rolls. The second new section will make voters rolls more accessible to the public, and will require the Commission to provide copies of the rolls to candidates and political parties contesting elections.

Clause 22

The main effect of this clause is that persons who are aggrieved at a refusal by a constituency registrar to transfer their names to the voters roll of another constituency will be given a right of appeal to a magistrate rather than to the Commission, as at present..

Clause 23

Presently, section 38(2)(c) of the Electoral Act requires that an election proclamation should specify the date on which the voters roll shall be closed for the purpose of accepting the registration of new voters, which date may be a day on or after the day of the publication of the election proclamation. This clause seeks to entrench the rule that the voters' roll must be closed on the day before nomination day.

Clause 24

Section 27 of the Electoral Act provides that a constituency registrar may object to the registration of any claimant or voter by sending to the claimant or voter a written notice of objection to which a form of notice of appeal is annexed. The proviso to subsection (1) of that section stipulates that no objection may be taken "during the period between the issue of a proclamation referred to in section 38 or publication of a notice referred to in section 39 and the close of polling at the election to which such proclamation or notice relates". This clause replaces these words by stating that no objection may be taken "during an election period". A definition of the phrase "election period" is to be included in this Bill (see clause 14(d)). Notwithstanding the foregoing, objections may be taken during the period of a by-election in respect of the registration of any voter in any ward or constituency that is not affected by the by-election.

Clause 25

Section 28 provides for objections by voters to the registration of any person on the voters roll of the constituency to which the objecting voter belongs. The amendment sought to this section will make it clear that this section applies also to objections by voters to the removal of their names from the voters roll at the instance of a constituency registrar in terms of section 33

Clause 26

Section 33 provides for the removal by the constituency registrar of persons from the voters roll on the disqualification or death of such persons or their absence from their constituencies for more than 12 months or the redomiciliation of such persons in another country. The amendment sought to this section will require the constituency registrar to publish his or her intention to exercise his or her powers under this section in a newspaper circulating in the area of the voter's last known address.

Clause 27

Section 35(c) of the Electoral Act empowers a constituency registrar to strike out from the voters roll the name of any voter on proof that he or she is registered or entitled to be registered on another roll. This clause repeals that provision, which is considered to give the constituency registrar an undesirable power to alter the roll at his or her sole discretion.

Clause 28

This clause will insert a new Part in the Electoral Act that will require the Commission, when delimiting wards and constituencies in terms of the Constitution, to consult interested parties and entertain representations from them "so far as is practicable within the time available".

Clause 29

This clause substitutes section 38 of the Electoral Act, which deals with the matters that must be provided for in an election proclamation. The principal effects of the substitution are as follows: (a) to provide for the harmonisation of Presidential, Parliamentary and local authority elections; (b) to omit references in the proclamation to the last day for accepting the registration of voters who may vote at the election (see clause 23 above); (c) to provide that the fixing of the days for the poll and nomination in connection with the Presidential and local authority elections must be dealt with simultaneously in the same election proclamation as that which fixes the days for the poll and nomination for the Parliamentary election; (d) to provide that the day or days fixed for polling will be deemed to be a public holiday or public holidays; (e) to provide that the election of the Council of Chiefs and the president and deputy president thereof must take place before the nomination day for Parliamentary candidates; and (f) to provide that the electoral colleges for electing Chiefs to the Senate must sit no later than forty-eight hours after the close of the poll for the Presidential election.

Clause 30

This clause will amend section 39 of the Electoral Act (which provides for the notification of vacancies in Parliament to the President and the Commission) in the following ways: (a) by substituting references to the “Speaker” with references to the “President of the Senate or the Speaker of the House of Assembly”; (b) by providing that the day or days fixed for polling at the by-election will be deemed to be a public holiday or public holidays in the constituency concerned; and (c) by providing that the date on which a voters rolls is deemed to be closed to further registration will be the date on which the vacancy in Parliament occurred.

Clauses 31, 32 and 33

These clauses will substitute section 40 and amend sections 43 and 44 of the Electoral Act in order to make provision for the election to the Senate of two Chiefs representing each non-metropolitan province.

Clause 34

This clause will amend section 45 of the Electoral Act to make provision for the notification in the *Gazette* by the President of the appointment of persons as Senators.

Clause 35

This clause will amend section 46 of the Electoral Act in several particulars, mostly minor, apart from the two mentioned below.

Firstly, the law presently requires nominators of candidates to be registered voters, but where a candidate lodges nomination papers containing the names of nominators who do not appear on the voters roll (this may happen because the nominator registered late, so that his or her name could not be entered timeously in the rolls), the onus is placed on the candidate to produce a voters registration certificate (or certified copy thereof) of the nominator in question.

Secondly, it is provided that a person may not lodge nomination papers for both the House of Assembly and Senate elections. If that happens, the nomination is voided.

Clause 36

This clause amends section 47 of the Electoral Act by providing that the sum deposited by a candidate with the nomination officer will be non-refundable.

Clause 37

This clause repeals section 49(3) of the Electoral Act, which makes reference to a nomination deposit.

Clause 38

This clause will amend section 51 of the Electoral Act to require constituency elections officers (among other considerations relevant to the location of polling stations) to locate sufficient polling stations in each ward of his or her constituency. It also empowers the Commission to receive from political parties representations on the issue of the location of polling stations, and to give constituency elections officers appropriate directions on this issue on the basis of such representations. Finally, new subsections are sought to be inserted in section 51 for the purpose of ensuring that polling stations are sited at convenient locations where there is unlikely to be intimidation of voters.

Clause 39

The new section 54A will require presiding officers of polling stations to make a public count, before polling begins, of the ballot papers delivered at their stations.

Clause 40

Section 55 of the Electoral Act presently requires voters to be divided into three groups in alphabetical order of their surnames. This clause will abolish that requirement, so as to enable presiding officers to arrange and manage voting queues in such manner as they consider best. The clause will also exclude police officers from polling stations, unless they are casting their votes or unless they are specifically summoned to assist the election officers in quelling a disturbance. Presiding officers of polling stations will be obliged to keep a record of all incidents which disrupt polling.

Clause 41

This clause will replace section 56 of the Electoral Act with a new section that contemplates the simultaneous voting for the President, members of Parliament and members of the governing bodies of local authorities. A voter may not vote except in the ward where he or she is registered on the ward voters roll. Provision is also made to benefit voters who have registered late, and whose names could not be entered timeously in the voters rolls. These voters will be allowed to vote if they produce to the presiding officer voters registration certificates.

Clauses 42 and 43

At present, sections 59 and 60 of the Electoral Act empower presiding officers, in the presence of a monitor and police officer, to assist physically incapacitated or illiterate voters to mark their ballot papers on their behalves. These clauses will now require presiding officers to perform this duty in the presence of another electoral officer, an observer or any employee of the Commission.

Clause 44

Section 61 of the Electoral Act provides for the procedure to be followed at the close of a poll, in particular, the sealing of ballot boxes by the presiding officer. It gives an opportunity to the candidates and election agents present to affix their own seals, signatures or thumb-prints to the presiding officer's seal. The translucent ballot boxes which replaced the wooden ones are furnished with a new type of seal that no longer affords any space for the candidates and election agents to do this. In any case, this safeguard became redundant with the introduction of counting at the polling station. It will accordingly be repealed.

Clauses 45 and 52

Sections 62 and 77 of the Electoral Act prevent candidates or their election agents from being present at the counting of the votes or opening of postal ballot boxes for an election for which the candidate has not been nominated. This rule will be difficult to enforce where concurrent Presidential, House of Assembly, Senatorial and local council elections take place. The amendment sought by this clause allows candidates or their election agents to be present at the counting of the votes or opening of postal ballot boxes for an election for which he or she was not nominated, if such counting or opening takes place concurrently at the same polling station with the counting of votes or opening of postal ballot boxes for the election for which he or she was nominated.

Clause 46

Under section 64 of the Electoral Act the polling officer is required to record the number of votes obtained by each candidate at his or her polling station on a polling-station return and display the same to such of the candidates or their election agents as are present. The return or copies thereof must then be transmitted to the appropriate constituency centre and be exhibited outside the polling station. In practice, the exhibition of the results outside the polling station is done before the polling station return is transmitted to the constituency centre. The section will be amended accordingly. In addition, certain provisions of section 69 of the Electoral Act, insofar as they relate to the securing of the ballot boxes and the sealing of packets containing unused and spoilt ballot papers, etc., at each polling station and their transmission to the constituency elections officer; have been transferred to this section.

Clause 47

Section 65 of the Electoral Act describes the procedure at the constituency centre after receipt of the polling-station returns: these will be verified and collated in the presence of the candidates or their election agents; at the same time, the postal ballots will be counted. There are two amendments to this section. Firstly, certain provisions of section 69 of the Electoral Act, insofar as they relate to the sealing in packets of the polling-station returns and postal ballot papers by the constituency elections officer, have been transferred to this section. Secondly, provision is made for the onward transmission by a constituency elections officer to a senatorial constituency elections officer of polling station returns relating to a senatorial constituency, and for their collation by a senatorial constituency elections officer.

Clause 48

The new section 67A which this clause seeks to insert in the Electoral Act will give candidates and political parties the right to a recount of votes if they can satisfy the Commission

that there are reasonable grounds to believe that there was a miscount that affected the result. Even in the absence of a request from candidates and parties, the Commission will have power to order a recount if it considers the votes were miscounted.

Clause 49

For the sake of compactly describing the whole procedure that takes place at polling stations and constituency centres at the end of a poll, all the provisions of section 69 of the Electoral Act are proposed to be transferred to sections 64 and 65 (as explained in clauses 47 and 48 above). Accordingly section 69 will be repealed.

Clause 50

This clause will amend section 70 of the Electoral Act, which provides for the custody and disposal of ballot and other papers. The effect of the amendment is that the Chief Elections Officer must cause to be destroyed all election documentation for any constituency not earlier than 14 days after the “election period” (as defined in clause 14(d)), unless an election petition is lodged in respect of that constituency. If an election petition is lodged, the period of custody of election documentation for the constituency concerned is six months, after which the documentation will, subject to any court order to the contrary, be destroyed. A further amendment requires election residue to be transmitted to places designated by the Chief Elections Officer, instead of being transmitted to a single centre where no space may be available.

Clause 51

This clause amends section 76 of the principal Act to lengthen the period within which a candidate must be given notice of the sealing of the postal ballot boxes.

Clause 53

This clause will substitute section 82 of the Electoral Act (concerned with the administration of oaths of secrecy to presiding officers, electoral officers, candidates and election agents) to enable presiding officers to act as commissioners of oaths for the purposes of that section.

Clause 54

This clause makes it clear that the failure of any person, other than electoral officer, who is entitled to be present at the counting and recording the total number of ballot papers received at a polling station in terms of the new section 54A, to attend timeously at such event, shall not prevent the electoral officer concerned from proceeding in the absence of such person.

Clause 55

This clause will amend section 85 of the Electoral Act (setting out offences in relation to ballot papers and ballot boxes) by making it an offence for a person to apply for a ballot paper at a polling station, knowing that he or she is not entitled to vote in the ward or constituency concerned.

Clause 56

This clause will substitute section 88 of the Electoral Act with another section that omits redundant references to monitors and commissioners and employees of the Electoral Supervisory Commission.

Clause 57

This clause will add a new section to the Electoral Act making it an offence for a person who applies for a ballot paper at a polling station to refuse to undergo a prescribed test to determine whether or not he or she has already voted or to be marked in the prescribed way..

Clause 58

This clause will remove the requirement, in section 95 of the Electoral Act, that the appointment of election agents (other than chief election agents) must be notified in the press.

Clauses 59 and 61

These clauses will repeal sections 102 and 103 and amend section 106 of the Electoral Act in conformity with the Constitution, as amended, which contemplates a Presidential election being held concurrently with Parliamentary and local authority elections.

Clause 60

This clause amends section 105 of the Electoral Act by providing that the sum deposited by a Presidential candidate with the Chief Elections Officer will be non- refundable.

Clause 62

This clause will repeal section 107(3) of the Electoral Act, which makes reference to the refund of a nomination deposit.

Clause 63

This clause will make a consequential change required by the fact that the Presidential election will now be governed by same proclamation as that which calls the Parliamentary and local government elections. Accordingly, when the date for the sitting of the Presidential nomination court is changed, this must be notified by the President by an amendment to that proclamation, not by the Chief Elections Officer by notice in the *Gazette*.

Clauses 64 and 85

These clauses will insert a new section 112A and a Fifth Schedule in the Electoral Act, in conformity with the Constitution, as amended, which provides in section 28(3)(b) that if a President dies, resigns or is removed from office, the Senate and the House of Assembly will jointly sit as an electoral college to elect a successor within 90 days. The procedure for the election as set out in the new Fifth Schedule provides for the electoral college, under the presidency of the Chief Justice, to decide between candidates (if two or more candidates are nominated) by means of successive “tallies of votes” of the members of Parliament organised into voting blocs in support of particular candidates. A Presidential candidate must win a majority of the votes of the electoral college at which a quorum is present.

Clause 65

This clause will replace sections 115, 116, 117 and 118 of the Electoral Act in order to facilitate the compilation by the Registrar-General of Voters, under the supervision of the Commission, of ward voters rolls, which will form the basis of voting in the simultaneous elections for the President, members of Parliament and councillors.

Clauses 66 and 68

The Constitution as amended now requires the President, in the same proclamation as that which fixes the date of the Presidential and Parliamentary elections, to fix the same date for Presidential, Parliamentary and local authority elections. Accordingly, clause 66 will repeal section 121 of the Electoral Act which contemplates non-synchronous local authority elections. In its place two clauses are substituted. The new section 121 provides that the town clerk or chief executive officer of a local government body must notify the Minister responsible for local government and the Commission of any vacancy in the office of mayor or councillor within 21 days of the vacancy occurring. The new clause 121A assigns to the Commission the responsibility for fixing the date of elections for casual vacancies in local government bodies. Additionally, the new clause 121A provides that the date on which a ward voters roll is deemed to be closed to further registration will be the date on which the vacancy in local government body occurred.

Clause 67

As stated under clause 66, the Constitution now requires that Presidential, Parliamentary and local authority elections be held simultaneously. The same applies to elections for the office of executive mayor. Accordingly, this clause will replace section 122 of the Electoral Act which contemplates non-synchronous mayoral elections. It also assigns to the Commission the responsibility for fixing the date of elections for casual vacancies in the office of mayor.

Clause 69

This clause amends section 125 of the Electoral Act by providing that a person may not lodge nomination papers for more than one vacancy in the office of councillor or for both the offices of mayor and councillor. If that happens, the nomination is voided.

Clause 70

Section 131 of the Electoral Act makes local authorities responsible for funding their elections. The repeal of the clause will enable the transfer of this responsibility to the Commission.

Clause 71

This clause will insert a new Part in the Electoral Act, criminalising conduct which is intended to intimidate voters or, through intimidation, to influence the conduct of elections.

Clause 72

This clause will repeal section 135 of the Electoral Act, which deals with the theft or destruction of voter identification. This act is now treated as an “intimidatory practice” under the new Part inserted by clause 71.

Clause 73

This clause will repeal section 145 of the Electoral Act, which requires election posters and advertisements to carry the names of their printers and publishers.

Clause 74

Section 147 of the Electoral Act makes it an offence for persons to engage in certain prohibited activity within 200 metres of any polling station on any polling day. This clause will extend the exclusion zone for such activity to an area within 300 metres of any polling station.

Clause 75

This clause will replace section 159 of the Electoral Act, to take account of the new class of intimidatory practices to be inserted into the Act by clause 71.

Clauses 76, 81 and 84

The effect of these clauses is to incorporate into the body of the Electoral Act as a separate Part the provisions on conflict management during elections and the appointment of multiparty liaison committees. These are presently contained in the Third Schedule to the Electoral Act,. It is also now provided that multiparty liaison committees be set up for local as well as national elections, and that independent candidates be included in the multiparty liaison committees.

Clause 77

This clause will amend section 162 of the Electoral Act to provide that the appointment of judges to the Electoral Court by the Chief Justice shall be in consultation with the Judicial Service Commission. The amendment is made in compliance with the ruling of the Supreme Court in the case of *Marimo & MDC v. The Minister of Justice and others* (SC 25/2006).

Clause 78

This clause replaces the definition of “respondent” (of an electoral petition) in section 166 of the Electoral Act by a more comprehensive definition embracing a respondent who is the President, a Senator or a councillor, in addition to a respondent who is a member of Parliament.

Clause 79

This clause seeks to define the maximum period for the presentation of an election petition in terms of section 168 of the Electoral Act as 14 days from the end of the period of the election to which it relates. This formulation resolves the ambiguity about how the terminal date for the lodging of an election petition is to be calculated (this is presently stated to be “14 days after the day on which the result of the election has been notified in terms of this Act”- is this day ascertainable by reference to section 66, 67 or 68 of the Act?) since the term “period of the election” is to be clearly defined by this Bill (see clause 14(d)). The clause also gives the Electoral Court a discretion as to the form of the security that may be demanded from the election petitioner to cover the costs associated with the election petition.

Clause 80

This clause amends section 171 of the Electoral Act by substituting references to the Speaker with references to the Speaker of the House of Assembly or the President of the Senate.

The amendment also takes account of the new class of intimidatory practices to be inserted into the Act by clause 71.

Clause 82

This clause amends the regulation-making powers contained in section 192 of the Electoral Act by providing for certain additional items for which regulations can be made by the Commission.

Clause 83

This clause amends the First Schedule to the Electoral Act by omitting redundant references to “monitors”.

Clause 86

This clause will make consequential amendments to the long title of the Electoral Act.

Clause 87

This clause makes minor and consequential amendments to the sections listed in the first column of the Schedule to the extent specified in the second column of the Schedule.

PART IV

Clause 88

This clause amends the Traditional Leaders Act [*Chapter 29:17*] to align that Act with constitutional and electoral provisions relating to the election of Chiefs to Parliament.

Clause 89

This clause will insert a transitional provision which provides for the transfer of assets and liabilities of the Electoral Supervisory Commission to the Zimbabwe Electoral Commission.

PRESENTED BY THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS

BILL

To amend the Zimbabwe Electoral Commission Act [*Chapter 2:12*] (No. 22 of 2004), the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) and the Traditional Leaders Act [*Chapter 29:17*] (No. 25 of 1998); and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Electoral Laws Amendment Act, 2007.

PART II

AMENDMENTS TO ZIMBABWE ELECTORAL COMMISSION ACT [*CHAPTER 2:12*] (NO. 22 OF 2004)

2 Amendment of section 2 of Cap 2:12

Section 2 (“Interpretation”) of the Zimbabwe Electoral Commission Act [*Chapter 2:12*] (No. 22 of 2004) (hereinafter in this Part called the “principal Act”) is amended—

(a) by the repeal of the definition of “Commission” and the substitution of—

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

(b) by the repeal of the definitions of “Committee on Standing Rules and Orders” and “election period”.

3 New sections substituted for section 3 and 4 of Cap 2:12

Sections 3 and 4 of the principal Act are repealed and the following are substituted—

“3 Procedure and powers of Commission

(1) The First Schedule applies to the procedure to be followed by the Commission at its meetings.

(2) Subject to this Act, for the better exercise of its functions the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of

the things specified in the Second Schedule, either absolutely or conditionally and either solely or jointly with others.”.

4 Additional functions of Commission

(1) In addition to the functions set out in section 61 of the Constitution, the Commission shall be responsible for—

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

4 Amendment of section 8 of Cap 2:12

Section 8 (“Provisions to ensure independence, impartiality and professionalism of Commissioners and staff and agents of Commission”)(2) of the principal Act is amended

- (a) in paragraph (e) by the deletion of “monitors and”;
- (b) by the insertion of the following paragraph after paragraph (f)—

“(g) not—

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

any confidential information which he or she has gained through being a Commissioner or an employee or agent of the Commission.”.

5 Amendment of section 9 of Cap 2:12

Section 9 (“Funds and finances of Commission”)(1) of the principal Act is amended—

- (a) by the deletion of “The” and the substitution of “In addition to the funds appropriated in terms of section 61(6) of the Constitution, the”;
- (b) by the repeal of paragraph (a);
- (c) by the insertion of the following paragraph after paragraph (d)—
 - “(d1) donations or grants from any local or foreign source whatsoever, which have been approved by the Minister; and”.

6 New section inserted in Cap 2:12

The principal Act is amended by the insertion after section 9 of the following section—

“9A Investment of moneys not immediately required by Commission

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

7 Amendment of section 11 of Cap 2:12

Section 11 (“Chief Elections Officer and other employees of Commission”) (1) of the principal Act is amended by the deletion of “a person to be” and the substitution of “a chief executive of the Commission who shall be called”.

8 Amendment of section 12 of Cap 2:12

Section 12 (“Reports of Commission on elections, referendums and other matters”) of the principal Act is amended—

- (a) by the repeal of subsection (1) and the substitution of—
 - “(1) As soon as possible after the result of any election or referendum has been announced, and in any event no later than six months thereafter, the Commission shall submit a report on the conduct of the election or referendum to—
 - (a) the President, the Speaker of the House of Assembly and the Minister; and
 - (b) each of the political parties that contested the election or referendum.”;
- (b) in subsection (2) by the deletion of “Speaker of Parliament ” and the substitution of “Speaker of the House of Assembly”;
- (c) in subsection (3) by the deletion of “Speaker of Parliament ” wherever it occurs and the substitution of “Speaker of the House of Assembly”;
- (d) by the repeal of subsection (4) and the substitution of—
 - “(4) The Speaker of the House of Assembly shall cause every report received in terms of subsection (1), (2) or (3) to be laid before Parliament on one of twenty-four days on which the Senate and the House of Assembly sit, whichever House meets first after the Speaker of the House of Assembly has received the report.”.

9 Amendment of section 13 of Cap 2:12

Section 13 (“Interpretation in Part IV”) of the principal Act is amended by the insertion of the following definition—

““programme of voter education” means a course or programme of instruction whose purpose is to inform voters generally about the electoral process and additionally, or alternatively, about the identity of the political parties and any candidates contesting an election; but does not include such a course or programme that is part of a course in civics or law offered to students at an educational institution;”.

10 Amendment of section 15 of Cap 2:12

Section 15 (“Voter education by persons other than the Commission or political parties”) of the principal Act is amended—

(a) in subsection (1)(b) by the deletion of “a non-governmental organisation in terms of the Non-Governmental Organisations Act [*Chapter 17:09*]” and the substitution of “a private voluntary organisation in terms of the Private Voluntary Organisations Act [*Chapter 17:05*]”;

(b) by the insertion of the following subsections after subsection (3)—

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

(5) Any person who contravenes subsection (4) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.

11 New sections inserted in Cap 2:12

The principal Act is amended by the insertion after section 15 of the following sections—

“15A Provision of voter education by Commission

(1) Not later than ninety days before polling day in any election, the Commission shall begin a programme of voter education directed at the electorate in the election.

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

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

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

(b) subject to sections 15 and 15B, as preventing anyone other than the Commission from providing programmes of voter education

15B Commission to monitor voter education provided by other persons

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

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

(a) false, in that the information provided by it is materially false or incorrect; and

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

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

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

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

12 New Part inserted in Cap. 2:12

The principal Act is amended by the insertion after Part IV of the following Part—

“PART IVA

MEDIA COVERAGE OF ELECTIONS

16A Interpretation in Part IVA

In this Part—

“broadcaster” means a person who operates a broadcasting service for the transmission of television or radio programmes to the public or any substantial section of the public, whether the transmission is effected by wireless or other means;

“election period” has the meaning given to that term by section 4 (“Interpretation”) (1) of the Electoral Act [*Chapter 2:13*];

“print publisher” means a person who publishes a newspaper, magazine or other printed document at regular intervals for sale or distribution to the public generally;

“public broadcaster” means a broadcaster that is owned or controlled by the State.

16B Application of Part IVA in relation to other media laws

In the event of inconsistency between this Part and the Broadcasting Services [*Chapter 12:06*] (No. 3 of 2001), the Access to Information and Protection of Privacy [*Chapter 10:27*] (No. 5 of 2002) or any other enactment, this Part shall prevail over that enactment to the extent of the inconsistency.

16C Access to public broadcasting media

(1) Public broadcasters shall afford all political parties and independent candidates contesting an election such free access to their broadcasting services as may be prescribed in regulations made by the Commission, with the approval of the Minister, in terms of section 19.

(2) Regulations referred to in subsection (1) shall provide for—

- (a) the total time to be allocated to each political party and candidate and the duration of each broadcast that may be made by or on behalf of a party or candidate; and
- (b) the times at which broadcasts made by political parties and candidates are to be transmitted; and
- (c) the areas to which broadcasts made by political parties and candidates are to be transmitted;

and the regulations shall ensure—

- (d) a fair and balanced allocation of time between each political party and independent candidate;
- (e) that each political party and independent candidate is allowed a reasonable opportunity to present a case through the broadcasting service concerned.

16D Political advertising in broadcasting and print media

(1) A broadcaster or print publisher shall not be obliged, subject to section 16B, to publish any advertisement by or on behalf of a political party or candidate contesting an election, but if the broadcaster or publisher is prepared to publish any such advertisement—

- (a) it shall offer the same terms and conditions of publication, without discrimination, to all the political parties and candidates contesting the election; and
- (b) the price it charges for publication shall be at the lowest rate it offers to publishers of commercial advertisements; and
- (c) every such publication shall be identified clearly as an advertisement.

(2) Subsection (1) shall not be construed as obliging a broadcaster or print publisher to publish an advertisement which would render the broadcaster or publisher liable to any criminal or delictual penalty.

16E Publication of electoral information in public interest

(1) If required to do so by the Commission, broadcasters and print publishers shall publish statements issued by the Commission for the purpose of informing voters about aspects of the electoral process.

(2) The Commission shall pay for the publication of any statement referred to in subsection (1) such reasonable amount as may be agreed between it and the broadcaster or print publisher concerned.

16F Conduct of news media during election period

During an election period broadcasters and print publishers shall ensure that—

- (a) all political parties and candidates are treated equitably in their news media, in regard to the extent, timing and prominence of the coverage accorded to them;
- (b) reports on the election in their news media are factually accurate, complete and fair;

- (c) a clear distinction is made in their news media between factual reporting on the election and editorial comment on it;
- (d) inaccuracies in reports on the election in their news media are rectified without delay and with due prominence;
- (e) political parties and candidates are afforded a reasonable right of reply to any allegations made in their news media that are claimed by the political parties or candidates concerned to be false;
- (f) their news media do not promote political parties or candidates that encourage violence or hatred against any class of persons in Zimbabwe;
- (g) their news media avoid language that—
 - (i) encourages racial, ethnic or religious prejudice or hatred; or
 - (ii) encourages or incites violence; or
 - (iii) is likely to lead to undue public contempt towards any political party, candidate or class of person in Zimbabwe.

16G Monitoring of media by Commission

(1) The Commission shall monitor the Zimbabwean news media during any election period to ensure that political parties, candidates, broadcasters, print publishers and journalists observe the provisions of this Part.

(2) In their post-election report the Commission shall include a report on the coverage of the election by the news media.

(3) This section shall not be construed as preventing anyone other than the Commission from monitoring news media and reporting on their conduct during an election period.”.

13 Amendment of First Schedule to Cap 2: 12

The First Schedule (“Provisions Applicable to Zimbabwe Electoral Commission”) to the principal Act is amended in paragraph 11 (“Minutes of proceedings of Commission”) by the repeal of subparagraph (3).

14 Amendment of Second Schedule to Cap 2: 12

The Second Schedule (“Ancillary Powers of Commission”) to the principal Act is amended—

- (a) in paragraph 8 by the deletion of “With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise” and the substitution of “To enter into, renew, cancel or abandon arrangements with the Government or any local or authority within Zimbabwe, or, with the approval of the Minister, any foreign government or authority,”;
- (b) by the repeal of paragraph 18 and the substitution of—

“18. To make loans to any employee of the Commission—

 - (b) not exceeding six months’ salary or wages payable to him or her, for any purpose;

- (a) with the approval of the Minister, for the purpose of purchasing vehicles, tools or other equipment used by him or her in carrying out his duties; or
- on such security as the Commission considers adequate.”.

15 Amendment of the long title to Cap 2: 12

The long title to the principal Act is repealed and the following is substituted—

“To provide for the terms of office, conditions of service, qualifications and vacation of office of members of the Zimbabwe Electoral Commission, the procedure at meetings of the Zimbabwe Electoral Commission and the appointment of the Chief Elections Officer; and to provide for matters connected with or incidental to the foregoing.”.

PART III

AMENDMENTS TO ELECTORAL ACT [*CHAPTER 2:13*] (NO. 25 OF 2004)

16 Amendment of section 4 of Cap. 2:13

Section 4 (“Interpretation”) (1) of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) (hereinafter in this Part called the “principal Act”) is amended—

- (a) by the repeal of the definitions of “claim”, “Commission”, “constituency”, “constituency elections officer”, “Speaker”, “voter” and “voters roll” and the substitution of—

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

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

“constituency” means—

- (a) in relation to a House of Assembly constituency, one of the constituencies delimited in accordance with section 61A(4) of the Constitution;
- (b) in relation to a senatorial constituency, one of the constituencies determined in accordance with section 61A(7) of the Constitution;
- (c) in relation to a ward, one of the constituencies determined in accordance with section 61A(2) of the Constitution;

and the terms “House of Assembly constituency” and “senatorial constituency” shall be construed accordingly;

“constituency elections officer” means a person who is appointed to be a constituency elections officer in terms of section 17(1)(ii) and includes (unless the context otherwise requires) a senatorial constituency elections officer designated or appointed as such in terms of section 17(3);

“Speaker” means the Speaker of the House of Assembly;

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

“voters roll” means—

- (a) the voters roll for any constituency; or
 - (b) the voters roll for any ward of a local authority area;”;
- (b) by the repeal of the definitions of “Electoral Supervisory Commission”, “monitor” and “Service Commissions”;
- (c) in the definition of—
 - (i) “electoral officer” by the insertion after “Chief Elections Officer,” of “an officer employed by the Commission, a nomination officer,”;
 - (ii) “observer”, by the deletion of “section *fourteen*” and the substitution of “section 6”;
 - (iii) “proof of residence”—
 - A. in paragraph (a) by the insertion at the end of that paragraph of the words “or any other satisfactory documentary evidence reasonably establishing the place of residence of the voter or claimant”;
 - B. in paragraph (d) by the deletion of "chief, headman or village head" and the substitution of "councillor, chief, headman or village head";
 - C. by the insertion of the following paragraph after paragraph (d)—
 - “(e) a sworn written statement by a property owner on whose property the voter or claimant resides;”;
 - (iv) “voters registration certificate” by the deletion of “section *twenty-four*” and the substitution of “section 26”;
- (d) by the insertion of the following definitions—
 - “ “by-election” means an election to fill a casual vacancy in the membership of the Senate or the House of Assembly or in the governing body of a local authority;
 - “call”, in relation to an election, means to issue a proclamation referred to in section 38 or a notice in terms of section 39 in relation to that election, as the case may be;
 - "casual or special vacancy", in relation to a council, means abvacancy referred to in section 32 of the Rural District Councils Act [*Chapter 29:13*] or section 78 of the Urban Councils Act [*Chapter 29:15*];
 - "Clerk of Parliament" means the Clerk of Parliament appointed in terms of section 48 of the Constitution;
 - "council" means a municipal council, town council or rural district council established in terms of the Rural District Councils Act [*Chapter 29:13*] or the Urban Councils Act [*Chapter 29:15*] for any local authority area;
 - "councillor" means a member of a council;
 - “election period” or “period of an election” means—
 - (a) in the case of a Presidential election, the period between the calling of the election and the declaration of the result of the poll in terms of paragraph 3(1) of the Second Schedule;

- (b) in the case of a general election for the purpose of electing members of Parliament, the period between the calling of the election and the declaration of the result of the poll for the last constituency in terms of section 66(1);
- (c) in the case of an election to fill a vacancy in the membership of Parliament, the period between the calling of the election and the declaration of the result of the poll for the constituency concerned in terms of section 66(1);
- (d) in the case of a general election for the purpose of electing councillors, the period between the calling of the election and the declaration of the result of the poll in terms of section 130(1) for the last council area or ward of the local authority concerned
- (e) in the case of an election for the purpose of filling a casual vacancy or special vacancy in the governing body of a local authority, the period between the publication of a notice referred to in section 124 and the declaration of the result of the poll in terms of section 130(1) for the council area or ward of the local authority concerned;

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

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

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

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

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

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

“province” means an area of Zimbabwe declared as such in terms of the Provincial Councils and Administration Act [*Chapter 29:11*] or any other law substituted for the same;

“responsible authority” means, in relation to—

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

“statutory body” means—

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

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

17 New Part substituted for Part II of Cap 2:13

Part II of the principal Act is repealed and the following is substituted—

“PART II

ADDITIONAL FUNCTIONS OF COMMISSION

6 Functions of Commission regarding observers

(1) In this section—

“observe”, in relation to any election, means to do any of the following during an election period, subject to such conditions as may be prescribed—

- (a) to observe the election process between the issue of a proclamation referred to in section 38 and the declaration of the result of the poll; and
- (b) to observe the conduct of the polling at the election; and
- (c) to be present at the counting or collating of votes cast at the election and the verification of polling station returns by presiding officers in terms of sections 63, 64 and 65; and
- (d) to bring any irregularity or apparent irregularity in the conduct of the poll or the counting or collating of the votes to the attention of the Commission;

and the noun “observer” shall be construed accordingly.

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

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

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

(4) The functions of the Observers' Accreditation Committee shall be to accredit as observers—

- (a) individuals representing foreign countries or international organisations and eminent persons who have earlier applied to the Commission to be accepted as observers and have been approved for accreditation by the Commission:

Provided that the Observers' Accreditation Committee shall not accredit any individual under this paragraph in respect of whom the Minister responsible for foreign affairs has lodged any objection against such individual observing any election; and

- (b) individuals representing local organisations and eminent persons from within Zimbabwe who have earlier applied to the Commission to be accepted as observers and have been approved for accreditation by the Commission:

Provided that the Observers' Accreditation Committee shall not accredit any individual under this paragraph in respect of whom the Minister has lodged any objection against such individual or eminent person observing any election; and

- (c) individuals representing bodies that exercise functions similar to those of the Commission and that have been invited by the Commission to observe any election:

Provided that the Observers' Accreditation Committee shall not accredit any individual under this paragraph in respect of whom the Minister has lodged any objection against such individual observing any election; and

- (d) individuals representing foreign countries or international organisations and eminent persons from outside Zimbabwe who have been invited by the Minister responsible for foreign affairs to observe any election; and
- (e) individuals representing local organisations and eminent persons from within Zimbabwe who have been invited by the Minister to observe any election:

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

- (a) report to the Committee at the time and place notified by the Committee; and
- (b) furnish the Committee with proof of—
 - (i) the appropriate letter by the Commission of acceptance and approval for accreditation referred to in subsection (4)(a) or (b); or
 - (ii) the appropriate invitation referred to in subsection (4)(c), (d) or (e);and
- (c) be furnished with a copy of, or made aware of the contents of, the code of conduct prescribed in the First Schedule; and
- (d) pay the prescribed accreditation fee.

(6) Upon satisfaction of the requirements of subsection (5) the Observers' Accreditation Committee shall issue the individual concerned with an accreditation

certificate confirming that the applicable requirements have been satisfied by that individual and specifying that the individual is accredited as an observer for the election period.

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

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

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

18 Amendment of section 17 of Cap 2:13

Section 17 (“Staff of Commission during elections”) of the principal Act is amended—

(a) in subsection (1) by the deletion of “Service Commissions” and the substitution of “Public Service Commission, the Health Service Board established in terms of the Health Service Act [*Chapter 15:16*] (No. 20 of 2004) and the responsible authorities of any statutory body or council”;

(b) by the insertion of the following subsection after subsection (2)—

“(3) Of the persons seconded in terms of subsection (1)—

- (a) to be constituency elections officers, the Chief Elections Officer may designate as a senatorial constituency elections officer one constituency election officer for each senatorial constituency, and such person shall do the work of a constituency election officer for his or her constituency and the work of senatorial constituency election officer for his or her senatorial constituency in terms of section 65(5); or
- (b) the Chief Elections Officer may appoint one senatorial constituency elections officer for each senatorial constituency.”.

19 New sections inserted in Cap 2:13

Part IV (“Registrar-General of Voters and Constituency Registrars) of the principal Act is amended by the insertion before section 18 of the following section—

“17A Voter registration to be conducted continuously

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

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

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

20 Amendment of section 18 of Cap 2:13

Section 18 (“Registrar-General of Voters”) of the principal Act is amended—

- (a) in subsection (2) by the deletion of “, and shall have regard to any report or recommendation by the Electoral Supervisory Commission”;
- (b) in subsection (3) by the deletion of “Minister” and the substitution of “Commission”.

21 New sections substituted for sections 20 and 21 of Cap 2:13

Sections 20 and 21 of the principal Act are repealed and the following are substituted—

“20 Voters rolls to be kept by Commission

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

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

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

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

(4) The Commission shall—

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

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

21 Inspection of voters rolls and provision of copies

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

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

(3) The Commission shall without delay provide any person who requests it with a copy of the voters roll, upon payment of the prescribed fee:

Provided that—

- (i) the prescribed fee shall not exceed the reasonable cost of preparing the copy;
- (ii) the Commission may impose reasonable conditions upon the provision of a voters roll in terms of this subsection, to prevent the roll from being used for commercial or other purposes unconnected with an election.

(4) Notwithstanding subsection (3), the Commission shall, upon payment of the prescribed fee, not later than seven days after the calling of the election concerned, provide to every political party and candidate contesting the election, and every accredited observer group, one electronic copy of every voters roll to be used in the election:

Provided that in the event of any discrepancy between an electronic copy of a voters roll and a voters roll prepared in terms of subsection (3), the latter roll shall be deemed to be the authentic record of the voters roll.”.

22 Amendment of section 25 of Cap. 2:13

Section 25 (“Claims for transfer or registration”) of the principal Act is amended by the repeal of subsection (6) and the substitution of—

“(6) Any applicant aggrieved by any decision of the Registrar-General of Voters or a constituency registrar made under this section may appeal against the decision to a designated magistrate for the province in which either of the constituencies concerned is situated.”.

23 New section inserted in Cap 2:13

Part V of the principal Act is amended by the insertion after section 26 of the following section—

“26A Closure of voters rolls 24 hours before nomination day

No person shall be registered as a voter for the purposes of voting at any Presidential election or general election of members of Parliament or councillors unless he or she lodges a claim for registration or transfer of registration under section 24 or 25 no later than twenty-four hours before the nomination day fixed in terms of a proclamation referred to in section 38 in relation to that election.”.

24 Amendment of section 27 of Cap 2:13

Section 27 (“Objections by constituency registrar”) of the principal Act is amended in subsection (1) by the repeal of the proviso thereto and the substitution of—

“Provided that no such objection shall be taken or notice sent during an election period (other than during an election period referred to in paragraph (c) or (e) of the definition of the term “election period” in section 4(2), if the objection or notice does not relate to a claimant or voter who may vote at an election referred to in those paragraphs).”.

25 Amendment of section 28 of Cap 2:13

Section 28 (“Objections by voters”) of the principal Act is amended by the insertion at the end of subsection (1) of the words “, and to the removal of his or her name from the voters roll in terms of section 33(4)”.

26 Amendment of section 33 of Cap 2:13

Section 33 (“Removal from voters roll on disqualification, death or absence”) of the principal Act is amended in subsection (4) by the insertion after “unless he or she has” of the words “published his or her intention to do so in a newspaper circulating in the area of the voter’s last known address and”.

27 Amendment of section 35 of Cap 2:13

Section 35 (“Additional powers to alter voters rolls”)(1) of the principal Act is amended by the repeal of paragraph (c).

28 New Part inserted in Cap. 2:13

The principal Act is amended by the insertion after Part VIII of the following Part—

“PART VIIIA

DELIMITATION OF CONSTITUENCIES AND ELECTORAL BOUNDARIES

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

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

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

29 New section substituted for section 38 of Cap 2:13

Section 38 of the principal Act is repealed and the following is substituted—

“38 General, presidential and local authority elections

(1) In a proclamation in terms of section 58(1) of the Constitution fixing a day or days for the holding of an election to the office of President, a general election and elections for councillors, the President shall—

(a) for the purposes of the election of a person to the office of President, fix —

(i) a place or places at which, and a day or days, not less than fourteen and not more than twenty-one days after the day of publication of the proclamation, on which a nomination court shall sit for the purpose of receiving nominations of candidates for election to the office of President; and

(ii) a day or days, not less than twenty-eight and not more than fifty days after the nomination day or last nomination day, as the case may be, fixed in terms of subparagraph (i), on which a poll shall be taken if a poll becomes necessary in terms of section 110(2).

(b) for the purposes of a general election, fix—

(i) a place or places at which, and a day or days, not less than fourteen nor more than twenty-one days after the day of publication of the proclamation, on which a nomination court shall sit in terms of section 46 to receive nominations of candidates for election as members of Parliament; and

- (ii) a day or days, not less than twenty-eight nor more than fifty days after the nomination day or last nomination day, as the case may be, fixed in terms of subparagraph (i), on which a poll shall be taken if a poll becomes necessary in terms of section 46(17)(c) for the election of members of Parliament;
- (c) for the purposes of elections for councillors, fix—
 - (i) a place or places within the ward at which, and a day or days, not less than fourteen or more than twenty-one days after the day of publication of the proclamation, on which a nomination court will sit in terms of section 46 to receive nominations of candidates for election as councillor; and
 - (ii) a day or days, not less than twenty-eight or more than fifty days after the nomination day or last nomination day, as the case may be, fixed in terms of subparagraph (i), on which a poll shall be taken if a poll becomes necessary:

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

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

(3) For the purposes of the appointment and election of Chiefs as Senators in terms of section 34(1)(c) and (d) of the Constitution the President shall, in the proclamation referred to in subsection (1), fix times and places at which and a day or days—

- (a) between the date of publication of the proclamation and the nomination day fixed in terms of subsection (1)(b)(i), on which—
 - (i) each provincial assembly of Chiefs referred to in section 35 of the Traditional Leaders Act [*Chapter 29:17*], shall convene for the purpose of electing the Council of Chiefs in terms of section 37 of the Traditional Leaders Act [*Chapter 29:17*]; and
 - (ii) the Council of Chiefs referred to in section 37 of the Traditional Leaders Act [*Chapter 29:17*] shall convene for the purpose of electing the President and the Deputy President of the Council of Chiefs;

and

- (b) being not earlier than the nomination day fixed in terms of subsection (1)(b)(i) and not later than forty-eight hours after the day or last day, as the case may be, of the poll for the Presidential election fixed in terms of in terms of subsection (1)(a)(ii), on which the electoral colleges shall meet in terms of Part X.

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

30 Amendment of section 39 of Cap 2:13

Section 39 (“Vacancies and by-elections”) of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by the deletion of “Speaker” where it occurs for the first time and the substitution of “President of the Senate or the Speaker of the House of Assembly, as the case may be,”;
 - (ii) by the deletion of “Speaker” where it occurs for the second time and the substitution of “President of the Senate or the Speaker of the House of Assembly”;
- (b) by the insertion of the following subsection after subsection (2)—

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

31 New section substituted for section 40 of Cap 2:13

Section 40 of the principal Act is repealed and the following is substituted—

“40 Election of Council of Chiefs and of President and Deputy President of Council of Chiefs and other Senator Chiefs

For the purpose of electing—

- (a) the President and the Deputy President of the Council of Chiefs referred to in section 37 of the Traditional Leaders Act [*Chapter 29:17*]
 - (i) each provincial assembly of Chiefs referred to in section 35 of the Traditional Leaders Act [*Chapter 29:17*] shall convene at the time and place and on the day or days fixed by the President in terms of section 38(3)(a)(i) to elect the Council of Chiefs referred to in section 37 of the Traditional Leaders Act [*Chapter 29:17*]; and
 - (ii) the Council of Chiefs shall convene at the time and place and on the day or days fixed by the President in terms of section 38(3)(a)(ii) to elect the President and the Deputy President of the Council of Chiefs;
- and
- (b) two Chiefs to the Senate to represent each non-metropolitan province in terms of section 34(1)(d) of the Constitution, each provincial assembly of Chiefs referred to in section 35 of the Traditional Leaders Act [*Chapter 29:17*], shall constitute an electoral college which shall be convened at the time and place and on the day or days fixed by the President in terms of section 38(3)(b).”.

32 Amendment of section 43 of Cap 2:13

Section 43 (“Nomination of Chiefs as candidates”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “Parliament” and the substitution of “the Senate”;
- (b) in subsection (2) by the deletion of “Parliament” and the substitution of “the Senate”;
- (c) by the repeal of subsection (4);

(d) in subsection (5)—

- (i) by the deletion of “which is a provincial assembly of Chiefs”;
- (ii) in paragraph (a) by the deletion of “a member of Parliament” and the substitution of “a Senator”.

33 Amendment of section 44 of Cap 2:13

Section 44 (“Conduct of poll for election of Chiefs”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “paragraph (b) of subsection (4) or (5) of section *forty-three*” and the substitution of “section 43(5)(b)”;
- (b) in subsection (4) by the deletion of “before the meeting of the electoral college is reconvened in terms of subsection (3)” and the substitution of “before the nomination of candidates”;
- (c) in subsection (6)—
 - (i) in paragraph (b) by the deletion of “member of Parliament” and the substitution of “Senator”.
 - (ii) by the repeal of paragraph (e) and the substitution of—
 - “(e) after the counting of the votes the presiding officer shall prepare a list with the candidate or candidates who received the greatest number of votes at the top of the list and the rest of the candidates in descending order according to the number of votes cast for each and, subject to paragraph (f), shall declare the candidates whose names appear first and second at the top of the list to have been duly elected as Senators with effect from the day of such declaration;”;
 - (iii) in paragraph (f)—
 - A. by the deletion of “member of Parliament” and the substitution of “Senator”;
 - B. by the deletion of “member or members of Parliament” and the substitution of “Senator or Senators”;
- (d) in subsection (8) by the deletion of “members of Parliament” and the substitution of “Senators”.

34 Amendment of section 45 of Cap 2:13

Section 45 (“Notification of appointment of members of Parliament”) of the principal Act is amended by the deletion of “paragraph (d) of subsection (1) of section 38 of the Constitution” and the substitution of “section 34 (1)(e) of the Constitution”.

35 Amendment of section 46 of Cap. 2:13

Section 46 (“Nomination of candidates”) of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by the insertion of the following proviso to paragraph (a)—
 - “Provided that if, at the time a nomination paper is lodged in terms of subsection (5), the name of any person nominating the candidate does

not appear on the voters roll, the nomination officer shall reject the nominator unless the candidate produces a voters registration certificate in respect of that nominator or a copy thereof certified by a commissioner of oaths;”;

- (ii) in paragraph (d) by the deletion of “black and white”;
- (b) in subsection (4) by the deletion of “during the period between nomination day and polling day or the last polling day, as the case may be, in the election concerned” and the substitution of “during the election period”;
- (c) in subsection (5) by the deletion of “constituency elections officer” wherever it occurs and the substitution of “nomination officer”;
- (d) in subsection (6) by the deletion of “constituency elections officer” wherever it occurs and the substitution of “nomination officer”;
- (e) in subsection (7) by the deletion of “constituency elections officer” wherever it occurs and the substitution of “nomination officer”;
- (f) in subsection (8) by the deletion of “constituency elections officer” and the substitution of “nomination officer”;
- (g) in subsection (9) by the deletion of “constituency elections officer” wherever it occurs and the substitution of “nomination officer”;
- (h) in subsection (10) by the deletion of “constituency elections officer” wherever it occurs and the substitution of “nomination officer”;
- (i) in subsection (11) by the deletion of “constituency elections officer” wherever it occurs and the substitution of “nomination officer”;
- (j) in subsection (12) by the deletion of “constituency elections officer” and the substitution of “nomination officer”;
- (k) in subsection (14) by the deletion of “constituency elections officer” and the substitution of “nomination officer”;
- (l) in subsection (15)(c) by the deletion of “deposit” and the substitution of “sum”;
- (m) by the repeal of subsection (16) and the substitution of—

“(16) If, at the close of the sitting of the appropriate nomination court the same person has been nominated for—

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

his or her nomination for all the constituencies for which he or she has been nominated shall be void.”;

- (n) in subsection (17) by the deletion of “constituency elections officer” wherever it occurs and the substitution of “nomination officer”;
- (o) in subsection (18)(a) by the deletion of “constituency elections officer” and the substitution of “nomination officer”;
- (p) in subsection (19) by the deletion of “constituency elections officer” wherever it occurs and the substitution of “nomination officer”.

36 Amendment of section 47 of Cap. 2:13

Section 47 (“Deposit on nomination”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “constituency elections officer” and the substitution of “nomination officer”;
- (b) by the repeal of subsection (2) and the substitution of—

“(2) The sum referred to in subsection (1) shall be non-refundable and shall form part of the funds of the Commission.”.

37 Amendment of section 49 of Cap. 2:13

Section 49 (“Withdrawal of candidate”) of the principal Act is amended by the repeal of subsection (3).

38 Amendment of section 51 of Cap. 2:13

Section 51 (“Polling stations”) of the principal Act is amended—

- (a) by the repeal of subsection (1) and the substitution of the following subsections—

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

Provided that—

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

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

(1b) No polling station shall be located—

- (a) in premises owned or occupied by a political party or candidate; or
 - (b) in a police station, barracks, cantonment area or other place where police officers or members of the Defence Forces are permanently stationed; or
 - (c) in premises licensed under the Liquor Act [*Chapter 14:12*]; or
 - (d) at or in any place which, for any reason, may give rise to reasonable apprehension on the part of voters as to the secrecy of their votes or the integrity of the electoral process.”;
- (b) in subsection (3) and the deletion of “two weeks” and the substitution of “three weeks”.

39 New section inserted in Cap 2:13

The principal Act is amended by the insertion after section 54 of the following section—

“54A Recording of ballot papers before polling

Subject to section 84, before the commencement of the poll at any polling station, or before the commencement of the poll on the first polling day where voting is to take place over two or more days, the presiding officer shall, in the presence of such persons entitled in terms of section 55(2)(b) to be within the polling station as are present, count and record the total number of ballot papers received at the polling station.”.

40 Amendment of section 55 of Cap 2:13

Section 55 (“Conduct of poll”) of the principal Act is amended—

- (a) by the repeal of subsection (1);
- (b) in subsection (2) by the repeal of paragraph (b) and the substitution of—
 - “(b) exclude all persons other than—
 - (i) electoral officers present for the performance of their official duties; and
 - (ii) the candidates and their chief election agents; and
 - (iii) one election agent for each Presidential candidate or candidate standing in the constituency or ward where the polling station is located; and
 - (iv) accredited observers; and
 - (v) persons who are recording their votes; and
 - (vi) such other classes of persons as may be prescribed.”;
- (c) by the repeal of subsection (5) and the substitution of the following subsections—
 - “(5) For the purpose of keeping order at a polling station and the area surrounding it, every electoral officer at the polling station shall have the powers of a peace officer under the Criminal Procedure and Evidence Act [*Chapter 9:07*].
 - (6) A presiding officer may call upon a police officer for assistance in keeping order at the polling station and the area surrounding it, and every police officer so called upon shall provide whatever assistance is needed.
 - (7) The Commissioner-General of Police shall ensure that sufficient numbers of police officers are available to provide assistance if called upon in terms of subsection (6).
 - (8) The presiding officer shall record in detail every incident in which order at the polling station and the area surrounding it was disrupted and, in particular, every occasion in which a person was expelled or required to leave the polling station or its surrounding area in terms of this section.”.

41 New section substituted for section 56 of Cap 2:13

Section 56 of the principal Act is repealed and the following is substituted—

“56 Entitlement to vote, number of votes and identification of voters

- (1) At an election held for the purpose of electing the President, members of Parliament and councillors—
 - (a) every voter registered on a ward voters roll shall be entitled to vote in the ward concerned for a Presidential candidate, the Parliamentary candidates who have

been duly nominated for the senatorial and House of Assembly constituencies in which that ward is situated, and a candidate for the office of councillor standing in that ward:

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

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

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

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

- (a) the applicant is registered as a voter on the voters roll for the ward; and
- (b) there is no indication that the applicant has previously received a ballot paper or postal ballot paper for the election;

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

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

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

42 Amendment of section 59 of Cap. 2:13

Section 59 (“Voting by illiterate voters”)(1) of the principal Act is amended by the deletion of “a monitor and a police officer on duty” and the substitution of “two other electoral officers or employees of the Commission”.

43 Amendment of section 60 of Cap. 2:13

Section 60 (“Voting by physically incapacitated voters”)(1) of the principal Act is amended by the deletion of “a monitor and a police officer on duty” and the substitution of “two other electoral officers or employees of the Commission”.

44 Amendment of section 61 of Cap. 2:13

Section 61 (“Procedure at close of poll”) of the principal Act is amended by the repeal of paragraph (a) and the substitution of—

“(a) close and seal the aperture in the ballot box; and”.

45 Amendment of section 62 of Cap 2:13

Section 62 (“Procedure after sealing of ballot boxes”) of the principal Act is amended by the insertion of the following subsection after subsection (2)—

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

46 New section substituted for section 64 of Cap. 2:13

Section 64 of the principal Act is repealed and the following is substituted—

“64 Procedure after counting at polling station

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

- (a) close and seal the aperture in the ballot box; and
 - (b) make up into separate packets sealed with his or her own seal and with the seals of those candidates and election agents, if any, who desire to affix their seals—
 - (i) the unused and spoilt ballot papers and counterfoils of the unused ballot papers placed together;
 - (ii) the counterfoils of the used ballot papers, including the counterfoils of the spoilt ballot papers;
 - (iii) the list of votes marked by the presiding officer;
- and
- (c) record on the polling-station return the votes obtained by each candidate and the number of rejected ballot papers in such a manner that the results of the count for each ballot box are shown on the return; and
 - (d) display the completed polling-station return to those present and afford each candidate or his or her polling agent the opportunity to subscribe their signatures thereto; and
 - (e) affix a copy of the polling-station return on the outside of the polling station so that it is visible to the public.

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

- (a) the ballot box and packets referred to in subsection (1)(a) and (b), accompanied by a statement made by the presiding officer showing the number of ballot papers entrusted to him or her and accounting for them under the heads of used ballot papers, excluding spoilt ballot papers, unused ballot papers and spoilt ballot papers; and
- (b) the polling-station return certified by himself or herself to be correct:

Provided that if, by reason of death, injury or illness, the presiding officer is unable personally to transmit the ballot box, packets, statement and polling station return under this subsection, a polling officer who was on duty at the polling station shall personally transmit these, and in that event any statement or certification required to be made by the presiding officer for the purposes of this section may be made by the polling officer concerned.”.

47 Amendment of section 65 of Cap. 2:13

Section 65 (“Procedure on receipt of polling-station returns”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “The constituency elections officer” and the substitution of “Subject to subsection (6), the constituency elections officer”;
- (b) by the insertion of the following subsections after subsection (4)—

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

- (a) close and seal the aperture in the postal ballot box; and
- (b) enclose in two separate sealed packets the polling-station returns and the counted and rejected postal ballot papers.

(6) Upon receipt of a polling-station return relating to a senatorial constituency, a constituency elections officer shall transmit that return personally, or through another electoral officer—

- (a) to the constituency elections officer who is designated as the senatorial constituency elections officer in terms of section 17(3)(a); or
- (a) to the person appointed as the senatorial constituency elections officer in terms of section 17(3)(b);

as the case may be, and this section shall apply to verification and collation of those returns by the senatorial constituency elections officer as if references to the “constituency elections officer” were references to the “senatorial constituency elections officer”.”.

48 New section inserted in Cap. 2:13

The principal Act is amended by the insertion after section 67 of the following section—

“67A Recounting of votes

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

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

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

(3) On receipt of a request in terms of subsection (1) the Commission shall order a recount of votes in the polling stations concerned if the Commission considers there are reasonable grounds for believing that the alleged miscount of the votes occurred and that, if it did occur, it would have affected the result of the election.

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

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

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

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

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

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

49 Repeal of section 69 of Cap 2:13

Section 69 of the principal Act is repealed.

50 Amendment of section 70 of Cap 2:13

Section 70 (“Custody and disposal of ballot and other papers”) of the principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (a) by the deletion of “subsection (1) of section *sixty-nine*” and the substitution of “section 64(1)(a) and (b)”;
 - (ii) in paragraph (c) by the deletion of “subsection (1) of section *sixty-nine*” and the substitution of “section 64(1)(a) and (b)”;

- (b) in subsection (2) by the deletion of “to the Chief Elections Officer” and the substitution of “to the places designated by the Chief Elections Officer”;
- (c) by the repeal of subsection (3) and the substitution of—
 - “(3) The Chief Elections Officer shall—
 - (a) unless an election petition is lodged in relation to the constituency concerned, cause to be destroyed all the documents referred to in subsection (1) relating to that constituency not earlier than the fourteenth day after the end of the election period;
 - (b) if an election petition is lodged in relation to any constituency within fourteen days after the end of the election period to which the election relates, retain for six months all the documents referred to in subsection (1) relating to that constituency and then, unless otherwise directed by an order of the Electoral Court, shall cause them to be destroyed.”.

51 Amendment of section 76 of Cap 2:13

Section 76 (“Postal ballot boxes”)(2) of the principal Act is amended by the deletion of “not later than three days after nomination day” and the substitution of “not later than seven days before polling day”.

52 Amendment of section 77 of Cap 2:13

Section 77 (“Opening of postal ballot boxes”) of the principal Act is amended by the insertion of the following subsection after subsection (3)—

“(3a) For the avoidance of doubt it is declared that the proviso to subsection (3)(a) does not prevent a candidate or his or her chief election agent from being present at the opening of the postal ballot box of votes at a Presidential election or general election of members of Parliament or councillors which takes place concurrently with the election for which he or she was nominated, so long as the opening of the postal ballot boxes of votes at the elections in question are held concurrently at the time and place notified in terms of subsection (2).”.

53 New section substituted for section 82 of Cap 2:13

Section 82 of the principal Act is repealed and the following is substituted—

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

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

- (a) if he or she is a constituency elections officer or a presiding officer, before a commissioner of oaths; or
- (b) in any other case, before a commissioner of oaths or the constituency elections officer or the presiding officer.”.

54 Amendment of section 84 of Cap 2:13

Section 84 (“Absence of election agents, etc. at opening and closing of ballot boxes, etc.”) of the principal Act is amended by the insertion before paragraph (a) of the following paragraph—

“(1a) at the counting and recording the total number of ballot papers received at a polling station in terms of section 54A; or”.

55 Amendment of section 85 of Cap 2:13

Section 85 (“Offences in relation to ballot papers and ballot boxes”)(1) of the principal Act is amended by the insertion after paragraph (a) of the following paragraph—

“(a1) at a polling station, applies for a ballot paper, knowing that he or she is not entitled to vote in the ward or constituency concerned; or”.

56 New section substituted for section 88 of Cap 2:13

Section 88 of the principal Act is repealed and the following is substituted—

“88 Obstruction of election officials

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

- (a) Commissioner; or
- (c) electoral officer or employee of the Commission; or
- (c) observer;

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

57 New section inserted in Cap. 2:13

The principal Act is amended by the insertion after section 89 of the following section—

“89A Refusal of precautions against double voting

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

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

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

58 Amendment of section 95 of Cap. 2:13

Section 95 (“Election agents”) of the principal Act is amended—

- (a) in subsection (1) by the repeal of paragraph (b);
- (b) by the repeal of subsection (2) and the substitution of—

“(2) Anything done for the purposes of the election by or to an election agent shall be deemed to be done by or to the chief election agent, and any act or default of an election agent which, if he or she were the chief election agent, would be an

electoral malpractice shall be an electoral malpractice in terms of Part XVIII, XIX or XX, as the case may be, committed by the election agent, and—

- (a) the election agent shall be liable to punishment accordingly; and
- (b) the candidate shall, save as provided in section 146(3), incur the same consequences as if the act or default had been the act or default of the chief election agent.”;
- (c) in subsection (4) by the repeal of paragraph (b).

59 Repeal of sections 102 and 103 of Cap 2:13

Sections 102 and 103 of the principal Act are repealed.

60 Amendment of section 105 of Cap. 2:13

Section 105 (“Deposit on nomination”) of the principal Act is amended by the repeal of subsection (2) and the substitution of—

“(2) The sum referred to in subsection (1) shall be non-refundable and shall form part of the funds of the Commission.”.

61 Amendment of section 106 of Cap. 2:13

Section 106 (“Publication of names of Presidential candidates”) of the principal Act is amended by the deletion of “in terms of paragraph (a) of subsection (1) of section *one hundred and three*” and the substitution of “in terms of section 38(1)(a)”.

62 Amendment of section 107 of Cap. 2:13

Section 107 (“Withdrawal of candidature”) of the principal Act is amended by the repeal of subsection (3).

63 Amendment of section 108 of Cap. 2:13

Section 108 (“When fresh nominations to be held”) of the principal Act is amended by the deletion of “the Chief Elections Officer shall forthwith publish in the *Gazette* a notice announcing in the same manner, with any changes that may be necessary, as is provided in section one hundred and three the sitting of a new nomination court, and thereafter the provisions of this Part shall apply accordingly” and the substitution of “the President shall, subject to section 58(1) of the Constitution, by further proclamation in the *Gazette* published in terms of section 38(4), announce the sitting of a new nomination court, and thereafter the provisions of this Part shall apply accordingly”.

64 New section inserted in Cap 2:13

Part XVII of the principal Act is amended by the insertion after section 112 of the following section—

“112A Election of President in the event of casual vacancy

(1) If the office of President becomes vacant by reason of his or her death or his or her resignation or removal from office in terms of the Constitution, the members of the Senate and the House of Assembly shall meet as an electoral college on a day (no later than ninety days from the date when the office of President becomes vacant) and at a time fixed by the

Speaker of the House of Assembly in order to elect a person to the office of President of Zimbabwe.

(2) The procedure for the election of a person to the office of President of Zimbabwe in terms of subsection (1) is prescribed in the Fifth Schedule.”.

65 New sections substituted for sections 115, 116, 117 and 118 of Cap 2:13

Sections 115, 116, 117, and 118 of the principal Act are repealed and substituted by—

“Qualifications of voters and preparation of ward voters rolls

“115 Qualifications of voters in local authority elections

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

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

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

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

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

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

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

116 First ward voters rolls

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

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

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

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

or

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

(3) The expenses incurred in compiling the first ward voters rolls shall be paid shall be charged upon and paid out of the funds of the Commission, or, in the extent of any insufficiency of the funds of the Commission for this purpose, the Consolidated Revenue Fund.

117 Preparation of subsequent ward voters rolls

(1) Subject to this section—

- (a) in each year in which elections for councillors are to be held, the Registrar-General of Voters shall prepare ward voters rolls containing the names of persons entitled to be enrolled thereon on the date fixed in terms of section 26A for the closing of the roll concerned;
- (b) as soon as possible after an area has been added to the council area concerned, the Registrar-General of voters shall prepare one or more ward voters rolls containing the names of persons entitled to be enrolled thereon in terms of section 115.

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

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

or

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

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

(4) Section 116(2) and (3) shall apply, with any changes that may be necessary, in relation to any roll or list prepared or updated in terms of this section.

118 Inspection of ward voters rolls

(1) A voters roll prepared in terms of section 116 or 117 shall be open to inspection by the public, free of charge, during office hours at the office of the Registrar-General of Voters.

(2) Immediately after preparing a ward voters roll in terms of section 116 or 117, the Registrar-General of Voters shall, by notice published in two issues of a newspaper and posted at his or her office—

- (a) notify that a copy of the ward voters roll is open for inspection in terms of subsection (1); and
- (b) call upon any person who—
 - (i) claims that he or she should be enrolled on the ward voters roll, to apply for enrolment in terms of section 24 or to apply to the Registrar-General of Voters for the rectification of the voters roll as soon as possible; or
 - (ii) has any objection to the enrolment of a person whose name appears on the ward voters roll, to lodge his or her objection as soon as possible in terms of Part VI.”.

66 New sections substituted for section 121 of Cap 2:13

Section 121 of the principal Act is repealed and substituted by the following sections—

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

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

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

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

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

shall be held on a date fixed by the Commission, which date shall be not less than thirty-five days nor more than ninety days after the date on which the vacancy occurred:

Provided that, except where the number of vacancies exceeds one-half of the total number of councillors, no by-election shall be held to fill such a vacancy which occurs within one hundred and eighty days before the day or first day fixed in a proclamation in terms of section 58(1) of the Constitution as the day or days on which elections are to be held for the purpose of electing councillors.

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

- (a) state the number of vacancies to be filled and, where appropriate, the wards in which the vacancies have occurred; and
- (b) fix a place or places within the council area at which, and a day or days, not less than 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 46 to receive nominations of candidates for election as councillor or mayor, as the case may be; and
- (c) fix a day or days, not less than 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.

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

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

67 New section substituted for section 122 of Cap 2:13

Section 122 of the principal Act is repealed and substituted by—

“122 When election to office of mayor to be held

An election to the office of mayor shall be held on a date fixed by a proclamation referred to in section 38, or, in the case of a casual vacancy in the office of mayor, fixed by the Commission in terms of section 121A.”.

68 Repeal of sections 123 and 124 of Cap 2:13

Sections 123 and 124 of the principal Act are repealed.

69 Amendment of section 125 of Cap. 2:13

Section 125 (“Nomination of candidates”) of the principal Act is amended—

- (a) in subsection (3)(b) by the deletion of “which, if a poll takes place and the number of valid votes cast for the candidate is less than one-fifth of the number of valid votes cast for the successful candidate, shall be forfeited and form part of the funds of the

Commission” and the substitution of “which shall be non-refundable and shall form part of the funds of the Commission”;

(b) in subsection (4) by the insertion of the following paragraph after paragraph (b)—

“(c) the same person has been duly nominated for—

(i) more than one vacancy in the office of councillor; or

(ii) the office of mayor and one or more vacancies in the office of councillor;

his or her nomination for all the vacancies for which he or she has been duly nominated shall be void.”.

70 Repeal of section 131 of Cap 2:13

Section 131 of the principal Act is repealed.

71 New Part inserted in Cap. 2:12

The principal Act is amended by the insertion after Part XVIII of the following Part—

“PART XVIIIA

INTIMIDATORY PRACTICES

133A Meaning of “intimidation”

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

(a) inflicting or threatening to inflict bodily injury upon a person; or

(b) abducting a person or detaining a person against his or her will; or

(c) causing or threatening to cause unlawful damage to a person’s property; or

(d) withholding or threatening to withhold from a person any assistance or benefit to which that person is legally entitled; or

(e) illegally doing or threatening to do anything to the disadvantage of a person.

133B Intimidation

A person who, through intimidation—

(a) compels or attempts to compel a person to sign or refrain from signing a nomination paper; or

(b) prevents or attempts to prevent a candidate from lodging a nomination paper with a constituency elections officer; or

(c) compels or attempts to compel a person or persons generally—

(i) to vote for a political party or candidate; or

(ii) not to vote;

or

- (d) compels or attempts to compel a person or persons generally to attend or participate in any political meeting, march, demonstration or other political event;

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

133C Preventing political party or candidate from campaigning

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

133D Theft or destruction of voter identification

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

133E Additional punishment for intimidation

(1) Where the High Court convicts a person of an offence under this Part, the court may, in addition to any other punishment, declare the person to be incapable, for a period not exceeding five years from the date of his or her conviction, of—

- (a) being registered as a voter or voting at an election; or
- (b) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution;

and, if the person holds a public office that is covered by a declaration under paragraph (b), the High Court may declare the office to be vacant as from the date of the conviction.

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

72 Repeal of section 135 of Cap 2:13

Section 135 of the principal Act is repealed.

73 Repeal of section 145 of Cap 2:13

Section 145 of the principal Act is repealed.

74 Amendment of section 147 of Cap 2:13

Section 147 (“Prohibition of certain activities in vicinity of polling stations”)(1) of the principal Act is amended by the deletion of “two hundred metres” and the substitution of “three hundred metres”.

75 New section substituted for section 159 of Cap 2:13

Section 159 of the principal Act is repealed and the following is substituted—

“159 Finding on charge of electoral malpractice

Any person charged with—

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

76 New Part inserted in Cap. 2:12

The principal Act is amended by the insertion after Part XXI of the following Part—

“PART XXIA**CONFLICT MANAGEMENT****160A Interpretation in Part XXIA**

In this Part—

“Code” means the Electoral Code of Conduct for Political Parties and Candidates set out in the Fourth Schedule;

“multiparty liaison committee” means a national multiparty liaison committee, a constituency multiparty liaison committee or a local authority multiparty liaison committee.

160B Constitution of multiparty liaison committees

(1) As soon as possible after the close of nominations in an election, the Commission shall appoint—

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

(2) A multiparty liaison committee shall, in the case of—

- (a) a national multiparty liaison committee, consist of a Commissioner as the chairperson and—
 - (i) two representatives of each political party contesting the election, who shall be selected by the party concerned:

Provided that an independent candidate contesting a Presidential election shall be entitled to select two representatives to represent him or her on the committee;
 - (ii) any person invited by the representatives of every political party represented in the liaison committee;
- (b) a constituency multiparty liaison committee, consist of a representative of the Commission selected by the Commission and—
 - (i) a representative of each political party contesting the election, who shall be selected by the party or candidate concerned:

Provided that an independent candidate contesting an election at a particular constituency shall be entitled to select two representatives to represent him or her on the committee for that constituency;

and
 - (ii) any person invited by the representatives of every political party represented in the liaison committee;
- (c) a local authority multiparty liaison committee, consist of a representative of the Commission selected by the Commission and—
 - (i) a representative of each political party contesting the election, who shall be selected by the party or candidate concerned:

Provided that an independent candidate contesting an election at a particular ward shall be entitled to a representative to represent him or her on the committee for that ward;
 - (ii) any person invited by the representatives of every political party represented in the liaison committee.

160C Functions of multiparty liaison committee

- (1) The functions of a multiparty liaison committee shall be—
 - (a) to hear and attempt to resolve any disputes, concerns, matters or grievances relating to the electoral process, including in particular any disputes arising from allegations concerning non-compliance with the Code; and
 - (b) in the case of a national multiparty liaison committee—
 - (i) to create and establish multiparty liaison subcommittees in each province; and
 - (ii) to delegate any of its functions to any multiparty liaison subcommittee; and
 - (iii) to monitor, supervise or direct the activities of multiparty liaison subcommittees;

- (c) to immediately report upon and refer to the Commission any disputes, concerns, matters or grievances relating to the electoral process; and
- (d) to request the Commission to mediate or appoint an independent mediator to resolve any dispute, concern, matter or grievance relating to the electoral process; and
- (e) to present to the Commission any reports, assessments, records or recommendations relating to the electoral process; and
- (f) generally, to assist in implementing the Code.

(2) The Commission or an independent mediator referred to in subsection (1)(d) shall endeavour to resolve any dispute, concern, matter or grievance relating to the electoral process referred for mediation within the time requested by the multiparty liaison committee or within a reasonable time.

160D Decisions of multiparty liaison committees

The decisions of the multiparty liaison committee shall be made by consensus.”.

77 Amendment of section 162 of Cap 2:13

Section 162 (“Judges of the Electoral Court and composition thereof”) of the principal Act is amended by the repeal of subsection (1) and the substitution of—

“(1) The Chief Justice shall, after consultation with the Judicial Service Commission and the Judge President of the High Court, appoint one or more judges of the High Court to be Judge or Judges, as the case may be, of the Electoral Court for such a period as he or she may specify in such appointment.”.

78 Amendment of section 166 of Cap 2:13

Section 166 (“Interpretation in Part XXIII”) of the principal Act is amended by the repeal of the definition of “respondent” and the substitution of—

““respondent” means the President, a member of Parliament or councillor whose election or qualification for holding the office is complained of in an election petition.”.

79 Amendment of section 168 of Cap. 2:13

Section 168 (“Provisions governing election petitions”) of the principal Act is amended—

- (a) in subsection (2) by the deletion of “after the day on which the result of the election has been notified in terms of this Act” and the substitution of “after the end of the period of the election to which it relates”;
- (b) in subsection (4) by the deletion of “shall be” where it occurs for the first time and the substitution of “may be”.

80 Amendment of section 171 of Cap. 2:13

Section 171 (“Provisions as to trial of election petition”) of the principal Act is amended—

- (a) in subsection (3)—
 - (i) in paragraph (b) by the repeal of subparagraph (ii) and the substitution of—
 - “(ii) the Electoral Court shall forthwith certify its determination to the Commission, and to the President of the Senate or the Speaker of the

House of Assembly, as the case may be, and the Commission shall thereupon, by notice published in the *Gazette*, declare such other person duly elected with effect from the day of the determination of the Electoral Court;

(ii) in paragraph (c) by the repeal of subparagraph (ii) and the substitution of—

“(ii) the Electoral Court shall forthwith certify its determination to the President of the Senate or the Speaker of the House of Assembly, as the case may be, and the President of the Senate or the Speaker of the House of Assembly shall thereupon notify the President that the vacancy has occurred and the cause of such vacancy;

(b) in subsection (4)—

(i) in the introductory words—

A. by the deletion of “a corrupt or illegal practice” and the substitution of “an electoral malpractice”.

B. by the deletion of “Speaker” and the substitution of “President of the Senate or the Speaker of the House of Assembly, as the case may be”;

(ii) in paragraph (a) by the deletion of “corrupt practice or illegal practice” and the substitution of “electoral malpractice”;

(iii) in paragraph (1)(c) by the deletion of “corrupt practices or illegal practices” and the substitution of “electoral malpractices”;

(c) in subsection (5)—

(i) by the deletion of “Speaker” and the substitution of “President of the Senate or the Speaker of the House of Assembly, as the case may be”;

(ii) by the deletion of “corrupt practice or illegal practice” and the substitution of “electoral malpractice”.

(d) in subsection (6) by the deletion of “Speaker” and the substitution of “President of the Senate or the Speaker of the House of Assembly, as the case may be”.

81 Repeal of section 191 of Cap 2:13

Section 191 of the principal Act is repealed.

82 Amendment of section 192 of Cap. 2:13

Section 192 (“Regulatory powers of Commission”) of the principal Act is amended in subsection (2) by the insertion after paragraph (g) of the following paragraphs—

“(g1) facilities enabling electoral officials and other persons who, on polling day in any election are or will be assisting with the conduct of the election, to cast their votes, whether through the medium of postal voting or otherwise;

(g2) the membership and functions of multi-party liaison committees as defined in Part XXIA;”.

83 Amendment of First Schedule to Cap 2: 13

The First Schedule (“Code of Conduct for Chief Election Agents, Election Agents and Observers”) to the principal Act is amended—

- (a) in the title thereof by the deletion of “, MONITORS”;
- (b) in paragraph 1 by the deletion of “, monitor”;
- (c) in paragraph 2 by the deletion of “, monitor”;
- (d) in paragraph 3 by the deletion of “No monitor or observer” and “while monitoring or observing” and the substitution of “No observer” and “while observing” respectively;
- (e) in paragraph 4 by the deletion of “A monitor or observer” and the substitution of “An observer”;
- (f) in paragraph 7 by the deletion of “, monitor”;
- (g) in paragraph 8 by the deletion of “, monitor”;
- (h) in paragraph 9 by the deletion of “, election agent or monitor” and the substitution of “or election agent”;
- (i) by the repeal of paragraph 10 and the substitution of—

“10. If an observer considers that there has been any irregularity in the conduct of the poll or the counting of the votes, the observer shall bring such irregularity or apparent irregularity to the attention of the presiding officer or constituency elections officer at the polling station, constituency centre or ward or council centre concerned.”;
- (j) in paragraph 14 by the deletion of “, monitor”.

84 Repeal of Third Schedule to Cap 2: 13

The Third Schedule to the principal Act is repealed.

85 New Schedule inserted in Cap. 2:13

The principal Act is amended by the insertion of the following Schedule after Fourth Schedule—

“FIFTH SCHEDULE (Section 112A(2))

ELECTION OF PRESIDENT IN THE EVENT OF CASUAL VACANCY

Interpretation

1. In this Schedule—

“chamber” means the chamber of the House of Assembly or an enclosed place at any other venue of the electoral college specified in terms of paragraph 2(1)(a)(ii);

“Chief Justice” includes, where the Chief Justice is unable for any reason to perform his or her functions under this Schedule, the Deputy Chief Justice;

“election day” means the day fixed in terms of section 112A(1) for the electoral college to meet;

“electoral college” means the electoral college convened in terms of section 112A(1) in order to elect a person to the office of President;

“nomination day” means the day specified in terms of paragraph 2(1)(b) as the day on which nominations of candidates for election as President may be lodged with the Clerk of Parliament;

“tally of votes” means a tally of votes in favour of a particular candidate conducted in terms of paragraph 7;

“voting bloc” means a group of those members of the electoral college wishing to vote for a particular candidate, who are gathered in a part of the chamber indicated by the Chief Justice in terms of paragraph 7(1)(a).

(2) Any word or expression to which a meaning has been assigned in the Standing Orders of the House of Assembly shall bear the same meaning when used in this Schedule.

Notice of election day and nomination day

2.(1) Not later than fourteen days before election day, the Clerk of Parliament shall cause a notice to be published in the *Gazette* and in every newspaper circulating in the areas where Senators and members of the House of Assembly are resident—

(a) announcing the date of election day and the time at which the electoral college will meet—

(i) at the House of Assembly; or

(ii) at such other place specified by the Clerk in the notice;

on election day in order to elect a person to the office of President:

Provided that the election day shall be fixed for a date no later than fourteen days before the expiry of the ninety-day period referred to in section 28(3)(b) of the Constitution; and

(b) stating that nominations of candidates for election as President may be lodged with the Clerk of Parliament in terms of this Schedule during ordinary business hours up to four o'clock in the afternoon on the day specified in the notice, which day shall be not less than three and not more than fourteen days before election day.

(2) The Clerk of Parliament may alter any date, time or venue referred to in subparagraph (1) and, if he or she does so, he or she shall cause notice of the altered dates or time to be given in accordance with that subparagraph.

Qualifications and nomination of candidates

3.(1) In an election of a President in terms of section 112A each candidate shall be a person who—

(a) is a citizen of Zimbabwe by birth or by descent; and

(b) has attained the age of forty years; and

(c) is ordinarily resident in Zimbabwe;

and shall be nominated by not fewer than twenty-five persons, each of whom shall be a Senator or a member of the House of Assembly.

(2) A candidate for election as President shall be nominated by means of a separate nomination paper in the form set out in the Appendix—

(a) signed by not fewer than twenty-five persons, each of whom shall be a Senator or a member of the House of Assembly; and

(b) countersigned with the acceptance of the candidate.

(3) A nomination paper, duly completed in accordance with subparagraph (2), may be lodged with the Clerk of Parliament during ordinary business hours up to four o'clock in the afternoon on nomination day.

(4) The Clerk of Parliament shall forthwith examine every nomination paper lodged with him or her in terms of subparagraph (3) in order to ascertain if it is in order, and shall give any person lodging it an opportunity to rectify any defect therein, until four o'clock in the afternoon on nomination day.

(5) The Clerk shall reject any nomination which, in his or her opinion, is not in order, where the person lodging it has not rectified any defect after being given an opportunity to do so in terms of subparagraph (4).

(6) A candidate shall not be regarded as duly nominated if—

- (a) his or her nomination paper was not lodged with the Clerk of Parliament in accordance with this paragraph; or
- (b) his or her nomination paper has not been signed and countersigned in accordance with subparagraph (2) or is otherwise not properly completed; or
- (c) he or she is not qualified in terms of subparagraph (1) for election as President.

(7) If the Clerk of Parliament has rejected a nomination paper in terms of subparagraph (5)—

- (a) the Clerk of Parliament shall forthwith notify the candidate or his or her agent, giving reasons for the decision; and
- (b) subject to subparagraph (8), the candidate shall have a right to bring the decision on review before the Supreme Court.

(8) An application for a review of a decision of the Clerk of Parliament to reject a nomination paper shall be lodged with the Registrar of the Supreme Court no later than eleven o'clock in the morning three days before election day.

(9) The Chief Justice or any judge of the Supreme Court may give directions as to the procedure to be followed in any review of a decision of the Clerk of Parliament to reject a nomination paper so as to ensure the prompt determination of the review.

(10) The Supreme Court—

- (a) may, on any review in terms of this paragraph, set aside the decision of the Clerk of Parliament, and may substitute its own decision for that of the Clerk of Parliament and give such directions in the matter as it thinks fit; and
- (b) shall determine any review in terms of this paragraph by not later than the day immediately preceding election day.

(11) If no application for a review of a decision of the Clerk of Parliament to reject a nomination paper is lodged within the time prescribed in subparagraph (8), the decision of the Clerk of Parliament shall be final.

When tally of votes required

4.(1) If only one candidate is duly nominated he or she shall be declared by the Clerk of Parliament to be duly elected as President of the Republic of Zimbabwe without the necessity of a tally of votes.

(2) If two or more candidates are duly nominated, the Clerk of Parliament shall direct a tally of votes to take place and notify the Chief Justice in writing accordingly.

Procedure when tally of votes required

5. If a tally of votes becomes necessary in terms of paragraph 4(2), the Chief Justice shall—

- (a) convene the electoral college at the House of Assembly or other venue specified in terms of paragraph 2(1)(a)(ii); and
- (b) preside over the electoral college; and
- (c) conduct any drawing of lots; and
- (d) declare the successful candidate to be elected;

in terms of this Schedule.

Quorum of electoral college

6.(1) If a tally of votes becomes necessary in terms of paragraph 4(2), then, subject to subparagraph (2), half of the membership of the electoral college shall constitute a quorum at any meeting of the electoral college.

(2) If, at any meeting of the electoral college, there is no quorum within fifteen minutes of the time fixed for the start of the meeting of the electoral college, the Chief Justice shall adjourn the meeting until one hour later and, at that adjourned meeting, the members of the electoral college present shall form a quorum.

Voting procedure

7.(1) If a tally of votes becomes necessary in terms of paragraph 4(2)—

- (a) the Chief Justice shall order the doors of the chamber to be secured and, as soon as possible thereafter, shall—
 - (i) call out the name of each candidate in alphabetical order of his or her surname; and
 - (ii) after calling out each name—
 - A. direct those wishing to vote for the candidate to gather as a voting bloc in the part of the chamber indicated by the Chief Justice; and
 - B. appoint one member of the voting bloc as the teller for that voting bloc, who shall make up a list of the members of the voting bloc under the name of the candidate for whom the voting bloc wishes to vote, and the total number of the members of that voting bloc;

and

- (b) the tellers shall sign the voting bloc lists and hand them to the Chief Justice, who shall declare the numbers to the electoral college; and
- (d) in the case of confusion or error occurring concerning the numbers reported, which cannot otherwise be corrected, the Chief Justice shall direct that another tally of votes shall take place.

(2) Each member of the electoral college shall be entitled to a single vote in the voting bloc to which he or she belongs.

Further tallies of votes

8.(1) If no candidate receives a majority of the votes after the first tally of votes—

- (a) the Chief Justice shall announce to the electoral college the number of votes cast for each candidate; and
- (b) the candidate or candidates who received the least number of votes shall, subject to subparagraph (2), be eliminated and a further tally of votes shall be taken under paragraph (c) in respect of the remaining candidates, and if no candidate receives a majority of the votes cast at such subsequent tally of votes this procedure shall be repeated until a candidate does receive such a majority; and
- (c) paragraph 7 applies, with such changes as may be necessary, to any subsequent tally of votes held in terms of paragraph (b).

(2) If after any particular tally of votes—

- (a) the application of subparagraph (1)(b) results in two or more candidates with an equality of votes being eliminated and only one candidate remaining, only one of the first-mentioned candidates, who shall be determined by the drawing of lots in the presence of the electoral college, shall be eliminated and the other candidate or candidates shall remain for the subsequent tally of votes;
- (b) an equality of votes is found to exist between two candidates who were the only candidates at that tally of votes, a further tally of votes shall be taken in the manner specified in paragraph 7 until one of the candidates receives a majority of the votes cast:

Provided that if both candidates continue to receive an equality of votes after such number of tallies as the Chief Justice may determine, the Chief Justice may adjourn the sitting of the electoral college and direct that it shall reconvene at a date, time and place fixed by him or her, being no later than forty-eight hours after the day when the electoral college is adjourned, and paragraph 7 and this paragraph shall apply, with such changes as may be necessary, to any subsequent tally of votes held in terms of this proviso.

Declaration of successful candidate

9.(1) If after any tally of votes one candidate receives a majority of the votes cast by members of the electoral college the Chief Justice shall—

- (a) announce to the electoral college the number of votes cast for each candidate; and
- (b) declare the candidate who received a majority of the votes cast to be duly elected as President of the Republic of Zimbabwe.

(2) An entry shall be made in the Journals of both Houses of the final voting bloc lists that resulted in a candidate being declared duly elected as President of the Republic of Zimbabwe.

Deputy Clerk may act for Clerk to Parliament

10. If the Clerk of Parliament is unable for any reason to perform his or her functions under this Schedule the Deputy Clerk or, where there are two or more Deputy Clerks, the most senior of them, shall act in his or her place.

APPENDIX (PARAGRAPH 3(2))

FORM OF NOMINATION PAPER

[OBVERSE]

NOMINATION PAPER : ELECTION OF PRESIDENT

We, the Senators and members of the House of Assembly whose names and signatures appear on the reverse of this form, hereby nominate :

.....

(full name, in block letters)

of.....

(address in block letters)

as a candidate for election as President.

Date :

DECLARATION OF CANDIDATE

I,

(full name, in block letters)

of.....

(address in block letters)

certify that—

1. I am a citizen of Zimbabwe by birth/descent*.
2. The date of my birth was
3. I am ordinarily resident in Zimbabwe.
4. I hereby accept nomination as a candidate for election as President.

Signature :

Date : Place :

**Delete whichever does not apply.*

[REVERSE]

LIST OF NOMINATORS

Full names (in block letters)	Signature
1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
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20.”
21.”
22.”
23.”
24.”
25.”
26.”
27.”
28.”

29.”
30.”

86 Amendment of the long title to Cap 2: 13

The long title to the principal Act is repealed and the following is substituted—

“To provide for the Registrar General of Voters and constituency registrars; to make provision for the registration of voters and for the lodging of objections thereto; to provide for the preparation, compilation and maintenance of voters rolls; to provide for the functions of the Zimbabwe Electoral Commission with respect to observers; to prescribe the residence qualifications of voters and the procedure for the nomination and election of candidates to and the filling in of vacancies in Parliament; to provide for elections to the office of the President; to provide for local authority elections; to provide for offences and penalties, and for the prevention of electoral malpractices in connection with elections; to establish the Electoral Court and provide for its functions; to make provision for the hearing and determination of election petitions; and to provide for matters connected with or incidental to the foregoing.”.

87 Minor amendments to Cap 2: 13

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent specified opposite thereto in the second column of the Schedule.

PART IV

AMENDMENT OF TRADITIONAL LEADERS ACT [*CHAPTER 29:17*] AND TRANSITIONAL PROVISIONS

88 Amendment of Cap. 29:17

The Traditional Leaders Act [*Chapter 29:17*] (No. 25 of 1998) is amended—

- (a) in section 35 (“Provincial assemblies”)(2) by the deletion of “A provincial assembly” and the substitution of “Subject to section 38(3) of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004), a provincial assembly”;
- (b) in section 37 (“Council of Chiefs”)—
 - (i) in subsection (2) by the deletion of “, on such dates as may be prescribed,” and the substitution of “, on the day or days fixed by the President in terms of section 38(3) of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004),”
 - (ii) by the repeal of subsection (4) and the substitution of—

“(4) Subject to subsections (5), (6) and (7), every Chief elected to the Council shall hold office as a member thereof for a period of five years concurrent with the life of Parliament referred to in section 63(4) of the Constitution, or—

 - (a) a lesser period where the President earlier dissolves Parliament in terms of section 63(2) of the Constitution; or

- (b) a longer period where the life of Parliament referred to in section 63(4) of the Constitution is extended under section 63(5) or (6) of the Constitution;

in which event term of office of the Chief as a member of the Council shall terminate on the expiration of such lesser or longer period, as the case may be:

Provided that the Chief shall continue in office as a member of the Council until the Chief is re-elected or another Chief is elected in his or her place.”.

- (c) in section 38 (“Meetings of Council”)—

- (i) in subsection (1) by the deletion of “The Council” and the substitution of “Subject to section 38(3) of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004), the Council”;

- (ii) by the repeal of subsection (3) and the substitution of—

“(3) On the day or days fixed by the President in terms of section 38(3) of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004), the members of the Council shall elect one of their number as president and another as deputy president of the Council”.

- (iii) by the repeal of subsection (7).

89 Transfer of assets and liabilities to the Commission

- (1) In this section—

"Chief Elections Officer" means the Chief Elections Officer of the Commission appointed in terms of the Zimbabwe Electoral Commission Act [*Chapter 2:12*] (No. 22 of 2004);

"Commission" means the Zimbabwe Electoral Commission appointed in terms of section 61 of the Constitution;

"Electoral Supervisory Commission" means the Electoral Supervisory Commission appointed in terms of section 61 of the Constitution before the substitution of that section by the Constitution of Zimbabwe Amendment (No. 17) Act, 2005;

"transfer date" means the date fixed in terms of subsection (2).

(2) Subject to subsection (2), the Minister, in consultation with the Chief Executive Officer of the Commission, shall by written notice fix the date on which the assets and liabilities of the Electoral Supervisory Commission shall be transferred to the Commission.

(2) On the relevant transfer date, every asset and liability of the Electoral Supervisory Commission shall be transferred to the Commission and shall vest in the Commission.

(3) All bonds hypothecation, deeds, contracts, instruments, documents and working arrangements that subsisted immediately before the transfer date and to which the Electoral Supervisory Commission was a party shall, on and after that date, be fully effective and enforceable against or in favour of the appropriate successor company as if, instead of the Electoral Supervisory Commission, the Commission had been named therein.

(4) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his or her registers in respect of any immovable property, right or obligation which passes to the Commission under this section but the Registrar of Deeds, when so requested in writing by the Commission in relation to any particular such property,

right or obligation, shall cause the name of the Commission to be substituted, free of charge, for that of the Electoral Supervisory Commission on the appropriate title deed or other document or in the appropriate register.

(5) Any cause of action or proceeding which existed or was pending by or against the Electoral Supervisory Commission immediately before the date of transfer shall continue in force on or after that date by or against the Commission in the same way that it might have been enforced or continued by or against the Electoral Supervisory Commission had this Act not been passed.

(6) Any guarantee or suretyship which was given or made by the Government or any other person in respect of any debt or obligation of the Electoral Supervisory Commission and which was effective immediately before the transfer date of the principal debt or obligation shall remain fully effective against the guarantor or surety on and after that date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the Commission to which the principal debt or obligation was transferred.

SCHEDULE (Section 87)

MINOR AND CONSEQUENTIAL AMENDMENTS TO CHAPTER 2:13

<i>Provision</i>	<i>Extent of amendment</i>
Section 17(1)	By the insertion after “assistant constituency elections officers,” of “nomination officers”.
Section 22(a) and (b)	By the insertion after “information” of “reasonably”.
Section 22(c)	By the deletion of “such questions” and the substitution of “such reasonable questions”.
Section 23(1)	By the deletion of “In order” and the substitution of “Subject to the Constitution and this Act, in order”.
Section 41	By the deletion of “Parliament” and the substitution of “the Senate”.
Sections 41 and 42	By the deletion of “each” and the substitution of “the”.
Sections 48, 49(4) and (5) and 50(2)	By the deletion of “constituency elections officer” and the substitution of “nomination officer”.
Sections 57(a)(4) and 104 (1)(e)	By the deletion of “black and white”.
Section 63(2)	By the deletion of “referred to in subsection (1) of section <i>fifty-five</i> ”.
Section 83(1), (2) and (3)	By the deletion of “, monitor” wherever it appears.
Sections 96(2)(proviso),), 155(a) and (b),	By the deletion of “corrupt practice or illegal

156(a), 158 and 175(1)	practice” and the substitution of “electoral malpractice”.
Sections 109(1) and 110(1)	By the deletion of “paragraph (a) of subsection (1) of section <i>one hundred and three</i> ” and the substitution of “section 38(1)(a)”.
Section 122(a)	By the deletion of “before” and the substitution of “after”..
Sections 156, 173 and 185	By the deletion of “a corrupt or illegal practice” and the substitution of “an electoral malpractice”.
Section 156(b)	By the insertion before “corrupt practices and illegal practices” of “electoral malpractices,”.
Section 165(3)	By the deletion of “shall be referred to the Electoral Supervisory Commission and”.
Section 167	By the deletion of “corrupt practice, illegal practice” and the substitution of “electoral malpractice”.
Sections 173	By the insertion before “corrupt practices or illegal practices” of “electoral malpractices,”.
Paragraph 2(2) of Second Schedule	By the deletion of “,monitors”.
Paragraph 3(c) of Fourth Schedule	By the deletion of “compliance” and the substitution of “compliance”.
Paragraph 5(c) of Fourth Schedule	By the deletion of “piece” and the substitution of “peace”.