

Malawi

# Presidential, Parliamentary and Local Government Elections Act, 2023

Act 10 of 2023

Legislation as at 21 February 2023

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# Malawi

## Presidential, Parliamentary and Local Government Elections Act, 2023

### Act 10 of 2023

*Published in Malawi Gazette Supplement on 21 February 2023*

**Assented to on 18 February 2023**

**Commencement date unknown**

*[This is the version of this document as it was from 21 February 2023 to 4 September 2025.]*

**An Act to make provision with respect to the conduct of elections to the office of President of the Republic, for elections of members of the National Assembly, for elections of councillors; and for matters ancillary thereto or connected therewith**

ENACTED by the Parliament of Malawi as follows—

### Part I – Preliminary

#### 1. Short title and commencement

This Act may be cited as the Presidential, Parliamentary and Local Government Elections Act, 2023, and shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**ballot box**” means a box into which a voter deposits a ballot paper;

“**ballot paper**” means a sheet of paper for use by a voter in expressing his or her vote in an election;

“**by-election**” means the election of a member of the National Assembly or a councillor to fill a seat in the National Assembly or council which has become vacant otherwise than by dissolution of the National Assembly or the council;

“**campaign period**” means the period declared as campaign period under section 51;

“**candidate**” means a person who has been nominated under this Act as a candidate for election as President, member of the National Assembly or councillor;

“**Chief Elections Officer**” has the meaning assigned thereto in the Malawi Electoral Commission Act;

*[Cap. 2:03]*

“**Commission**” means the Malawi Electoral Commission established under section 75 of the Constitution and appointed in accordance with section 4 of the Malawi Electoral Commission Act;

*[Cap. 2:03]*

“**constituency**” means an area delimited as such under section 76 of the Constitution and section 8 (1) (a) and (b) of the Malawi Electoral Commission Act;

*[Cap. 2:03]*

“**councillor**” means a person elected under this Act to the office of councillor of a council;

“**election representative**” means a person appointed by a candidate under section [25](#) to be a representative of the candidate for purposes of an election;

“**general election**” means an election of the President, members of the National Assembly and councillors;

“**independent candidate**” means a candidate not sponsored by a political party;

“**irregularity**” in relation to the conduct of an election, means non-compliance with the requirements of this Act, the Constitution and any other applicable law;

“**National Assembly**” means the National Assembly constituted under section 62 of the Constitution;

“**nomination day**” means the day appointed by the Commission for the receipt of nominations of candidates for an election under this Act;

“**political party**” means a political party registered under the Political Parties Act;

[Cap. 2:07]

“**polling day**” means—

- (a) in relation to a general election, the day specified under section 67 of the Constitution; and
- (b) in relation to a by-election, a day appointed by the Commission for the taking of a poll in a by-election;

“**polling station**” means a place established as such under section [62](#);

“**polling station officer**” means a person appointed as such under section [63 \(1\)](#);

“**presiding officer**” means a polling station officer designated as such under section [63 \(2\)](#);

“**registration**” means the registration of voters for an election;

“**returning officer**” means a returning officer appointed under section [24](#);

“**voter**” means a person registered to vote in an election;

“**voters register**” means the register of voters established under section [11](#), and includes a register that is compiled electronically;

“**voter registration certificate**” means a certificate issued to a voter under section [13](#);

“**voting booth**” means a compartment at a polling station for screening a voter from view when he or she is making his or her choice in a poll; and

“**ward**” means an area in a local government authority designated as such under section 146 (4) of the Constitution.

## Part II – Registration of voters

### 3. Eligibility for registration

A person shall be eligible to register as a voter in an election if he or she—

- (a) is a citizen of Malawi or, if not a citizen, has been ordinarily resident in the Republic for seven years;
- (b) has attained the age of eighteen years or provides proof that on or before the polling day, he or she shall have attained the age of eighteen years; and
- (c) is ordinarily resident in an area, or was born in that area, or is employed or carries on business in that area.

#### 4. Voter registration

- (1) The Commission shall, within the year of holding a general election, conduct registration of voters.
- (2) The Commission shall, through notice published in the *Gazette*, announce commencement of registration of voters for a general election or by-election.
- (3) The Commission shall, for each election, conduct voter registration for a period of not less than seven days and not more than fourteen days.

#### 5. Right and duty to register

Every eligible person shall have—

- (a) the right and civic duty to present himself or herself for registration as a voter;
- (b) the right to verify with the Commission or its officers that he or she has been registered; and
- (c) the right to request that any error or omission with respect to his or her registration be corrected.

#### 6. Duty to promote registration

The Commission shall, in accordance with this Act, create the necessary conditions and take all necessary actions to promote awareness of the need to register as a voter and the need for full participation of eligible voters in an election.

#### 7. Single registration

A person eligible to register as a voter shall be registered only once.

#### 8. Place of registration and transfers

- (1) A person eligible to register shall be registered as a voter in the area where he or she ordinarily resides or was born or is employed or carries on business.
- (2) A person may, before the verification of the voters' register by the Commission, transfer to another registration centre, and upon such transfer, his or her name shall be deleted from the roll of the registered voters at the original registration centre.

#### 9. Registration officers

- (1) The Commission may employ staff, on such terms and conditions as it shall determine, as registration officers who shall register voters.
- (2) In the performance of his or her duties, a registration officer shall be under the supervision of the Commission and such other election officers as the Commission shall designate for that purpose.

#### 10. Registration centres

- (1) The Commission shall establish centres throughout every constituency or ward as places where voters shall be registered and for this purpose, the Commission shall endeavor to adopt the centres established for the registration of voters in the last previously held poll in addition to establishing new centres.
- (2) No form of propaganda campaign material or advertisement shall be exhibited at a registration centre or within a radius of one hundred meters of a registration centre.

## 11. Voters register

- (1) A voters' register shall be in the prescribed form.
- (2) The Commission shall procure sufficient copies of the voters' register for the registration of voters and for distribution to registration officers at every registration centre.
- (3) The Commission may adopt existing voters' registers which shall, be updated by registration officers with new registrations.

## 12. Evidence of a person's eligibility to register

A person who is eligible to be registered as a voter in an election shall, as proof of eligibility, present in person to a registration officer, proof of his or her national registration issued by the National Registration Bureau.

## 13. Registration and issue of voter's registration certificate

- (1) A registration officer shall, upon being satisfied with proof of eligibility of a person to vote—
  - (a) register that person in the voters register by entering the particulars of that person as prescribed; and
  - (b) issue to that person a voter's registration certificate.
- (2) If a voters registration certificate issued to a voter is lost, destroyed, defaced, torn or otherwise damaged, the voter shall notify the registration officer or other officer duly authorized in that behalf in writing giving proof thereof, and upon such officer being satisfied with such proof, shall issue to the voter, a replacement of that certificate, but the registration officer shall make sure that a voter is not denied his or her right to vote
- (3) A person to whom a voter's registration certificate has been issued shall not allow or permit another person to use the registration certificate for any purpose.
- (4) A person shall not use a voter's registration certificate of another person for any purpose.
- (5) A person who contravenes subsection (3) or (4), or who aids, abets or counsels, or conspires with any person to contravene subsection (3) or (4), commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and to imprisonment for two years.

## 14. Updating of voters register

- (1) The Commission shall maintain an updated voters' register.
- (2) In updating a voters' register, a registration officer shall do so by—
  - (a) adding names and other prescribed particulars of voters resulting from new registration; and
  - (b) deleting names of registered voters who are known to be deceased or who have lost eligibility to vote

## 15. Deregistration of a voter

registration officer shall de-register a voter if the registration officer is satisfied that the voter—

- (a) does not qualify to be registered as a voter;
- (b) no longer meets the eligibility criteria for registration as a voter as specified under section 3;
- (c) has been fraudulently registered; or
- (d) is dead.

## 16. Monitoring of registration by political parties and independent candidates

- (1) A political party intending to sponsor a candidate in an election, or an independent candidate intending to contest in an election, shall have the right to monitor the registration of voters and shall do so through designated representatives assigned to specified registration centres and whose names shall be notified in writing to the Commission, and in the absence of such notification by any political party or independent candidate, it shall be presumed that the political party or independent candidate does not desire to monitor the registration of voters.
- (2) The Commission shall issue to every person designated as a representative under subsection (1) a document of identity which shall be in the prescribed form.
- (3) A political party or an independent candidate shall not assign more than two representatives to one registration centre.

## 17. Rights and duties of representatives of political parties and independent candidates

- (1) A representative of a political party or an independent candidate shall have the right to—
  - (a) be treated with due respect and consideration by all persons administering the registration of voters and by the representatives of other political parties or independent candidates;
  - (b) request and obtain information on activities relating to the registration of voters; and
  - (c) submit to the Commission, in writing, complaints or appeals about any irregularities in the registration of voters.
- (2) A representative of a political party or of an independent candidate shall, in exercising his or her rights under subsection (1), have the duty to—
  - (a) monitor the registration activities conscientiously and objectively;
  - (b) cooperate with registration officers in order to ensure that registration activities proceed smoothly by avoiding unjustified interference in, and obstacles to, the work of the registration officers;
  - (c) refrain from submitting complaints or appeals in bad faith or with the purpose of paralyzing the registration process; and
  - (d) refrain from divulging any information about a registered voter or a person intending to register as a voter obtained in the course of monitoring the registration.
- (3) The Commission shall determine every complaint or appeal lodged under subsection (1) (c) before the polling day and shall remedy any confirmed irregularity.

## 18. Suspension of registration of voters

- (1) The Commission shall suspend registration of voters at least sixty days before the polling day.
- (2) In the case of a by-election, the Commission shall, at least thirty days before the polling day, suspend registration of voters in the area in which the by-election is to take place.

## 19. Application to change registration details

- (1) A voter whose name or ordinary place of residence, business or employment, has changed, may apply in the prescribed manner to have the change recorded in the voters register.
- (2) A person shall not apply for change of particulars under subsection (1) where the change of name is due to change in marital status.

## 20. Publication of voters register

A voter's register shall be available for inspection during working hours at the offices of the Commission or at any place as the Commission may determine.

## 21. Inspection of voters register before elections

- (1) The Commission shall open for inspection the voters register, for purposes of verifying the entries therein, by voters, representatives of political parties, independent candidates and observers.
- (2) The Commission shall cause to be posted a copy of the voters register for each registration centre at the registration centre where the registration took place for a period not exceeding seven days, as the Commission may determine.

# Part III – Conduct of elections

## Division 1 – General

### 22. General elections

- (1) A general election shall be held in accordance with section 67 (1) of the Constitution.
- (2) A candidate may stand for election to the office of President, as a member of the National Assembly or as a councillor either on the sponsorship of a political party or as an independent candidate, and the rights and duties conferred by this Act on political parties shall apply, *mutatis mutandis*, to an independent candidate as they apply to political parties.
- (3) Pursuant to the Constitution and this Act, in a general election, the poll for election—
  - (a) to the office of President;
  - (b) as a member of the National Assembly; and
  - (c) as a councillor,shall be taken concurrently.

### 23. By-elections

- (1) Where a seat of a member of the National Assembly or a councillor becomes vacant otherwise than by dissolution of the National Assembly or a council, a by-election shall be held.
- (2) A seat of a member of the National Assembly or a councillor shall not be declared vacant in accordance with any written law until the time for appeal against the decision occasioning the vacancy has expired or, if there is an appeal, until the determination of the appeal.

### 24. Appointment of returning officers

- (1) The Commission shall appoint a returning officer with respect to a district, city, municipality, town, constituency or ward as the Commission shall determine.
- (2) For the purposes of subsection (1), the Commission may designate a District Commissioner or Chief Executive Officer of a local council as a returning officer in respect of a district, city, municipality, town, constituency or ward, as the case may be.

## 25. Election representatives

- (1) A candidate may appoint not more than two persons to be his or her election representatives at each polling center and shall submit names of the persons so appointed to the returning officer of the area where he or she is a candidate, or intends to be a candidate.
- (2) An election representative shall—
  - (a) be a person who is a citizen of Malawi; and
  - (b) not be a candidate in the election.
- (3) The Commission may, by notice published in the *Gazette*, prescribe guidelines for appointment and revocation of appointment of election representatives.

## 26. Powers and duties of an election representative

- (1) An election representative shall observe proceedings during—
  - (a) polling;
  - (b) the counting of votes; and
  - (c) the announcement and declaration of results of an election.
- (2) The absence of an election representative of any political party or independent candidate from a polling station shall not invalidate the electoral proceedings at that polling station.
- (3) An election representative shall, whilst at a polling station—
  - (a) wear the prescribed identification indicating—
    - (i) that the person is an election representative; and
    - (ii) the name of the candidate represented by that election representative; and
  - (b) comply with any lawful order issued by a presiding officer or returning officer.

## Division 2 – Conduct of election to the office of President

### 27. Notice of election to the office of President

- (1) The Commission shall, for the purpose of election to the office of President, publish in the *Gazette* a notice declaring—
  - (a) a day or days, not less than twenty-one days after the nomination day or last nomination day fixed under paragraph (b), as the case may be, on which a poll shall be taken, if a poll becomes necessary in accordance with this Act; and
  - (b) a place or places at which, and a day or days, not less than fourteen days after the day of publication of the notice, on which the Commission shall receive nominations of candidates for election to the office of President.
- (2) The Commission may, by further notice published in the *Gazette*, alter the day, time or place fixed under subsection (1).

### 28. Nomination of Presidential candidates

- (1) Nomination of a candidate for election to the office of President shall be in the prescribed form and shall be made by ten registered voters in each district, each of whom shall sign the nomination paper.

- (2) A registered voter shall not nominate more than one person as a candidate in a presidential election.
- (3) A nomination paper shall—
  - (a) be countersigned by the candidate, endorsing thereby his or her acceptance of the nomination;
  - (b) in the case of a candidate who is to stand for or be sponsored by a political party, specify that fact, together with the name of the political party, the name of the candidate, an abbreviation of the name of the candidate, the distinctive symbol of the party and other particulars approved by the Commission which the candidate wishes to appear on the ballot paper;
  - (c) in the case of an independent candidate, specify the name of the candidate, an abbreviation of the name of the candidate, the distinctive symbol of the candidate and other particulars approved by the Commission which the candidate wishes to appear on the ballot paper;
  - (d) be accompanied by—
    - (i) evidence, satisfactory to the Commission, identifying the candidate as the person so nominated; and
    - (ii) evidence, or a statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidate is a citizen of Malawi and has attained the minimum age required by the Constitution for election to the office of President; and
  - (e) specify the name of the person appointed by the candidate as his or her running mate in the elections.
- (4) Where a candidate is to stand for or is sponsored by a political party, the nomination form shall be countersigned by another person who is an office-bearer of the political party concerned and who has authority to certify that the candidate is to stand for or to be sponsored by that political party.
- (5) The striking off from the voters register of the name of any person who nominated the candidate, subsequent to a candidate's nomination under subsection (1), shall not invalidate the nomination of the candidate.
- (6) The Commission shall, upon request by a candidate or his or her election representative, examine the nomination form and supporting documents of the candidate before the nomination papers are formally presented to the Commission and advise the candidate or the election representative whether, in its opinion, the nomination papers are in order.
- (7) The Commission shall, after formal presentation of the nomination papers and at the earliest opportunity before the close of the period allowed for nominations, advise the candidate or his or her election representative of any defect in the candidate's nomination form or supporting documents, and the candidate or his or her election representative may, before the closure of the nomination period, rectify the defect.
- (8) A candidate or his or her election representative shall lodge his or her nomination papers with the Commission, at such place and time as the Commission shall prescribe under section 27(1)(b).

## 29. Nomination fees

- (1) A candidate for election to the office of President or his or her election representative shall, at the time of collecting a nomination form, deposit with the Commission a non-refundable nomination fee as shall be determined by the Commission under subsection (2).
- (2) The Commission shall, six months before the nomination day—
  - (a) determine the nomination fee to be deposited under subsection (1); and

- (b) publish in the *Gazette*, on the radio and in at least two newspapers in general circulation in Malawi, the nomination fee determined under paragraph (a).

### 30. Publication of names of presidential candidates

The Commission shall, within seven days after receiving nominations of candidates for election to the office of President under this Part, cause to be published in the *Gazette* and disseminated in the print and electronic media, the names of candidates who have been duly nominated for election to the office of President in alphabetical order of surnames as they appear on their respective voter registration certificates.

### 31. Withdrawal of candidates for election to the office of President

- (1) A candidate nominated for election to the office of President may, by notice in writing addressed to the Commission, withdraw his or her candidature at any time before the day on which the poll in an election to the office of President is to be taken.
- (2) The Commission shall, on receipt of the notice of withdrawal under subsection (1), cause the withdrawal to be published in the *Gazette*, on the radio and in at least two newspapers in general circulation in Malawi.
- (3) Where a candidate for election to the office of President has withdrawn his or her nomination under this section, the nomination fees paid under section 29 shall be forfeited.

### 32. Extension of period for nomination of candidates for election to the office of President

If at the end of the period allowed for nomination for election to the office of President, no candidate has been duly nominated, the Commission shall by notice published in the *Gazette* extend the period for receipt of nominations.

### 33. Holding of fresh nominations for presidential candidates and replacement of running mates

- (1) Where—
  - (a) no candidate for election to the office of President has been duly nominated at the expiry of the time fixed for lodging nomination papers with the Commission;
  - (b) no candidate nominated for election to the office of President is qualified in accordance with the Constitution for election as President;
  - (c) a candidate, other than an independent candidate, nominated for election to the office of President dies, withdraws his or her nomination, becomes disqualified or is otherwise incapacitated, on or before the day on which the poll in the election is to be taken; or
  - (d) a candidate nominated for election to the office of President who would otherwise have been entitled to be declared duly elected as President dies, becomes disqualified, or is incapacitated, after the poll has begun in the election to the office of President, but before he or she has been declared duly elected as President,

the Commission shall, by notice published in the *Gazette*, declare that all proceedings relating to the election are void and that the proceedings shall immediately be commenced afresh in accordance with this Act.

- (2) Where a running mate of a candidate for election to the office of President dies, withdraws his or her nomination, becomes disqualified or is otherwise incapacitated, before the elections, the presidential candidate shall appoint another person to be his or her running mate in the elections.

### 34. Publication of notice of poll

- (1) If two or more persons have been duly nominated as candidates for election to the office of President, the Commission shall, as soon as practicable after the close of the period for nomination, give public notice that a poll is to be taken and such notice shall state—
  - (a) the names of the candidates in alphabetical order of surnames;
  - (b) the day or days during which the poll shall be held as determined by the Commission under section 27; and
  - (c) the location of polling stations.
- (2) The Commission may alter the provisions of a public notice given under subsection (1) and any such alteration shall be published in the same manner as the original notice.

### 35. Second poll in a presidential election and security for candidates

- (1) Where an election to the office of President is conducted and a majority of more than fifty percent is not obtained by any candidate in the first poll, a second poll shall be conducted in accordance with the Constitution where the only candidates shall be the presidential candidates that obtained—
  - (a) the highest and second highest number of valid votes cast in the first poll; or
  - (b) an equal number of valid votes cast in the first poll, being the highest votes amongst the candidates that stood in the election.
- (2) Where one of the candidates in the second poll is an independent candidate and he or she—
  - (a) dies;
  - (b) becomes disqualified, or
  - (c) is otherwise incapacitated,before the second poll is conducted, the running mate of the independent candidate shall within three days of the occurrence, notify the Commission and the Commission shall, within three days of being notified, announce the matter through notice published in the *Gazette* and advise the running mate to assume the place of the candidate in the second poll.
- (3) Where a candidate representing a political party in the second poll—
  - (a) dies;
  - (b) becomes disqualified; or
  - (c) is otherwise incapacitated,before the second poll is conducted, the political party shall, within three days of the occurrence, notify the Commission and the Commission shall, within three days of being notified, announce the matter through a notice published in the *Gazette* and advise the political party to present another candidate for the second poll.
- (4) A new presidential candidate identified in accordance with subsection (2) or (3) shall, within fourteen days of the notice published in the *Gazette*, submit to the Commission such information prescribed under section 28 (3) as the Commission shall determine.
- (5) Where the candidate identified under subsection (3) is not the running mate of the previous candidate, the new presidential candidate shall not replace the running mate unless the running mate—
  - (a) dies;
  - (b) becomes disqualified; or

- (c) is otherwise incapacitated.
  - (6) Where—
    - (a) both a presidential candidate for the second poll and his or her running mate—
      - (i) die;
      - (ii) become disqualified; or
      - (iii) are otherwise incapacitated; or
    - (b) a presidential candidate identified under subsection (2) or (3)
      - (i) dies;
      - (ii) become disqualified; or
      - (iii) is otherwise incapacitated,
- before the second poll is conducted, the Commission shall, by notice published in the *Gazette*, notify the public that a fresh election shall be conducted within such period as shall be stipulated in the notice.
- (8) The Commission shall, immediately after declaring presidential candidates for the second poll, provide details of the candidates and their running mates to State institutions responsible for security, and the State institutions shall provide security to the candidates and their running mates until the results of the second poll are declared.

*[Please note: numbering as in original.]*

### **Division 3 – Conduct of elections of members of the National Assembly and Councillors**

#### **36. Notice of election for members of National Assembly and Councillors**

- (1) The Commission shall, for the purpose of elections for Members of National Assembly and Councillors, publish in the *Gazette* a notice—
  - (a) declaring—
    - (i) in the case of a general election, that an election shall be held throughout Malawi; or
    - (ii) in the case of a by-election, that a by-election shall be held in the specified constituency or ward.;
  - (b) appointing the place, date and time for the receipt of nominations of candidates; and
  - (c) appointing the day or days on which the poll shall be taken, in accordance with this Act.
- (2) The date appointed under subsection (1) (b) shall not be less than fourteen days after publication of the notice.
- (3) The period appointed under subsection (1) (c) shall not be less than fourteen days after the closure of nomination of candidates.
- (4) A returning officer for each constituency or ward named in the notice under subsection (1) shall, upon receipt of the notice, proceed to hold an election in the manner prescribed under this Act.

### 37. Nomination of candidates

- (1) A returning officer shall, on the day or days and at the time or times and place or places fixed for the nomination of candidates, receive nomination papers as may be tendered to him or her, and which appear to him or her to comply with this Act.
- (2) Subject to subsection (7), the nomination of every candidate shall—
  - (a) be in the prescribed form;
  - (b) be made—
    - (i) in the case of nomination for a member of the National Assembly, by at least ten voters registered in the constituency in which the candidate intends to be a candidate, each of whom shall sign the nomination paper; and
    - (ii) in the case of nomination for a councillor, by at least ten voters registered in the ward in which the candidate intends to be a candidate, each of whom shall sign the nomination paper;
  - (c) be countersigned by the candidate, endorsing thereby his or her acceptance of the nomination;
  - (d) if the candidate is to stand for, or to be sponsored by, a political party, specify that fact, together with the name of the political party and the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper; and
  - (e) in the case of an independent candidate, specify the name of the candidate or an abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper.
- (3) A candidate nominated under subsection (2) shall produce to the returning officer evidence, satisfactory to the returning officer, identifying him or her as the person so nominated.
- (4) Where a candidate is to stand for, or be sponsored by a political party, the nomination paper shall be countersigned by a person who is an office-bearer of the political party concerned and who has authority to certify that the candidate is to stand for or be sponsored by that political party.
- (5) The striking off from the voters register of a name of any person who nominated the candidate, subsequent to the candidate's nomination shall not invalidate the nomination of the candidate.
- (6) A person shall not be nominated as a candidate—
  - (a) in more than one constituency or ward; or
  - (b) in the case of a by-election, if the person is a member of the National Assembly or a councillor.
- (7) A registered voter shall not nominate more than one person as a candidate in an election for member of the National Assembly or Councillor.

### 38. Qualifications for nomination for election as Member of the National Assembly or councillors

- (1) A person shall not be qualified to be nominated for election as a member of the National Assembly or councillor unless that person—
  - (a) is a citizen of Malawi;
  - (b) has, at the time of nomination, attained the age of twenty-one;

- (c) is able to speak and to read the English language well enough to take an active part in the proceedings of the National Assembly or council; and
  - (d) is a registered voter in any constituency or ward, as a case may be.
- (2) Notwithstanding subsection (1), a person shall not be qualified to be nominated for election as a member of the National Assembly or councilor if the person—
- (a) owes allegiance to a foreign country;
  - (b) is, under any written law in force in Malawi, adjudged or otherwise declared to be of unsound mind;
  - (c) has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;
  - (d) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Malawi;
  - (e) holds or acts in a public office or appointment;
  - (f) belongs to and is serving in the Malawi Defence Force, the Malawi Police Service or the Malawi Prison Service; or
  - (g) has, within the last seven years, been convicted by a competent court of violation of any law relating to elections.

### 39. Submission of nomination papers

- (1) A candidate or his or her election representative shall at the time of his or her nomination deliver to the returning officer—
- (a) a nomination form completed and executed in the prescribed form;
  - (b) evidence, or statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidate—
    - (i) is a citizen of Malawi and has attained the minimum age of twenty-one; and
    - (ii) is able to speak and read the English language well enough to take an active part in the proceedings of the National Assembly or the council; and
  - (c) evidence that he or she is a registered voter in any constituency or ward.
- (2) A returning officer shall, upon request by a candidate or an election representative of the candidate, examine the nomination form and supporting documents of the candidate before the nomination papers are formally presented to the returning officer and advise the candidate or the election representative whether, in the opinion of the returning officer, the nomination papers are in order.
- (3) The returning officer shall, at the earliest opportunity and in any case, before the close of the period allowed for nominations, advise the candidate or the election representative of the candidate of any defect in the nomination papers, and the candidate may, rectify the defect before the close of the nomination period.

### 40. Nomination fees

- (1) A candidate or an election representative of a candidate shall, on collection of a nomination form, deposit with the returning officer a non-refundable nomination fee as may be determined by the Commission.
- (2) The Commission shall, six months before the nomination day—
- (a) determine the nomination fee to be deposited under subsection (1); and

- (b) publish in the *Gazette*, on the radio and in at least two newspapers in general circulation in Malawi, the nomination fee determined under subsection (1).

#### 41. Invalid nomination

The nomination of a candidate shall be invalid if—

- (a) the description of the candidate is insufficient to identify the candidate;
- (b) the nomination form or any supporting document required under this Act is invalid or does not comply with this Act;
- (c) any supporting document required under this Act has not been provided;
- (d) the nomination papers were not tendered within the prescribed time;
- (e) or
- (f) the evidence delivered to the returning officer under section 37 (3) is insufficient.

#### 42. Rejected nominations

- (1) If, after close of the period allowed for nomination of candidates but before the polling day, the returning officer is of the opinion that—
  - (a) a candidate—
    - (i) has not been duly nominated in accordance with this Act; or
    - (ii) is not qualified for election or has obtained nomination by fraud or false pretence;
  - (b) a symbol or abbreviation specified in respect of a candidate pursuant to section 37 (2) (d) and (e) is indecent or obscene or is too complex or elaborate to be reproduced on a ballot paper or so closely resembles the symbol of another candidate contesting the election in the constituency or ward concerned or is the recognized symbol or abbreviation of another candidate or of a political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him or her as to be likely to cause confusion;
  - (c) where the nomination paper states that a candidate is to stand for or to be sponsored by a political party, there is reason to believe that that fact is not true;
  - (d) the nomination paper lodged with the returning officer is for any other reason not in order;
  - (e) the deposit referred to in section 41 was not lodged with the nomination paper of the candidate;
  - (f) a candidate is not qualified for election at that election; or
  - (g) a candidate has been duly nominated for election in another constituency or ward,the returning officer shall forthwith notify the candidate or his or her election representative that the nomination has been rejected and giving reasons for such decision, and, if so requested by the candidate or his or her election representative, the returning officer shall draw up and sign a statement of the facts and his or her opinion based on those facts.
- (2) Where a candidate refers any matter to do with his or her nomination to the High Court, the proceedings under sections 42, 43, 44 and 45 shall be suspended pending the determination of the matter.
- (3) Without derogation from subsection (1), the returning officer shall not take the action under that subsection solely on account of any minor variation between the name of any person as it appears on the nomination and as it appears on the voters register if the returning officer is reasonably satisfied that the variation is due to an error or is without significance.

#### 43. No nomination of candidate

If at the end of the period allowed for nomination of candidates no candidate has been duly nominated for a constituency or a ward, the Commission shall, by notice published in the *Gazette*, extend the period for the receipt by the returning officer of nominations to a date not later than seven days before the polling day.

#### 44. Publication of names of candidates for election as member of the National Assembly or councillor

After receiving nominations of candidates for election as member of the National Assembly or as a councillor, the Commission shall, within fourteen days after receiving the nominations, cause to be published in the *Gazette* and broadcast on the radio and in at least two newspapers in general circulation in Malawi, the names of all candidates who have been duly nominated for election in alphabetical order of surnames.

#### 45. Procedure for uncontested election

If at the end of the period allowed for nomination of candidates for election as member of the National Assembly or councillor there is only one candidate duly nominated in a constituency or ward, the returning officer shall publicly declare that candidate to be elected and shall immediately thereafter inform the Commission of the name of the candidate so elected and the constituency or ward for which he or she has been elected.

#### 46. Procedure when poll to be held

- (1) When two or more persons have been duly nominated as candidates for election in any constituency or ward, the returning officer for the constituency or ward shall, as soon as practicable after the close of the period for nomination of candidates, publicly declare and give public notice that a poll is to be taken stating—
  - (a) the names of the candidates in alphabetical order of surnames;
  - (b) the day or days and the times, as declared by the Commission under section 36 on which the poll shall be held; and
  - (c) the location of polling stations.
- (2) The returning officer may, with the consent of the Commission, alter the provisions of a public notice given under subsection (1) for the purpose of fulfilling the requirements of this Act and any such alteration shall be published in the same manner as the notice.

#### 47. Special provisions with respect to by-elections

- (1) The Speaker of the National Assembly or the Commission shall, by notice published in the *Gazette*, publicize a vacancy in the membership of the National Assembly or a council which exists otherwise than by reason of dissolution of the National Assembly or a council.
- (2) A notice published under subsection (1) shall, state the cause of the vacancy.
- (3) If—
  - (a) within fourteen days of the publication of the notice under subsection (1), the person to whom the notice relates has not presented a petition to the High Court seeking an order declaring that he or she has not ceased to be a Member of the National Assembly or the council;
  - (b) after presenting the petition referred to in paragraph (a), the petitioner by his or her own default does not prosecute the petition within fourteen days of presenting the petition; or

- (c) after hearing the petition, the High Court confirms the declaration by the Speaker or the Commission, as the case may be,

the Registrar of the High Court shall forthwith give notice of that fact to the Speaker or the Commission.

- (4) If, after hearing the petition referred to in subsection (3), the High Court makes an order declaring that the petitioner has not ceased to be a Member of the National Assembly or the council, the Registrar of the High Court shall forthwith give notice of that fact to the Speaker or the Commission and the Speaker or the Commission, as the case may be, shall publish a notice in the *Gazette* stating the effect of the order of the High Court.
- (4) The Attorney General and the Commission shall be respondents in a petition referred to in subsection (3).

*[Please note: numbering as in original.]*

#### **48. Withdrawal of a candidate**

- (1) Subject to this section, a duly nominated candidate for elections for a constituency or a ward may withdraw his or her nomination at any time before the polling day.
- (2) Withdrawal of a candidate under subsection (1) shall be affected by means of a written notification to the returning officer, signed by the candidate personally, and the returning officer shall notify the Commission in writing of the withdrawal of the candidate.
- (3) A notice of withdrawal of a candidate shall be accompanied with a sworn statement stating that the withdrawal is voluntary.
- (4) Where a candidate withdraws his or her nomination under this section, the nomination fee deposited under section 40 shall be forfeited.
- (5) In the event of a candidate withdrawing his or her nomination under this section, the returning officer shall take all such steps as are reasonably practicable to ensure that –
  - (a) the withdrawal is brought to the attention of voters in the constituency or ward; and
  - (b) the name of the candidate who has withdrawn is either omitted or deleted from the ballot paper.
- (6) A person who, in any way induces or influences a candidate to withdraw from an election, commits an offence.

#### **49. Death of a candidate**

- (1) Where a duly nominated candidate for election in a constituency or ward, other than an independent candidate, dies before commencement of a poll in the constituency or ward or, if the poll has commenced, before close of the poll, the returning officer shall stop all proceedings relating to the election in that constituency or ward and shall forthwith notify the Commission of that fact.
- (2) The Commission shall, where an election has been stopped under subsection (1), declare that all proceedings relating to the election in that constituency or ward are void and that all proceedings relating to that election shall be commenced afresh in the same manner as if a vacancy had occurred.
- (3) Where an election in a constituency or ward has been stopped under subsection (1) and a candidate who was duly nominated for that election notifies the Commission in writing of his or her intention to contest in the subsequent by-election, the Commission shall treat the candidate as duly nominated for the by-election.

## Part IV – Campaign for election

### 50. Campaigning by political parties and candidates

- (1) A political party or a candidate has a right to campaign in an election.
- (2) A person shall not convene or cause to be convened a public gathering for purposes of campaigning for election unless the person submits written notice of the intended gathering to the District Commissioner or Chief Executive Officer of the local council responsible for the area where the gathering is intended to convene.
- (3) The convener of a public gathering under subsection (1) shall submit a copy of the notice to the officer-in-charge of the Police establishment responsible for the area where the gathering is intended to convene.
- (4) The District Commissioner or Chief Executive Officer shall stamp every notice received under subsection (2) with his or her official date stamp and endorse thereon the time the notice is received.
- (4) Where two or more political parties or candidates give notice to hold a public meeting at the same venue under subsection (1), the political party or candidate whose notice was received first by the District Commissioner or Chief Executive Officer shall be entitled to hold the public meeting at the venue.

*[Please note: numbering as in original.]*

### 51. Campaign period

- (1) Subject to subsection (2), the Commission shall, through notice published in the *Gazette*, announce commencement of the official campaign period for an election, which shall be sixty days.
- (2) The official campaign period shall close forty-eight hours before the opening of the poll.

### 52. Equal treatment of candidates

Every public officer, public entity and authority shall give and be seen to give equal treatment to all political parties and candidates to enable the political parties and candidates to conduct election campaign freely.

### 53. Freedom of expression and information

Subject to any applicable law, a political party and a person campaigning in an election shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign under this Act.

### 54. Freedom of assembly

Subject to section 50, a political party, candidate and member of the general public shall, enjoy complete and unhindered freedom of peaceful assembly in campaigning in an election.

### 55. Ethical norms during campaign

- (1) Notwithstanding the guarantees of freedom of expression, information and assembly under this Act, no person shall, in campaigning in an election, use language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war.

- (2) The Commission shall, by notice published in the *Gazette*, prescribe a code of conduct to regulate campaign for election.
- (3) Every political party and candidate intending to participate in an election shall undertake to be bound by the code of conduct by signing and submitting to the Commission the signed copy of the code of conduct, at such time and in such manner as the Commission may prescribe.
- (4) A political party or person who contravenes the code of conduct shall be liable to a penalty of K5,000,000 payable to the Commission.
- (5) Where a political party or person fails to pay a penalty imposed under subsection (3) or, having paid the penalty continues to breach the code of conduct, the Commission may disqualify the political party or candidate from participating in the election.
- (6) The Commission shall not impose the fine under subsection (4) or disqualify a political party or candidate under subsection (5) before giving the political party or candidate a right to be heard.

## 56. Prohibited places of campaigning

A person shall not convene a public gathering for purposes of campaigning for election at or within the premises of—

- (a) a military or police establishment;
- (b) a public institution;
- (c) a workplace, during working hours;
- (d) a hospital; or
- (e) an education institution, during normal class period.

## 57. News broadcasts and reports

- (1) A political party or a candidate has a right to have the substance of its, his or her campaign message reported on television and radio news broadcasts of a public broadcaster:

Provided that in the case of news broadcasts—

- (a) the content of the news shall be professionally determined by the public broadcaster;
  - (b) the public broadcaster shall maintain neutrality in the manner of reporting the campaign messages and generally in its commentaries;
  - (c) the Commission shall monitor the news broadcasts and ensure equal coverage of political parties and independent candidates; and
  - (d) a political party or candidate shall not be entitled to make commercial advertisement for its, his or her campaign.
- (2) The Commission shall, by arrangement with a public broadcaster, allocate equal time to every political party and independent candidate to disseminate campaign messages.
  - (3) For the purposes of this section, “campaign message” means any statement or any other form of expression aimed at directly or indirectly promoting a particular political idea, policy or strategy with the aim of enticing voters to vote for a particular candidate in an election.

## 58. Publication of campaign materials

- (1) During the campaign period, a political party or a candidate may publish campaign materials and shall, in any such publication, specify particulars sufficient to identify the political party or candidate.

- (2) The District Commissioner or Chief Executive Officer of a local council shall designate places or spaces in the local council where political parties and candidates may post or affix campaign materials, and political parties and candidates shall be entitled to equal access to such places and spaces.
- (3) For the purposes of this section, “campaign material” means a manifesto, billboard, pictorial image, poster, t-shirt, cloth, advertisement, or any other material aimed at conveying a campaign message.

### **59. Campaign financing**

Subject to the Political Parties Act, a political party or candidate may, for the purpose of financing an election campaign, appeal for and receive contributions from any individual or entity within or outside Malawi.

*[Cap. 2:07]*

### **60. Prohibition on contributions**

- (1) A political party or candidate shall not receive any contribution or donation, in cash or in kind, from the State, any organ of the State or agency of the State.
- (2) A public officer, organ or agency of the State, shall not use any public resource to—
  - (a) support the election campaign of a political party or candidate;
  - (b) campaign for a political party or candidate; or
  - (c) support any organization that is campaigning for or supporting the election campaign of a political party or candidate.
- (3) A political party which, or a candidate who, contravenes subsection (1) commits an offence.

### **61. Prohibition on use of public resources**

- (1) Except as authorized under this Act or any other written law, a political party, a candidate or any other person shall not use public resources for the purpose of election campaign.
- (2) A political party, candidate or other person who fails to comply with the provisions of this section commits an offence.
- (3) For the purposes of this section, “public resource” means any property owned by the Government, an organ of the Government, a statutory corporation or body or state-owned enterprise.

## **Part V – Polling stations**

### **62. Polling stations**

- (1) The Commission shall establish polling stations throughout Malawi and there shall be at least one polling station for every registration centre established under section 10.
- (2) A polling station shall be established and located in a public building, including a school, community or social hall, administrative office of the Government or a local authority, but not—
  - (a) subject to subsection (3), at a military or police establishment;
  - (b) in a residential building;
  - (c) in a building occupied by a political party;
  - (d) in premises where alcoholic drinks are ordinarily sold or consumed;

- (e) at a place of worship or dedicated to worship; and
  - (f) at a hospital or health centre.
- (3) The Commission may establish a polling station at a military or police establishment for purposes of enabling members of the Malawi Defence Force, the Malawi Police Service and members of their families to vote in the last two days prior to the polling day.
- (4) The Commission shall, before the polling day—
- (a) publish in the *Gazette* and in more than one issue of a newspaper in general circulation in Malawi; and
  - (b) announce by radio or other appropriate means, names of all places throughout Malawi at which polling stations have been established.

### 63. Polling station officers

- (1) The Commission shall appoint polling station officers in its service whose duty shall be to administer proceedings at polling stations, including, the casting of votes and counting of votes cast at polling stations.
- (2) The Commission shall post at every polling station at least five polling station officers—
- (a) one of whom shall be designated as the presiding officer for that polling station; and
  - (b) at least one of whom shall be a person able to speak the language commonly spoken in the area where the polling station is located.
- (3) Polling station officers may be appointed from amongst persons who served as registration officers.

### 64. Working hours for polling station officers

A polling station officer shall, on the polling day, report for work at the polling station not later than thirty minutes before the opening time of the polling station and at any given time of the polling day there shall be a majority of polling station officers attending to business at the polling station.

### 65. Work items for polling station officers

The Commission shall provide to each polling station all the necessary voting materials and equipment, including—

- (a) an authenticated copy of the voters' register of the voters registered at the centre served by the polling station;
- (b) ballot papers
- (c) ballot boxes;
- (d) seals, sealing wax and envelopes for the votes;
- (e) indelible ink;
- (f) record sheets for the record required under section 92;
- (g) a lamp or other source of light to be used during counting of votes;
- (h) a log book in which formal complaints under section 92(1) (vii) shall be recorded;
- (i) a document to be signed by the presiding officer detailing the election materials entrusted to that presiding officer; and

- (j) any other materials that enhance the efficiency of polling as determined by the Commission from time to time in consultation with all election stakeholders.

## **66. Security of items at polling stations**

A presiding officer or a person appointed by the Commission and acting in that regard for the Commission, shall be responsible for creating and guaranteeing necessary and indispensable conditions for the custody, conservation, security and inviolability of the materials specified in section 66, including, more particularly, the ballot papers and ballot boxes.

## **67. Monitoring of voting by political parties and candidates**

- (1) A political party or an independent candidate has a right to monitor the voting process at polling stations and shall do so through not more than two designated representatives at each polling station.
- (2) A political party or a candidate shall submit to the Commission in writing names of designated representatives and the polling stations to which the representatives will be deployed and in the absence of such submission by any political party or candidate, it shall be presumed that the political party or candidate does not desire to monitor the voting process.
- (3) The Commission shall issue a document of identity in the prescribed form to every representative designated under subsection (1).

## **68. Rights and duties of representatives of political parties and candidates**

- (1) A representative of a political party or a representative of a candidate shall have the following rights—
  - (i) to be present at the polling station and to occupy the nearest seat or position to the polling station officers so as to be able to monitor all the operations relating to the casting and counting of votes;
  - (ii) to verify and inspect, before the beginning of the casting of votes, the ballot box and the polling booth;
  - (iii) to request and obtain from the polling station officers any information which he or she considers necessary relating to the voting process and the counting of votes;
  - (iv) to be consulted about any question raised on the operation of the polling station, whether during the casting or counting of votes; and
  - (v) to consult the voter's register at any time.
- (2) A representative of a political party or a representative of a candidate shall have the following duties—
  - (i) to act conscientiously and objectively in the exercise of his or her rights under subsection (1);
  - (ii) to co-operate with polling station officers in operations relating to the casting and counting of votes;
  - (iii) to refrain from interfering unjustifiably and in bad faith with the duties of the polling station officers so as not to disturb the process of casting and counting votes; and
  - (iv) to maintain the secrecy of the ballot.

## Part VI – The vote and the voting process

### 69. Ballot papers

- (1) The Commission shall print adequate ballot papers and distribute the ballot papers to all polling stations.
- (2) The Commission shall cause to be printed clearly and legibly on each ballot paper, in respect of each candidate—
  - (a) the name or abbreviation of the candidate;
  - (b) the election symbol of the candidate or his or her political party; and
  - (c) such other particulars as the Commission may determine.

### 70. Voting booth

The Commission shall construct a voting booth at each polling station and a voting booth shall be constructed in such a way as to allow secret voting by a voter.

### 71. Ballot boxes

- (1) The Commission shall procure ballot boxes of suitable material, specification and design, for use in the casting of votes.
- (2) Subject to satisfying the requirements of this Act, on the polling day, the presiding officer of a polling station shall position in respect of each voting booth at that polling station one ballot box in such a way that when a voter casts his or her vote in the ballot box, he or she shall do so in full view of the polling station officers and election representatives present at the polling station.

### 72. Right to vote

- (1) A registered voter shall personally exercise his or her right to vote in an election.
- (2) Voting shall be by secret ballot.
- (3) A registered voter shall be entitled to cast one vote in an election.

### 73. Right of employees to be released to vote

Notwithstanding any provision to the contrary in a contract of employment, an employer shall put in place such administrative arrangements as may be necessary to allow his or her employee to vote in an election.

### 74. Place of voting

A registered voter shall exercise his or her right to vote at a polling station located at the registration centre where he or she is registered or has been transferred to in accordance with this Act.

### 75. Requirements for exercising the right to vote

A person shall be allowed to vote if the person—

- (a) presents to a polling station officer his or her voter's registration certificate; and
- (b) has not voted in the election.

**76. Identification of voters**

A voter shall produce an identification document to a presiding officer as may be required.

**77. Voting hours**

- (1) On the polling day, voting shall begin at six o'clock in the morning and close at four o'clock in the afternoon.
- (2) The polling day of a general election shall be a public holiday.

**78. Procedure before commencement of voting**

The presiding officer shall, before commencement of voting—

- (a) together with other polling station officers and representatives of political parties and candidates, verify that there are no irregularities with the voting booth and the working documents at the polling station; and
- (b) exhibit in front of all voters present at the polling station, the ballot box to verify that it is empty after which the ballot box shall be closed and sealed.

**79. Order of voting**

Upon completion of preliminary procedures under section 78 and confirming that there are no irregularities, the first persons to be allowed to vote shall be the presiding officer, the other polling station officers, representatives of political parties or candidates and all officers responsible for ensuring order and security at the polling station, after whom all other persons shall vote according to the order of their arrival at the polling station and, to this end, the voters shall form a line but the presiding officer may, if circumstances so require, use his or her discretion to allow certain persons to vote before the persons mentioned in this section have cast their votes.

**80. Continuity of the voting process**

Voting at every polling station shall, once commenced, continue uninterrupted until closed.

**81. Adjournment in certain cases**

- (1) The Commission may adjourn voting at any polling station to another day to be fixed by the Commission if—
  - (a) the polling station officers are unable to assemble at that polling station in accordance with this Act;
  - (b) there is some commotion which causes voting to be interrupted for more than three hours; and
  - (c) there is public disaster or serious disturbance of public order, not being the death of any person, which affects the voting.
- (2) Where the Commission adjourns voting to another day under subsection (1)—
  - (a) the hours of voting on that day shall be the same as for the original day;
  - (b) the voting process shall be conducted afresh and not as continuing from the original day; and
  - (c) the votes cast on the original day shall be void and shall be classified as such in the records of that polling station prepared under section 93.

## 82. Prohibited presence, etc., at a polling station

- (1) No form of propaganda, campaign material or advertisement shall be exhibited inside a polling station or within a radius of two hundred meters outside a polling station.
- (2) Unless his or her presence is otherwise permitted under this Act, no person shall, while voting continues, be allowed to be within the premises of a polling station or, to remain within the premises of a polling station, if he or she—
  - (a) is not a registered voter;
  - (b) has already voted at that polling station or at any other polling station; or
  - (c) is not an accredited party or candidate representative, monitor or observer?
- (3) An agent of a media organization shall be entitled to be present at a polling station during polling, and for that purpose, every such agent shall identify himself or herself to the polling station officers by presenting his or her credentials.
- (4) No person shall be present at a polling station in the capacity of a member of the Malawi Defence Force, the Malawi Police Service or a uniformed organization, unless he or she is employed in the service of the Commission or has been invited by the presiding officer for purposes of keeping order.
- (5) The presiding officer shall take all necessary steps to effectively bar or expel from within a radius of one hundred meters of a polling station any person who is evidently drunk and disorderly or is carrying a weapon of any kind or is disturbing the order or peace at the polling station.

## 83. Procedure for casting votes

- (1) A voter shall present himself or herself to the polling station officer at the first desk as the voter approaches the polling station and hand to the polling station officer the voter's registration certificate, whereupon the polling station officer shall proceed to verify the identity of the voter by examining the voters register.
- (2) If the polling station officer is satisfied with the identity of the voter in accordance with subsection (1), the polling station officer shall—
  - (a) mark the voter's registration certificate and record the voter's name and registration number and hand back the voters registration certificate to the voter; and
  - (b) dip the right index finger of the voter in indelible ink provided for the purpose, or use any other security means as determined by the Commission from time to time, after which the presiding officer or the polling station officer authorized in that behalf shall hand to the voter a ballot paper for use by the voter in accordance with subsection (3), and then direct the voter to the voting booth for the poll for election to the office of President.
- (3) The voter shall then proceed to cast his or her vote in such manner as the Commission may determine.
- (4) After a voter has cast the vote in accordance with subsection (3) with respect to the election of President, the voter shall immediately be led to the next desk where upon the polling station officer verifying that the voter has had his or her right index finger dipped in indelible ink, or has satisfied other security means, shall hand to the voter a ballot paper for candidates in a constituency for election as member of the National Assembly for use by the voter in accordance with subsection (5), and then direct the voter to the voting booth for the poll for election of a member of the National Assembly.
- (5) The voter shall then proceed to cast his or her vote in such manner as the Commission may determine.

- (6) After a voter has cast his or her vote in accordance with subsection (5) with respect to the election of a member of the National Assembly, the voter shall immediately be led to the next desk where upon the polling station officer verifying that the voter has had his or her right index finger dipped in indelible ink, or satisfied other security means, shall hand to the voter a ballot paper for candidates in a ward for election as a councillor for use by the voter in accordance with subsection (7), and then direct the voter to the voting booth for the poll for election of a councillor.
- (7) The voter shall then proceed to cast his or her vote in such manner as the Commission may determine.

#### **84. Voting by persons with disabilities**

- (1) A voter who is blind or is affected by disease or other physical disability may vote while accompanied by another registered voter of his or her choice or, by a polling station officer, who shall assist such person in casting the vote and the other registered voter or polling station officer shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person.
- (2) A presiding officer shall record in the voters register, by means of a mark placed next to the name of the voter concerned, that a polling station officer or another person assisted the voter as provided for under this section and give the reasons for doing so.

#### **85. Issuance of a new ballot paper**

- (1) If a voter accidentally marks a ballot paper in a way that does not indicate his or her choice or otherwise makes a mistake and the ballot paper has not yet been placed in the ballot box—
  - (a) the voter may return that ballot paper to the presiding officer or a polling station officer;
  - (b) the presiding officer or the polling station officer shall deal with the ballot paper in accordance with subsection (2), and shall give the voter a new ballot paper; and
  - (c) the voter shall proceed to vote in accordance with section 84.
- (2) Upon receipt of a ballot paper from a voter under subsection (1), the presiding officer or the polling station officer shall mark “CANCELLED” on the back of the ballot paper and file it separately to be dealt with in accordance with section 90.

#### **86. Doubts and complaints**

- (1) In addition to representatives of political parties or of candidates, any voter present at a polling station may raise doubts and present in writing a complaint relating to voting at the polling station and shall have the right to obtain information from the polling station officers and from relevant documents available at the polling station.
- (2) No polling station officer shall refuse to receive a complaint presented to the polling station officer under subsection (1) and shall initial every such presentation, record it in a log book referred to under section 66, and annex it as part of the official record of the polling station.
- (3) Any presentation received by a polling station officer under this section shall be deliberated upon among, and be resolved by, the polling station officers who may, if necessary in their opinion, postpone such deliberation or resolution until the end of the voting process to enable the process to proceed.

## Part VII – Determination of results of elections

### 87. Definition of void vote

- (1) For purposes of this Part, a vote cast is void if—
  - (a) the ballot paper has been torn into two or more parts;
  - (b) the ballot paper does not bear an official mark of the Commission;
  - (c) anything is written or marked on the ballot paper by which the voter may be identified;
  - (d) the ballot paper is unmarked or it is marked in such a way that it is difficult to determine with certainty the candidate for which the vote was cast; or
  - (e) the vote is cast in a manner that does not comply with directions of the Commission concerning the validity of votes cast, issued from time to time and published in the *Gazette*.

### 88. Structure for determining results

- (1) For purposes of counting and determination of results, in a general election, the Commission shall have polling tally centres, constituency tally centres, district tally centres and a national tally centre.
- (2) For purposes of counting and determination of results in a by-election, the commission shall have polling tally centre and constituency tally centres.

### 89. Unused ballot papers

At the close of the poll at any polling station, the presiding officer shall proceed by first collecting all unused ballot papers and placing them in a separate envelope provided to him or her for that purpose and shall seal the envelope and initial or stamp it over the sealed area.

### 90. Classification of votes

The presiding officer shall, in counting votes at a polling station, classify the votes cast at the polling station into—

- (a) void votes;
- (b) votes for each of the candidates for election to the office of President;
- (c) votes for each of the candidates for election as member of the National Assembly; and
- (d) votes for each of the candidates for election as councillor.

### 91. Opening of ballot boxes and counting of votes

- (1) Immediately after the close of the poll at any polling station, the presiding officer shall bring all ballot boxes at one place, and, in the presence of other polling station officers and representatives of political parties and candidates, if any is present, open the ballot boxes and order the counting of the votes to proceed according to the following procedure entailing the polling station officers—
  - (a) picking out of the ballot box one ballot paper and displaying the ballot paper to all present and announcing aloud the classification of the vote as specified in section 90;
  - (b) recording on a sheet of paper provided to the polling station officers for the purpose, showing the classification of votes, the votes cast for each classification;

- (c) displaying the already announced ballot papers and separating them into lots corresponding to each classification; and
  - (d) announcing, through the presiding officer, the number of votes cast at the polling station under each classification.
- (2) The presiding officer shall, in counting votes at a polling station, start with the presidential votes, the parliamentary votes and the local government votes, in that order.

## 92. Record of the polling process

- (1) The presiding officer shall cause to be prepared by the polling station officers—
- (a) a record of the entire polling process at his or her polling station, containing—
    - (i) the full particulars of the polling station officers, representatives of political parties and representatives of independent candidates;
    - (ii) the total number of voters;
    - (iii) the total number of votes for or under each classification of votes;
    - (iv) the number of unused ballot papers;
    - (v) the number of ballot papers which have been the subject of complaints, if any;
    - (vi) the discrepancies, if any, between votes counted and the number of voters;
    - (vii) complaints registered and responses thereto and the decisions taken thereon by the polling station officers; and
    - (viii) any other occurrence which the polling station officers consider to be important to record; and
  - (b) a brief summary of the final result.
- (2) The record and summary prepared under subsection (1) shall be legibly signed by the presiding officer and each of the other polling station officers and, if any is present, by at least one representative of each political party or independent candidate.
- (3) The record prepared under subsection (1) shall, in relation to paragraph (a) (ii), (iii), (iv), (v) and (vi), be written in both Arabic numerals and words.
- (4) A representative of a political party or a representative of a candidate at a polling station shall be entitled to a copy of the duly signed summary of the final result of the poll at that polling station.
- (5) The presiding officer shall announce, declare and post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

## 93. Delivery and compilation of ballot papers, etc. from polling stations

- (1) The presiding officer of a polling station shall, with all dispatch, deliver to the returning officer of his or her constituency under conditions of absolute security against loss, tampering or interference —
- (a) the record prepared under section 92;
  - (b) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;
  - (c) all unused ballot papers;
  - (d) all spoilt ballot papers; and

- (e) all voters registers and election materials provided to that polling station.
- (2) On receipt of records from polling stations, the returning officer of a constituency or an officer of the Commission duly authorized in that behalf shall, at the constituency tally centre, compile the result of the elections in the constituency or wards, as the case may be, on the basis of the duly signed summaries received with such records and shall prepare, on the appropriate sheets in the prescribed form provided for the purpose by the Commission, a record in respect of the constituency or each ward showing—
- (a) the total number of persons who registered as voters;
  - (b) the total number of persons who voted;
  - (c) the total number of votes for or under each classification of votes in accordance with section 90;
  - (d) the discrepancies, if any, between the votes counted and the number of persons who voted; and
  - (e) the complaints, if any, received by him and his decisions thereon.
- (3) Representatives of political parties or of candidates duly designated for the purpose, shall be entitled to observe the entire procedure followed at the constituency tally centre, in compiling the result of the elections under subsection (2).
- (4) The record prepared under subsection (2) shall—
- (a) in relation to paragraphs (a), (b), (c) and (d), be written in both Arabic numerals and words; and
  - (b) be legibly signed by the returning officer of the constituency or other officer supervising the compilation thereof and, if any is present, by at least one political party or candidate representative.
- (5) The returning officer of the constituency, or an officer of the Commission duly authorized in that behalf, shall publicly announce and declare the result in the constituency or in each ward and post at the constituency tally centre, a copy of the duly signed summary of the presidential, constituency and ward result of the election in the constituency, in accordance with the records prepared under subsection (2).
- (6) The returning officer of the constituency or a duly authorized officer of the Commission shall, with all dispatch, deliver to the office of the District Commissioner or the Chief Executive Officer, under conditions of absolute security against loss, tampering or interference—
- (a) the records prepared under subsection (2); and
  - (b) all items received from all polling stations in the constituency.

#### **94. Compilation of district election results**

- (1) On receipt of records from the returning officer of a constituency, the returning officer or an officer of the Commission duly authorized in that behalf shall, at the office of the District Commissioner or Chief Executive Officer, compile results of the elections in the district, city, municipality or town, as the case may be, on the basis of the duly signed summaries received with such records, and shall prepare, on the appropriate sheets in the prescribed form provided for the purpose by the Commission, a record in respect of the district, city, municipality or town, showing—
- (a) the total number of persons who registered as voters;
  - (b) the total number of persons who voted;
  - (c) the total number of votes for or under each classification of votes in accordance with section 90;

- (d) the discrepancies, if any, between the votes counted and the number of persons who voted; and
  - (e) the complaints, if any, received by him and his decisions thereon.
- (2) Representatives of political parties and representatives of candidates duly designated for the purpose, shall be entitled to observe the entire procedure followed at the office of the District Commissioner or the Chief Executive Officer in compiling the results under subsection (1).
- (3) The record prepared under subsection (1) shall—
  - (a) in relation to paragraphs (a), (b), (c) and (d), be written in both Arabic numerals and words; and
  - (b) be legibly signed by the returning officer or other officer supervising the compilation thereof and, if any is present, by at least one representative of each political party and representative of each candidate who shall, in addition, be entitled to receive a copy of the record.
- (4) The returning officer, or an officer of the Commission duly authorized in that behalf, shall publicly announce the results of the election in each constituency and in the entire district, city, municipality or town, in accordance with the record prepared under subsection (1).
- (5) The returning officer or a duly authorized officer of the Commission shall, with all dispatch, deliver to the Chief Elections Officer under conditions of absolute security against loss, tampering or interference—
  - (a) the record prepared under subsection (1); and
  - (b) all items received from all polling stations in the district, city, municipality or town concerned.

## 95. Determination of the national result of a general election

- (1) The Commission shall determine and publish the national result of a general election based on the records delivered to it from the district tally centres and polling stations.
- (2) The determination of the national result of a general election shall begin immediately after the Commission has received records from all districts and shall, subject only to subsection (3), continue uninterrupted until concluded.
- (3) If a record from any district or other element necessary for the continuation and conclusion of the determination of the national result of the election is missing, the Chairperson of the Commission shall take necessary steps to rectify the situation and may, in such case, suspend the determination of the results for a period not exceeding seventy-two hours.
- (4) Representatives of political parties and representatives of candidates designated in writing to the Commission shall be entitled to observe the determination of the national result of the election.
- (5) The Commission may prescribe the number of representatives of political parties and representatives of candidates to observe the determination of the national result of the election.
- (6) Subject to this Act, in any election—
  - (a) the candidate for election to the office of President who obtains a majority of more than fifty percent of the valid votes cast at the poll, shall in accordance with the Constitution, be declared by the Commission to have been duly elected; and
  - (b) the candidate for election as a member of the National Assembly or as a councillor, who obtains the greatest number of valid votes cast at the poll, shall be declared by the Commission to have been duly elected.

**96. Analysis of complaints, etc., prior to determination of the national result**

- (1) At the beginning of the determination of the national result of a general election, the Commission shall take a decision on any matter which has been a subject of a complaint and shall examine the votes which have been classified as void and may affirm or correct the determination thereof at the polling station or district tally centre.
- (2) Notwithstanding subsection (1), the Commission shall examine void votes only when such votes may have an effect of changing the outcome of the election.

**97. Records of the national result of a general election**

The Commission shall summarize its determination of the national result of a general election in a written record indicating—

- (a) the national result of the election as determined; and
- (b) the complaints and responses thereto and the decisions taken on them,

and the Chairperson of the Commission shall legibly seal the national result of the election by signing the summary and every political party and independent candidate shall be entitled to receive a signed copy of the summary.

**98. Publication of the national result**

- (1) The Commission shall publish in the *Gazette* and in at least one issue of a newspaper in general circulation and shall, by radio and television, broadcast—
  - (a) results of the presidential election within eight days from the last polling day;
  - (b) results of the parliamentary elections within fourteen days from the last polling day; and
  - (c) results of local government elections within twenty-one days from the last polling day.
- (2) The Commission shall, in the publication under subsection (1), specify—
  - (a) the total number of voters registered for the election;
  - (b) the total number of voters who voted;
  - (c) the total number of void votes; and
  - (d) the total number of valid votes cast for each classification of votes as specified in section 91.

**Part VIII – Complaints and appeals****99. Commission to decide on complaints**

Save as otherwise provided in this Act, any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved at a lower level of authority, shall be examined and decided on by the Commission, and where the irregularity is confirmed, the Commission shall take necessary action to correct the irregularity and its effects.

**100. Appeals to the High Court**

- (1) An appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity and such appeal shall be made by way of a petition, supported by sworn statements, which shall clearly specify the declaration the High Court is being requested to make by order.

- (2) On hearing a petition under subsection (1), the High Court –
  - (a) shall, subject to subsection (3), make such order or orders as it thinks fit; or
  - (b) in its absolute discretion, may or may not condemn any party to pay costs in accordance with its own assessment of the merits of the complaint.
- (3) An order of the High Court made under subsection (2) shall not declare an election or the election of any candidate void except on the following grounds which are proved to the satisfaction of the court –
  - (a) that the voters were corruptly influenced in their voting contrary to any provision of this Act, or had their ballot papers improperly rejected, or voted more than once;
  - (b) that persons not entitled were improperly granted ballot papers;
  - (c) that persons entitled to them were improperly refused ballot papers:

Provided that, if the court is satisfied that any failure to comply with this Act did not affect the result of the election, it shall not declare the election void; or
  - (d) that the candidate who has won the election was at the time of his or her election not qualified for election, or that he or she was not properly nominated, or that a duly qualified candidate had his or her nomination improperly rejected.
- (4) The court shall have the power to direct scrutiny and recount of votes if it is satisfied, during proceedings on an election petition, that such scrutiny and recount are desirable.
- (5) At the conclusion of the hearing of the election petition, the court shall report its determination to the Commission and upon such report being given, such determination shall be final.
- (6) No application shall be made to the High Court for an injunction or for an order restraining the holding of an election within fourteen days immediately preceding the date of the election.
- (7) Notwithstanding subsection (6), the High Court shall have power, subsequent to the holding of an election, to declare void the election if, upon hearing the petition referred to in subsection (1), the High Court is satisfied that there are good and sufficient grounds for declaring the election void.

## Part IX – Election petitions

### 101. Election petitions

- (1) A complaint alleging an undue return or an undue election of a person to the office of President, member of the National Assembly, or councillor, by reason of an irregularity or any other cause whatsoever shall be presented by way of petition to the High Court within seven days, including Saturday, Sunday and a public holiday, of the declaration of the result of the election in the name of the person—
  - (a) claiming to have had a right to be elected at that election; or
  - (b) alleging to have been a candidate at such election.
- (2) In proceedings with respect to a petition under subsection (1), the Commission shall be joined as a respondent.
- (3) If, on the hearing of a petition presented under subsection (1), the High Court or any court of competent jurisdiction, makes an order declaring that—
  - (a) the President, the member of the National Assembly or the councillor, as the case may be, was duly elected, such election shall be and remain valid as if no petition had been presented against his or her election; or

- (b) the President, the member of the National Assembly or the councillor, as the case may be, was not duly elected, the Registrar of the High Court shall forthwith give notice of that fact to the Commission and the Commission shall publish a notice in the *Gazette* stating the effect of the order of the Court.
- (4) Pursuant to an order of the Court under subsection (3)(b) declaring that the President, the member of the National Assembly, or the councillor, as the case may be, was not duly elected, a fresh election to the office of President, or for the seat of the member of the National Assembly, or the councillor, as the case may be, shall be held in accordance with this Act.
- (5) The Commission shall not register new voters for the fresh election.
- (6) The Commission shall not accept nomination of new candidates in a fresh election but shall allow nomination of a new candidate for a political party only if the political party candidate in the nullified elections—
  - (a) becomes disqualified ;
  - (b) dies; or
  - (c) is otherwise incapacitated,before the fresh elections are conducted.
- (7) A declaration by the Court under subsection (3)(b) shall not invalidate anything done by the President before that declaration.
- (8) A petition and any appeal arising therefrom shall be heard in accordance with Part II of Order 19 of the Courts (High Court) (Civil Procedure) Rules.
- (9) Notwithstanding subsection (8), the Chief Justice may make rules for the practice and procedure for election petitions and appeals under this Act.

## Part X – Observation

### 102. Meaning of observation

For the purposes of this Part, “observation” means the Meanin verification of the various stages of an election by international observa organizations, international and local non-governmental organizations, foreign governments, and foreign and local personalities, duly accredited for the purpose in accordance with this Act.

### 103. Accreditation of observers

- (1) Any person may apply to the Commission, in the prescribed manner, for accreditation to observe an election.
- (2) The Commission may require any further information it may consider necessary in support of an application under subsection (1).
- (3) The Commission shall, where it decides to accredit an applicant—
  - (a) issue the applicant with a certificate of accreditation in the name of the applicant, stating the period and other conditions of the accreditation; and
  - (b) enter the name of the applicant in the register of persons accredited as observers in the election.

- (4) The Commission may accredit an applicant to observe an election after considering the application, any additional information provided by the applicant and whether—
  - (a) the accreditation of the applicant shall promote conditions conducive to a free, fair and credible election; and
  - (b) where the applicant is an organization, the persons appointed by the applicant shall—
    - (i) observe the election impartially and independent of any political party or candidate contesting in the election;
    - (ii) be competent and professional in observing the election; and
    - (iii) subscribe to a code of conduct governing observers issued by the Commission under this Act.
- (5) The Commission shall, where it decides not to accredit an applicant, inform the applicant accordingly, in writing, giving reasons for its decision.
- (6) If a person accredited as an observer fails to comply with the conditions of accreditation or the code of conduct governing observers, the Commission may cancel that accreditation and notify the person concerned of the cancellation and state the reason for such cancellation in writing.
- (7) Any person may inspect the register and copies of the certificates of persons accredited as observers.
- (8) The register and copies of the certificates shall be kept by the Commission.
- (9) A person representing an accredited observer shall abide by the code governing observers.
- (10) An accredited observer who is found guilty of violating an election law shall be disqualified from observing the election.

#### **104. Scope of observation**

- (1) Observation shall consist of the following activities—
  - (a) verifying and monitoring the impartiality and the functioning of the Commission and its officers in conformity with this Act;
  - (b) verifying and monitoring the impartiality and legality of the decisions taken by the Commission and its officers in settling disputes;
  - (c) verifying and monitoring the registration of voters;
  - (d) observing the conduct of the campaign for elections;
  - (e) verifying and monitoring the voting process;
  - (f) verifying and monitoring the determination of results of the elections at all stages of determination; and
  - (g) observing access to and the use of the media.
- (2) An observer shall report to the Commission or to a competent officer of the Commission any irregularity noted by the observer and the Commission or such officer shall examine the activity reported as an irregularity and shall, where the irregularity is confirmed, take corrective measures necessary to bring the election into conformity with this Act.

#### **105. Beginning and end of observation**

Observation shall begin with the registration of voters and end with the determination of—

- (a) national results of the election,

- (b) results of by-election; or
- (c) settlement thereafter of all election disputes.

#### **106. Collaboration with competent authorities**

The Commission, every officer of the Commission and every competent public officer or other competent authority in Malawi shall cooperate with observers and offer to the observers the guarantees and other facilities necessary to enable the observers fulfill their role.

#### **107. Invitation to observers**

Notwithstanding the provisions of section 103, the Commission may send invitations for election observation and may do so on its own initiative or on request by a candidate or by any government, organization or person competent under this Act to undertake observation.

#### **108. Categories of observers**

- (1) For purposes of recognition under this Act, observers shall be categorized as follows—
  - (a) observers from the United Nations Organization and its agencies, the African Union and its agencies, the Commonwealth Secretariat and other international organizations;
  - (b) observers from non-governmental organizations constituted and operating in any foreign country;
  - (c) observers from non-governmental organizations constituted and operating in Malawi;
  - (d) observers from foreign governments; and
  - (e) individual observers.
- (2) A person shall not be recognized as an observer unless—
  - (a) in the case of categories under subsection (1) (a) and (b) he or she has been designated by the relevant organization or foreign government in writing to the Commission disclosing his or her particulars and credentials; and
  - (b) in the case of categories under subsection (1) (b), (c), and (e) the individual or the organization he or she represents has been accredited under section 103.

#### **109. Recognition and identification of observers**

Recognition of observers on arrival in Malawi shall be granted by the Commission which, for that purpose, shall—

- (a) establish adequate administrative procedures for the proper and timely recognition of the observers;
- (b) devise an identity card for each category of observers and issue to every recognized or accredited observer the card corresponding to his or her category; and
- (c) devise a common and easily identifiable badge for all observers and issue the badge to every recognized and accredited observer.

#### **110. Compulsory use of identity cards and badges**

Every observer recognized or accredited under this Act shall, while exercising his or her functions, use the identity card and the badge issued to the observer under section 109.

### 111. Rights of observers

Observers shall have the right to—

- (a) obtain a multiple entry visa to enter Malawi for the duration of the period of observation as specified in section 105;
- (b) have unimpeded access to all election events and to observe all aspects of the civic and voter education programmes, the registration of voters, the nomination of candidates, the campaign, the voting and the counting of votes at all stages;
- (c) enjoy freedom of movement throughout Malawi;
- (d) seek and obtain information on the official organizations involved in the conduct of an election and regarding the election itself;
- (e) communicate freely with any candidate and with any organization or person;
- (f) have access to information transmitted by or to the Commission and its officers;
- (g) have access to complaints and responses about any occurrence or matter relating to the conduct of the elections;
- (h) open offices within Malawi for the performance of their functions;
- (i) communicate any specific concerns, they may have to members and officers of the Commission; and
- (j) communicate to the local and international media.

### 112. Obligations of observers

Observers shall have obligation to—

- (a) exercise their role with impartiality, independence and objectivity;
- (b) respect the Constitution and the laws of Malawi;
- (c) not to interfere in, or to impede, the normal course;
- (d) maintain the secrecy of the ballot;
- (e) provide to the Commission copies of written information and statements which they have produced; and
- (f) return the identity cards, the badges and any other identification materials issued to them by the Commission after the end of their mission as observers.

### 113. Position of diplomats

Diplomats accredited to Malawi who are designated and recognized as observers under this Act, shall exercise their functions as observers without prejudice to their status and positions as such diplomats.

### 114. Separate and joint operation of observers

Observers may operate separately or jointly with other observers of the same or different categories.

## Part XI – Offences and penalty

### 115. Offences

A person who—

- (a) in relation to registration of voters—
  - (i) obtains his or her registration by giving false information;
  - (ii) obtains registration in more than one registration area;
  - (iv) registers another person knowing that that person is not eligible for registration;  
*[Please note: numbering as in original.]*
  - (v) prevents the registration of another person knowing that that person is eligible for registration;
  - (vi) having the authority to do so, does not delete a registration which he or she knows to be incorrect;
  - (vii) falsifies a register;
  - (viii) with fraudulent intent, modifies or substitutes a voter's registration certificate;
  - (ix) through violence, threat or fraud, prevents the registration of another person; or
  - (x) knowingly obstructs the detection of incorrect registration or the verification of the voter's roll;
- (b) in relation to campaigning for elections—
  - (i) holds a public meeting contrary to section 50;
  - (ii) prevents the holding, or interrupts the proceedings of a public meeting authorized under section 50;
  - (iii) campaigns or causes another person to campaign within forty-eight hours before opening of the poll or on the polling day, contrary to section 51;
  - (iv) denies any political party equal treatment with any other political party;
  - (v) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in an authorized place or space or superimposes thereon any other material concealing the earlier material;
  - (vi) being entrusted, by virtue of his or her office or functions, with displaying or depositing in an authorized place or space any campaign material, fails to display or deposit such campaign material, or misplaces, steals, removes or destroys such material;
  - (vii) contravenes section 56;
  - (viii) for the reason that another person attended or did not attend any campaign meeting, directly or indirectly, dismisses that other person from any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction to that other person;
- (c) in relation to voting —
  - (i) not being otherwise authorized to be present or not being a registered voter, knowingly presents himself or herself at a polling station;
  - (ii) knowing that he or she is not eligible to vote, casts a vote at any polling station;

- (iii) fraudulently uses the identity of another person in order to exercise the right to vote;
  - (iv) consciously allows that the right to vote be exercised by a person who does not have that right;
  - (v) votes more than once;
  - (vi) accompanying a blind or a disabled person to vote, fraudulently and faithlessly expresses a vote not according to the wish of that person;
  - (vii) within a radius of one hundred meters of a polling station, reveals his or her vote or procures another person by force or deceit to reveal that other person's vote;
  - (viii) uses or threatens violence or uses false information or other fraudulent means to coerce or induce another person to vote for or against a particular candidate or a candidate of a particular political party or to abstain from voting;
  - (ix) being a public officer, uses his or her office to coerce or induce another person to vote for or against a particular political party or candidate or abstain from voting;
  - (x) directly or indirectly, dismisses or threatens to dismiss another person from any employment or other gainful occupation or prevents or threatens to prevent another person from obtaining any employment or other gainful occupation or from continuing in any gainful occupation or applies or threatens to apply any sanction whatsoever to another person in order to induce that other person to vote for, or because that other person voted for, a particular candidate or a candidate of a particular political party or because that other person abstained from voting;
  - (xi) being a presiding officer of a polling station, fails to display a ballot box in accordance with the requirements of this Act;
  - (xii) illicitly introduces ballot papers in a ballot box before, during or after the voting;
  - (xiii) fraudulently takes possession or conceals a ballot box with uncounted ballot papers or removes, without lawful authority, an uncounted ballot paper from a ballot box;
  - (xiv) being a polling station officer, purposely neglects his or her duty with a view to occasioning an irregularity;
  - (xv) being a polling station officer, unjustifiably refuses to receive a complaint, or a response to a complaint about the proceedings at his or her polling station or to examine and seek to resolve such a complaint;
  - (xvi) disturbs the regular functioning of a polling station;
  - (xvii) refuses to leave a polling station after being asked to do so by a polling station officer;
  - (xviii) being an officer in-charge of a police establishment requested to assign police officers to keep order at a polling station, fails without justification to do so within a reasonable time;
  - (xix) being a police officer assigned to keep order at a polling station willfully neglects his or her duties; or
  - (xx) bars any election representative, observer or any person who has been duly accredited or authorized by the Commission to be at a polling station, constituency tally centre, district tally centre, or national tally centre;
- (d) uses or threatens to use any force or restraint to induce or compel another person to sign or refrain from signing any nomination paper;
- (e) in any manner, fraudulently spoils, substitutes, conceals, destroys, amends or falsifies any document relating to an election;

- (f) in bad faith, submits a complaint, or a response to a complaint or challenges or questions the decisions thereon by a competent person or body; or
- (g) without justification, neglects to fulfill obligations imposed on him or her by or under this Act, commits an offence.

#### **116. Maintenance of secrecy**

- (1) Every presiding officer, polling station officer, candidate, election representative of a political party or a candidate or other person in attendance at a polling station shall maintain and aid in maintaining the secrecy of the vote at such station, and shall not communicate, except for some purpose authorized by law, to any person any information as to the name of any voter who has or has not applied for any ballot paper or voted at that station; and no such officer, candidate, representative or other person shall interfere with a voter after the voter has received a ballot paper and before the voter has placed the ballot paper in a ballot box.
- (2) No person, other than a person assisting a voter with a disability in accordance with this Act, shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or voted for.
- (3) Any person who contravenes subsection (1) or (2) commits an offence

#### **117. Impersonation**

- (1) No person shall—
  - (a) be registered as a voter in the name of another person whether living, dead or fictitious;
  - (b) at any election, request for a ballot paper in the name of another person, whether living, dead or fictitious; or
  - (c) impersonate—
    - (i) a representative of a political party or of a candidate;
    - (ii) a candidate in an election;
    - (iii) a member, employee or other officer of the Commission; or
    - (iv) a person appointed by an accredited observer, or an accredited voter education provider.
- (2) A person who contravenes subsection (1) commits an offence.

#### **118. Offences under this Act arrestable offences**

Every offence under this Act shall be an arrestable offence within the meaning of the Criminal Procedure and Evidence Code.

[Cap. 8:01]

#### **119. General penalty**

- (1) A person convicted of an offence under this Act for which no other penalty has been specified shall be liable to a fine of K10,000,000 and to imprisonment for five years.
- (2) In addition to the penalty under subsection (1), the court may make an order—
  - (a) where applicable, barring the convicted person from performing the duties of his office in connection with the election;

- (b) suspending the right of the convicted person to vote in the election or annulling the vote cast by such person; and
- (c) having regard to the nature of the activity constituting the offence, give such directions as the court considers to be warranted in the circumstance.

## Part XII – Miscellaneous

### 120. Preservation of election documents

The Chief Elections Officer shall, at the end of each election, deliver to the Clerk of Parliament all documents forming the official record of the election, including, ballot papers, records from districts and polling stations and summaries thereof, and the record and summary of the national result, and the Clerk of Parliament shall retain and preserve the documents in safe and secure custody without destruction for a period not exceeding four months:

Provided that, if there is a dispute in relation to an election, the Clerk of Parliament shall continue to keep the records pertaining to that particular dispute until a final determination of the dispute.

### 121. Failure to elect a member of the National Assembly or councillor

If, after the holding of a general election no person has been elected in one or more constituencies or wards, a session of the National Assembly or council, as the case may be, may commence notwithstanding any such vacancy.

### 122. Regulations

The Minister may, on the recommendation of the Commission, make regulations for the better carrying out of the provisions of this Act.

### 123. Repeal and savings

- (1) The Parliamentary and Presidential Elections Act and [the Local Government Elections Act](#) are hereby repealed.

*[Cap. 2:01; Cap. 22:02]*

- (2) Any subsidiary legislation made under the Acts repealed by subsection (1), and in force immediately before the commencement of this Act—
  - (a) shall, unless in conflict with this Act, remain in force and be deemed to be subsidiary legislation made under this Act; and
  - (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.