MALAWI ELECTORAL COMMISSION

MALAWI ELECTORAL LAWS

Malawi Electoral Commission
Chisankho House
Private Bag 113
Blantyre

CHAPTER IV
HUMAN RIGHTS

Political rights 6 of 1995

40.- (1) Subject to this Constitution, every person shall have the right-

(a) to form, to join, to participate in the activities of, and to recruit members for a political party-

(b) to campaign for, a political party or cause;

(c) to participate in peaceful political activity intended to influence the composition and policies of the Government; and

(d) freely to make political choices.

6 of 1995

(2) The State shall provide funds so as to ensure that, during the life of any Parliament, any political party which has secured more than one-tenth of the national vote in elections to that Parliament has sufficient funds to continue to represent its constituency.

11 of 2010

(3) Save as otherwise provided in this Constitution, every person shall have the right to vote, to do so in secret and to stand for election for any elective office.

CHAPTER VI
LEGISLATURE

Qualification of members of Parliament

51. - (1) A person shall not be qualified to be nominated or elected as a Member of the Parliament unless that person-

6 of 1995
4 of 2001
13 of 2001
4 of 2004

(a) is a citizen of the Republic who at the time of nomination has attained the age of twenty-one years;

(b) is able to speak and to read the English language well enough to take an active part in the proceedings of Parliament; and

(c) is registered as a voter in a constituency.

6 of 1995

(2) Notwithstanding subsection (1), no person shall be qualified to be nominated or elected as a Member of Parliament who-

(a) owes allegiance to a foreign country;

(b) is, under any law in force in the Republic, adjudged or otherwise declared to be mentally incompetent;

(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 the Republic;

13 of 2001

(e) holds, or acts, in any public office or appointment, except where this Constitution provides that a person shall not be disqualified from standing for election solely on account of holding that office or

appointment or where that person resigns from that office in order to stand;

13 of 2001

4 of 2004

(f) belongs to, and is serving in the Defence Force of Malawi or the Malawi Police Service; and

(g) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of members of Parliament or local government elections.

(3) For the purposes of subsection 2(e), an appointment as a Minister or Deputy Minister in accordance with section 94(1) shall not be construed to be an appointment to a public office or to be a public appointment.

Composition of the National Assembly

13 of 2001

62.- (1) The National Assembly shall consist of such number of seats, representing every constituency in Malawi, as shall be determined by the Electoral Commission.

(2) Each constituency shall freely elect any person, subject to this Constitution and an Act of Parliament, to represent it as a member of the National Assembly in such manner as may be prescribed by this Constitution or an Act of Parliament.

Vacancies in the National Assembly

31 of 1994

4 of 2001

63.- (1) The seat of a member of the National Assembly shall become vacant-

(a) if the National Assembly has been dissolved;

(b) if the member dies or resigns his or her seat;

(c) if the member ceases to be a citizen of Malawi;

(c) if the member assumes the office of President or Vice-President;

(e) if any circumstances arise that, if he or she were not a member of the National Assembly, would cause that member to be disqualified for election under this Constitution or any Act of Parliament; or

(f) if the National Assembly declares a member's seat vacant in accordance with such Standing Orders as may permit or prescribe the removal of a member for good and sufficient reason provided that they accord with the principles of natural justice.

(2) The Speaker of the National Assembly shall give notice in the *Gazette* in the event that the seat of any member of the Assembly shall become vacant under this section:

Provided that-

(a) Parliament shall make provision for holding by-elections to fill any vacancy that shall occur;

31 of 1994

(b) any by-election to fill a vacancy that occurs shall be held within sixty days after the seat of the member becomes vacant or, if in the opinion of the Speaker the circumstances do not admit, then as expeditiously as possible after the expiry of that period; and

(c) any member elected at a by-election shall serve until such a time as his or her seat becomes vacant in accordance with subsection (1).

(3) The Speaker may, upon a motion of the National Assembly, postpone the declaration of a vacant seat for such period as that motion prescribes so as to permit any member to appeal to a court or other body to which an appeal lies against a decision which would require that member to vacate his or her seat in accordance with this section.

Dissolution of the National Assembly
38 of 1998
11 of 1999

67. - (1) The National Assembly shall stand dissolved on the 20th of March in the fifth year after its election, and the polling day for the general elections for the next National Assembly shall be the Tuesday in the third week of May that year:

Provided that where it is not practicable for the polling to be held on the Tuesday in the third week of May, the polling shall be held on a day, within seven days from that Tuesday, appointed by the Electoral Commission and provided further that, in the case of the elections to be held in 1999, the polling shall be held on a day, not later than 15th June, 1999, appointed by the Electoral Commission.

(2) This section shall not preclude the Electoral Commission from setting other days for polling in the general election for special classes or categories of voters, provided that such polling takes place not more than two days, before or after the polling day, excluding Sundays.

CHAPTER VII
ELECTIONS

The Electoral Commission

75.- (1) There shall be an Electoral Commission which shall consist of a Chairman who shall be a Judge nominated in that behalf by the Judicial Service Commission and such other members, not being less than six, as may be appointed in accordance with an Act of Parliament.

(2) A person shall not be qualified to hold the office of a member of the Electoral Commission if that person is a Minister, Deputy Minister, a Member of Parliament or a person holding public office.

(3) Subject to this section, a person shall cease to be a member of the Electoral Commission-

(a) at the expiration of four years from the date of his or her appointment, unless re-appointed to a new four-year term; or

(b) if any circumstances arise that, if that person were not a member of the Electoral Commission, he or she would be disqualified for appointment as such.

(4) A member of the Electoral Commission may be removed from office by the President on the recommendation of the Public Appointments Committee on the grounds of incapacity or incompetence in the performance of the duties of that office.

Powers and functions
13 of 2001

76.- (1) The Electoral Commission shall exercise such functions in relation to elections as are conferred upon it by this Constitution or by an Act of Parliament.

(2) The duties and functions of the Electoral Commission shall include-

(a) to determine constituency boundaries impartially on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register, subject only to considerations of-

(i) population density;
(ii) ease of communication; and
(iii) geographical features and existing administrative areas;

(b) to review existing constituency boundaries at intervals of not more than five years and alter them in accordance with the principles laid down in subsection (2)(a);

(c) to determine electoral petitions and complaints related to the conduct of any elections;

13 of 2001

(d) to ensure compliance with the provisions of this Constitution and any Act of Parliament; and

(e) to perform such other functions as may be prescribed by this Constitution or an Act of Parliament.

(3) Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determinations made under subsections (2) (c) and (2)(d).

(4) The Electoral Commission shall exercise its powers, functions and duties under this section independent of any direction or interference by other authority or any person.

(5) Without prejudice to subsection (3)-

(a) the High Court shall have jurisdiction to entertain applications for judicial review of the exercise by the Electoral Commission of its powers and functions to ensure that such powers and functions were duly exercised in accordance with this Constitution or any Act of Parliament; and

(b) the National Assembly shall confirm all determinations by the Electoral Commission with regard to the drawing up of constituency boundaries but may not alter the boundaries of any constituency, except upon the recommendation of the Electoral Commission.

The franchise
6 of 1995

77.- (1) All persons shall be eligible to vote in any general election, by-election, presidential election, local government election or referendum, subject only to this section.

(2) Subject to subsection (3), a person shall be qualified to be registered as a voter in a constituency if, and shall not be so qualified unless, at the date of the application for registration that person-

(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; and

(c) is ordinarily resident in that constituency or was born there or is employed or carries on a business there.

(3) No person shall be qualified for registration as a voter in a constituency if that person-

(a) is under any law in force in the Republic adjudged or otherwise declared to be mentally incompetent;

(b) is under sentence of death imposed by a court having jurisdiction in the Republic, either before or after the appointed day; or

(c) is disqualified from registration as a voter on the grounds of his or her having been convicted of any violation of any law relating to elections passed by Parliament and in force at the time of, or after, the commencement of this Constitution, but such disqualification shall be valid only with respect to the registration for the election in question and the person so disqualified shall be qualified to be registered as a voter in the next or any subsequent election.

6 of 1995
11 of 2010

(4) Where any person is qualified to be registered in more than one constituency as a voter, he or she may be so registered only in one of the constituencies.

(5) No person shall exercise more than one vote in any one election.

CHAPTER VIII
THE EXECUTIVE

Election of the President and the First Vice-President
31 of 1994
6 of 1995
38 of 1998

80.- (1) The President shall be elected in accordance with the provisions of this Constitution in such manner as may be prescribed by Act of Parliament and, save where this Constitution provides otherwise, the ballot in a Presidential election shall take place concurrently with the general election for members of the National Assembly as prescribed by section 67(1).

(2) The President shall be elected by a majority of the electorate through direct, universal and equal suffrage.

31 of 1994

(3) Every presidential candidate shall declare who shall be his or her First Vice-President if he or she is elected at the time of his or her nomination.

31 of 1994

(4) The First Vice-President shall be elected concurrently with the President and the name of a candidate for the First Vice-President shall appear on the same ballot paper as the name of the Presidential candidate who nominated him.

31 of 1994
6 of 1995

(5) Where the President considers it desirable in the national interest so to do, he or she may appoint a person to the office of Second Vice-President and may do so upon taking his or her oath of office or at any time thereafter or upon a vacancy in the office of Second Vice-president; and, where no person has been appointed to the office of Second Vice-President then-

(a) the provisions of this Chapter making reference to that office shall read *mutatis mutandis*; and

(b) the office of First Vice-President shall be known as office of the Vice-President as if section 79 created the office of a Vice-President only:

Provided that where the President was elected on the sponsorship of a political party, then he or she shall not appoint a Second Vice-President from that political party.

31 of 1994

(6) Notwithstanding any provision of this Constitution to the contrary, a person shall only be qualified for nomination for election as President or First Vice-President or for appointment as First Vice-President or Second Vice-President if that person-

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

(b) has attained the age of thirty-five years.

31 of 1994
6 of 1995
38 of 1998

(7) No person shall be eligible for nomination as a candidate for election as President or First Vice-President or for appointment as First Vice-President or Second Vice-President if that person-

(a) has been adjudged or declared to be of unsound mind;

(b) is an undischarged bankrupt having been declared bankrupt under a law of the Republic;

(c) has, within the last seven years, been convicted by a competent court of a crime involving dishonesty or moral turpitude;

38 of 1998

(d) owes allegiance to a foreign country;

(e) is a holder of a public office or a member of Parliament, unless that person first resigns;

(f) is a serving Member of the Defence Force or Malawi Police Service; or

(g) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of the members of Parliament.

Tenure of office
31 of 1994
38 of 1998

83.- (1) The President shall hold office for five years from the date that his or her oath of office is administered, but shall continue in office until his or her successor has been sworn in.

(2) The First Vice-President and the Second Vice President shall hold office from the date of the administration of the oath of office to them until the end of the President's term of office unless their office should come to an end sooner in accordance with the provisions of this Constitution.

(3) The President, the First Vice-President and the Second Vice-President may serve in their respective capacities a maximum of two consecutive terms, but when a person is elected or appointed to fill a vacancy in the office of President or Vice-President, the period between that election or appointment and the next election of a President shall not be regarded as a term.

(4) Whenever there is a vacancy in the office of President, the First Vice-President shall assume that office for the remainder of the term and shall appoint another person to serve as First Vice-President for the remainder of the term.

Appointment of Ministers and Deputy Ministers
6 of 1995
13 of 2001

94.- (1) The President shall have the power to appoint Ministers or Deputy Ministers and to fill vacancies in the Cabinet.

(2) A person shall not be qualified to be appointed as a Minister or Deputy Minister unless that person-

(a) is a citizen of the Republic who upon taking office, has attained the age of twenty-one years;

(b) is able to speak and to read the English language; and

(c) is registered as a voter in a constituency.

6 of 1995

(3) Notwithstanding subsection (2), no person shall be qualified to be appointed as a Minister or Deputy Minister who-
owes allegiance to a foreign country;

(a) owes allegiance to a foreign country;

(b) is, under any law in force in the Republic, 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 the Republic;

13 of 2001

(e) holds or acts in any public office or appointment;

(f) belongs to, and is serving in the Defence Force of Malawi or in the Malawi Police Service;

(g) has, within the last seven years, been convicted by a competent court of any violation of any law relating to election of the President or election of the members of Parliament.

CHAPTER XIV
LOCAL GOVERNMENT

25 of 2012

147.- (5) Local Government Elections shall take place concurrently with the general elections for members of National Assembly as prescribed under Section 67(1), and Local Government Authorities shall stand dissolved on 20th day of March in the fifth year after their election."

CHAPTER 2:03

THE ELECTORAL COMMISSION ACT

ARRANGEMENT OF SECTIONS

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11 of 1998

16 of 2010

An Act to make provision for the appointment of members of the Electoral Commission; for the establishment of a secretariat for the Electoral Commission; and for matters incidental thereto and connected therewith

ENACTED by the Parliament of Malawi as follows-

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Electoral Commission Act.

Interpretation

Cap 2:01

2. In this Act, unless the context otherwise requires, the several words and expressions used in this Act shall have the same meanings assigned to them in the Constitution and the Parliamentary and Presidential Elections Act, and the following additional words shall have the following meaning-

"Chief Elections Officer" means the Chief Elections Officer appointed under section 12.

PART II
STATUS AND MEMBERSHIP OF THE COMMISSION

Legal personality and capacity of the Commission

3. The Commission shall be a body corporate with perpetual succession and a common seal and be capable of–

(a) acquiring, holding and disposing of real and personal property;

(b) suing and being sued in its own name; and

(c) doing or performing all such acts and things as bodies corporate may by law do or perform.

Appointment of members of the Commission

4.- (1) The President shall, subject to the Constitution and in consultation with the leaders of the political parties represented in the National Assembly, appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of Parliament shall determine.

(2) The remuneration and any allowance of a member of the Commission may not be reduced during his period of office without his consent, and may be increased at such intervals as the Public Appointments Committee of Parliament may determine.

(3) A member of the Commission may resign from his office at any time by notice in writing to the President.

Eligibility for appointment to the Commission

5. No person who is a candidate in any election or is a serving employee of the Commission shall be eligible to be appointed a member of the Commission or any of its committees.

6.- (1) Every individual member and employee of the Commission shall perform the functions and exercise the powers provided for in this Act independently of the direction or interference of:

(a) any public office;

(b) any organ of the Government;

(c) any political party;

(d) any candidate; or

(e) any person whosoever or organization whatsoever:

Provided that for the purpose only of accountability the Commission shall be answerable, and report directly, to the President on the overall fulfillment of the functions and powers of the Commission.

(2) Upon assuming his office or immediately thereafter, every member of the Commission shall take an oath of office before the Chief Justice in the prescribed form.

Committees of the Commission

7.- (1) For the better carrying into effect of its functions, the Commission may establish such number of committees as it shall deem appropriate, to perform, subject to section 9, any of its functions and carry out such other responsibilities as the Commission may direct.

(2) A committee of the Commission may consist of either members of the Commission only or members of the Commission and such other suitably qualified persons as the Commission may deem fit.

(3) The Commission shall appoint the chairman of each committee from only amongst the members of the Commission.

(4) The provisions of this Act relating to meetings of the Commission shall apply *mutatis mutandis* to the meetings of its committees.

(5) Every committee of the Commission shall act in accordance with any direction given to it in writing by the Commission.

PART III
FUNCTIONS AND POWERS OF THE COMMISSION

Functions and powers of the Commission

16 of 2010

8.- (1) In addition to the broad functions and powers conferred on the Commission by the Constitution and, subject to the Constitution, the Commission shall exercise general direction and supervision over the conduct of every election and, without prejudice to the generality of such functions and powers, it shall have the following further functions-

(a) to determine the number of constituencies for the purposes of elections;

(b) to undertake or supervise the demarcation of boundaries of constituencies;

Cap. 22: 02
16 of 2010

(c) subject to the Local Government Elections Act, and any other written law relating to local government elections, to undertake or supervise the demarcation of wards for purposes of local government elections and to determine the number of such wards:

Provided that-

(i) in the case of City of Blantyre, the total number of wards shall not exceed thirty;

(ii) in the case of the City of Lilongwe, the total number of wards shall not exceed thirty;

(iii) in the case of the city of Mzuzu, the total number of wards shall not exceed fifteen ;

(iv) in the case of the City of Zomba, the total number of wards shall not exceed ten ;

No. 11 of 2013

(v) in the case of Kasungu Municipal Council, the total number of wards shall not exceed ten;

No. 11 of 2013

(vi) in the case of Luchenza Municipal Council, the total number of wards shall not exceed eight;

No. 11 of 2013

(vii) In the case of Mangochi Town Council, the total number of wards shall not exceed ten; and

No. 11 of 2013

(viii) in all other cases, the number of wards shall not exceed two (2) for each parliamentary constituency,

and the Commission shall ensure that ward boundaries do not cross local authority boundaries;

(d) to organize and direct the registration of voters;

(e) to devise and establish voters registers and ballot papers;

(f) to print, distribute and take charge of ballot papers and voting registers;

(g) to approve and procure ballot boxes;

(h) to establish and operate polling stations;

(i) to establish security conditions necessary for the conduct of every election in accordance with any written law governing elections;

(j) to promote public awareness of electoral matters through the media and other appropriate and effective means and to conduct civic and voter education on such matters;

(k) to promote and conduct research into electoral matters and into any matter pertaining to its functions and to publish the results of such research;

(l) to perform the functions conferred upon it by or under any written law; and

(m) to take measures and to do such other things as are necessary for conducting free and fair elections.

(2) For purposes of discharging the functions and exercising the powers conferred upon it by the Constitution, this Act or any other written law relating to elections, the Commission shall freely communicate with the Government and any political party or any candidate, person or organization.

Delegation of powers and functions

9. The Commission may delegate to any of its committees, the Chief Elections Officer or other employee of the Commission all or any of its powers and functions.

Vacancy in the membership of the Commission

10. Subject to the Constitution and to section 11(3), any vacancy in the membership of the Commission shall not affect its decisions, the performance of its functions or the exercise of its powers under the Constitution, this Act or any other written law.

PART IV

MEETINGS OF THE COMMISSION

Meetings of the Commission

11 - (1) The Commission shall meet at such place or places, and at such time or times as the Chairman may determine:

Provided that the Chairman shall convene a meeting within fourteen days of receipt by him of a request in writing signed by the majority of members of the Commission and specifying the purpose for which the meeting is to be convened.

(2) The Chairman shall take all reasonable steps to ensure that every member of the Commission is given due and adequate notice of every meeting of the Commission.

(3) The quorum at every meeting of the Commission shall be fifty-one per centum of the members of the Commission.

(4) The Chairman shall preside at all meetings of the Commission. In the absence of the Chairman, the members present and forming a quorum shall elect one of their number to preside over the meeting of the Commission

(5) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members of the Commission present and voting, and at all such meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(6) Subject to the Constitution and this Act, the Commission shall have the power to regulate its own procedure by standing orders and the procedure of any of its committees and may vary, suspend or revoke any such standing orders.

(7) The Chief Elections Officer or such other employee of the Commission as the Commission may designate shall be the secretary to the Commission or at the meetings of any of its committees.

(8) Minutes of each meeting of the Commission or a committee of the Commission shall be kept by the secretary and shall be confirmed at the subsequent meeting of the Commission or committee, as the case may be.

PART V
MANAGEMENT

Appointment to Chief Elections Officer

12.- (1) The Commission shall appoint a suitably qualified person to be Chief Elections Officer upon such written terms and conditions as the Commission may, in its discretion, determine.

(2) The Chief Elections Officer shall hold office for a period of five years and shall be eligible to be re-appointed as Chief Elections Officer for a further period of five years.

(3) The Chief Elections Officer shall be the chief executive officer of the Commission and, in the performance of his functions and duties, shall be responsible and answerable only to, and shall be under the direction, supervision and control of, the Commission.

(4) The Chief Elections Officer shall not divulge any information to any person or accept or seek instructions from any person in relation to his functions and duties or the functions or powers of the Commission or in relation the conduct of any election.

Appointment of staff of the Commission

13.- (1) The Commission shall appoint such other professional, technical and administrative officer and support staff as the Commission may deem necessary, subject to such terms and conditions as the Commission shall, in its discretion, determine.

(2) The Commission may pay to every person in its service, including the Chief Elections Officer, such remuneration and allowances and grant to every such person such fringe benefits as it may deem appropriate.

(3) There may be seconded to the Commission such number of public officers as the Commission may arrange with the appropriate authority responsible for such public officers for such periods and on such terms and conditions as may be agreed between the Commission and the authority concerned.

(4) For purposes of this Act, a public officer who is seconded to the Commission under subsection (3), shall be deemed to be an employee of the Commission and shall enjoy the same benefits and shall be required to comply with the Constitution, this Act and any other written law relating to elections and any instruction, orders and directions of the Commission in the same manner as an employee recruited directly by the Commission under this Act.

(5) The Commission shall deploy persons in its service in such manner as it deems appropriate and shall, for each district, constituency, ward and polling station, designate a District Elections Officer, elections officers, assistant elections officers, returning officers, presiding officers, registration officers, polling officials and counting officers in such numbers as the Commission shall deem appropriate for purposes of conducting or supervising elections.

(6) Upon assuming office, or immediately thereafter, every employee including the Chief Elections Officer shall take an oath of office in the prescribed form before a commissioner of oaths and, if there be no such form, in such form as the Commission shall determine.

Vacancy where employee becomes candidate in elections

14. The office or post an employee of the Commission shall automatically become vacant in the event that the employee becomes a candidate in any presidential, parliamentary or local government election.

PART VI
FINANCIAL PROVISIONS

Funds of the Commission

15.- (1) The funds of the Commission shall consist of-

(a) such sums as shall be appropriated by Parliament for purposes of the Commission;

(b) such sums or assets as may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;

(c) such sums or assets as may accrue to or vest in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;

(d) such sums that are derived from the sale of any property, real or personal, by or on behalf of the Commission;

(e) such sums as are received by the Commission by the way of voluntary contributions; and

(f) such sums of assets as may be donated to the Commission by any foreign government, international agency or other external body of persons, corporate or unincorporate.

(2) For the purposes of this section an "external body of persons" means anybody of persons, corporate or unincorporated, formed under or by virtue of the laws of any country other than Malawi.

(3) The funds of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of

this Act in accordance with the written directions of the Commission and for no other purposes.

Books and other records of accounts, audit and reports of the Commission

16.- (1) The Commission shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Commission in accordance with acceptable principles of accounting.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

(3) The Commission shall, as soon as practicable, but no later than six months after the end of the financial year of the Commission submit to the Minister and publish in the *Gazette* annual report on all the financial transactions of the Commission and on the work, activities and operations of the Commission.

(4) The report referred to in subsection (3) shall include a balance sheet and an income and expenditure account, and shall be laid by the Minister before the National Assembly in accordance with the Finance and Audit Act.

Cap. 37:01

(5) The Commission shall at all times comply with the provisions of the Finance and Audit Act.

Cap. 37:01

Holdings of funds of the Commission

17.- (1) All sums received for the purposes of the Commission shall be paid into one or more bank accounts at such bank or banks as the Commission may determine, and no amount shall be withdrawn therefrom except under the written authority of the Commission and by means of

cheques signed by such persons as are authorized in that behalf by the Commission

(2) Any sums not immediately required for the purposes of the Commission may be invested in such manner as the Commission may, in its discretion, determine.

Financial year

18. The financial year of the Commission shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Commission shall determine, but in any case longer than eighteen months.

PART VII
MISCELLANEOUS

Duty to co-operate

19.- (1) It shall be the duty of every relevant or competent public or private entity to cooperate with the Commission in its activities and to contribute towards the success of an election and not to do anything that might hinder such process.

(2) It shall be the special duty of -

(a) all District Commissioners, in their respective districts, and all Clerks of local authorities, in their respective local authorities, to give the Commission and its officers the support and collaboration deemed by the Commission or its officers to be necessary for the execution of the activities connected with the conduct of an election; and

(b) officers-in-charge of police, in their respective areas of operation, to take all necessary measures for the

maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under any written law relating to elections.

20. The Commission may instruct the Attorney General or any legal practitioner to provide legal representation to the Commission in any court proceedings, including proceedings concerning appeals against its decisions on complaints about any aspect of the electoral process, or to provide general legal advice to the Commission.

Publicity

21. The Commission shall, in such manner as it shall consider appropriate, publish a notice for public information specifying-

(a) the location of its principal office; and

(b) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

Regulations

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

PART VIII
TRANSITIONAL PROVISIONS

Savings

23.- (1) Any person who, at the commencement of this Act, is a member or employee of the Commission, shall continue as such member or employee pursuant to the terms and conditions of his appointment.

(2) The validity of any legal proceedings commenced by or against the Commission and anything done or action or decision taken or

made by a court or the Commission or any of its employees prior to the commencement of this Act shall not be affected by this Act.

Transfer of assets, etc.

24.- (1) All property, assets, rights, liabilities, obligations, agreements and other arrangements (other than arrangements with foreign Governments or other foreign donor agencies) existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Commission shall, upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission and shall become enforceable by or on behalf of the Commission to the same extent as they were enforceable by or against the Commission before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Commission under subsections (1) is required by any written law to be registered, the Commission shall, within one year from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties-

(a) make such entries in the appropriate register as shall give effect to the transfer;

(b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendment on such certificates or in the appropriate register as may be necessary; and

(c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

Passed in Parliament this fifth day of June, one thousand, nine hundred and ninety-eight

CHAPTER 2:01

PARLIAMENTARY AND PRESIDENTIAL ELECTIONS

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31 of 1993
16 of 1994
10 of 1998

An Act to make provision with respect to the conduct of elections for the election of members of Parliament and for the election of the President of the Republic and for matters ancillary thereto or connected therewith

Short title

1. This Act may be cited as the Parliamentary and Presidential Elections Act.

Application

2.- This Act shall apply to the election of members of Parliament and the election to the office of the President.

Interpretation

10 of 1998

3. In this Act, unless the context otherwise requires –

"ballot box" means the box into which a voter shall deposit the ballot paper or ballot papers corresponding to the candidate or candidates he has voted for in the election;

"ballot paper" means a rectangular sheet of paper for use by a voter in expressing his vote in an election;

"by-election" means the election of a member of the National Assembly to fill a seat in the National Assembly which has become vacant otherwise than by dissolution of Parliament;

"candidate" means any person who has been nominated under this Act as a candidate for election as a member of the National Assembly or for election to the office of President;

"Commission" means the Electoral Commission established under section 30 of the Constitution;

"Constituency" means an area delimited as such under section 31 of the Constitution and section 8(1)(a) and (b) of the Electoral Commission Act;

Cap. 2:03

"Council" means the National Consultative Council established by the National Consultative Council Act 1993;

"election" means a general election or a by-election;

"election representative" means a person appointed by a candidate under section 35 to be the candidate's representative for purposes of an election;

"general election" means an election consequent upon dissolution of Parliament for the election in accordance with this Act of members of the National Assembly and the President;

"Independent candidate" means a candidate not sponsored by a political party;

"irregularity," in relation to the conduct of an election, means noncompliance with the requirements of this Act;

"National Assembly" means the National Assembly constituted under section 19 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;

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"political party" means a political party registered under the Political Parties (Registration and Regulations) Act;

"polling day" means any day appointed by the Commission under section 36 (1) (c) and section 48 (1) (b), for the holding of a poll;

"polling station" means a place established as such under section 67;

"polling station officer" means a person appointed as such under section 68 (1);

"presiding officer" means a polling station officer designated as such under section 68 (2);

"Referendum" means the referendum held on 14th June 1993 under the Constitution (Referendum on Malawi's Political System) Regulations, 1993;

"registration" means the registration of voters;

10 of 1998

"returning officer" means a returning officer appointed under section 34 (1);

"the first general election" means the first general election contested by more than one political party following the Referendum;

"voter" means a person registered to vote in an election;

"voters register" means the register of voters established under section 22;

"voters registration certificate" means a certificate issued to a voter under section 24;

"voting booth" means a compartment at a polling station for screening a voter from view when he is making his choice or choices in the poll.

PART II

THE ELECTORAL COMMISSION

[Sections 4-14 *Repealed by Act No. 10 of 1998]*

PART III

REGISTRATION OF VOTERS

Eligibility

15. Every citizen of Malawi residing in Malawi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election.

Right and duty to register

16. It shall be the right and the civic duty of every eligible citizen to present himself for registration as a voter and further he shall have the right to verify with the Commission or its officers that he has been registered and to request that any error or omission with respect to his registration be corrected.

Duty to promote registration

17. The Commission shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness among the citizen of Malawi of the need to register as a voter for the purpose of an election and of the need for their full participation in the election.

Single registration

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

Place of registration
16 of 1994

19. A person shall be registered as a voter in the area where he ordinarily resides or was born or is employed or carries on business.

Temporary registration officers

20.- (1) The Commission may employ temporary staff, on such terms and conditions as it shall determine, as registration officers who shall register voters throughout Malawi.

(2) No person shall be employed as a registration officer with respect to any local area of Malawi, unless-

(a) he is a citizen of Malawi and has attained the age of eighteen years;

(b) he has attained the minimum educational qualification of Junior Certificate of Education or its equivalent; and

(c) He has knowledge of the language commonly spoken in the area.

(3) Every registration officer shall, before commencing his duties, receive a vocational training in the identification and registration of voters and generally in the requirements of this Act with respect to the registration of voters.

(4) In the performance of their duties, registration officers shall be under the supervision of the Chief Elections Officer and such of the other election officers as he or the Commission shall designate for the purpose.

Registration centres

21.- (1) The Commission shall establish centres throughout every Constituency in Malawi as places where voters are to be registered and for this purpose the Commission shall endeavour 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 metres of a registration centre.

Voters registers

22. Voters registers shall be in the prescribed form and the Commission shall procure sufficient copies thereof for the registration of voters throughout Malawi and for distribution to registration officers at every registration centre and for that purpose may adopt existing voters' registers which shall, as necessary, be updated by registration officers with new registrations.

Evidence of a person's eligibility to vote

23. An eligible person wishing to be registered as a voter in an election shall in person state that he is not registered at any other registration centre and shall present to a registration officer sufficient and cogent proof of his eligibility and may do so by producing-

(a) A passport, driver's licence, even if expired, tax certificate or marriage certificate, an employment identity card or employment discharge certificate or a birth certificate or similarly authentic document of identity;

(b) written, verbal or visual testimony of-

(i) the chief, a village headman or a registered voter of the area; or

(ii) the registration officer.

Registration and issue of voters registration certificate

24.- (1) Upon a registration officer being satisfied with proof of eligibility of a person to vote, he shall-

(a) issue to that person a voters registration certificate in the prescribed form;

(b) register that person in the voters register by entering the particulars of that person as prescribed therein.

(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 he shall issue to the voter a duplicate copy of that voter's original voters registration certificate with the words "DUPLICATE" clearly marked or printed thereon.

(3) A person to whom a voter's registration certificate has been issued shall be personally responsible at all times for its safekeeping and shall not place or cause it to be placed in the custody of any other person or allow any other person to use it to vote in an election.

(4) No person shall receive, keep or use in relation to an election, a voter's registration certificate that has not been issued to him in accordance with this section.

(5) Any person who contravenes subsection (3) or (4) or who aids, abets or counsels, or conspires with, any person to contravene subsection (3) or (4), shall be guilty of an offence and shall be liable to a fine of K50,000 and to imprisonment for seven years.

Updating of voters registers

25.- (1) In updating a voters register the registration officer shall do so by -

(a) adding the names and other prescribed particulars of the voters resulting from new registration;

(b) drawing a line, without affecting legibility, over

the particulars of the persons who are known to be deceased or who have lost eligibility to vote and indicating in the margin the reasons therefor.

(2) The registration officer making new entries in a voters register or deleting entries therefrom shall initial every such new entry or deletion.

(3) Upon the registration officer being satisfied with proof of loss of eligibility of a registered voter, he shall immediately update the voters register in accordance with the procedure under this section.

Monitoring of registration by political parties

26. In the case of registration in a new voters register, the registration officer shall initial both sides of every page at a point where registration on the page ends.

27.- (1) Every political party contesting an election shall have the right to monitor the registration of voters and shall do so through its designated representatives assigned to a specified registration centre and whose names shall be notified in writing to the Commission, and in the absence of such notification by any political party it shall be presumed that such party does not desire to monitor the registration of voters at such registration centre.

(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) There may be assigned to one registration centre more than one representative of a political party.

(4) Section 89 shall apply *mutatis mutandis* with respect to the registration of voters.

10 of 1998

Rights and duties of representatives of political parties

28.- (1) Representatives of political parties shall have the following rights -

(a) to be treated with due respect and consideration by all persons administering the registration of voters and by the representatives of other political parties;

(b) to request and obtain information on activities relating to the registration of voters; and

(c) to submit, to the Commission, in writing complaints and appeals about any irregularities in the registration of voters.

(2) It shall be incumbent upon the representatives of political parties in (2) exercising their rights under subsection (1) -

(a) to monitor the registration activities conscientiously and objectively;

(b) to co-operate in order to ensure that the registration activities proceed normally by avoiding unjustified interference in and obstacles to the work of registration officers;

(c) to refrain from submitting complaints or appeals in bad faith or with the purpose of paralysing the registration process; and

(d) to refrain from divulging any information about a voter or prospective voter obtained as a consequence of acting as a representative and which is not relevant to the registration process.

(3) In addition to political parties and their representatives any person eligible to be registered as a voter and any registered voter may submit to the Commission in writing complaints and appeals about any irregularity in the registration of voters.

(4) The Commission shall endeavour to determine every complaint or appeal relating to registration of voters before the polling day and to remedy any confirmed irregularity.

Period for registration of voters

16 of 1994

29. The period of registration shall be determined by the Commission and notified in the *Gazette*, being a period of not less than fourteen days expiring not less than twenty-one days before the first polling day.

Closing of registration

30. At the close of registration, every registration officer shall sign off the voters register assigned to him and shall forward it for custody to the Chief Elections Officer or to such other officer as is designated by the Commission for the purpose and shall submit to such officer a summary of the total number of voters registered in the area assigned to him.

Voters register open to inspection

31. A voters register shall be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and international observers, and for this purpose the Commission shall make copies of voters registers and post them for inspection at appropriate public places made known to the public.

PART IV

HOLDING OF A GENERAL ELECTION AND BY-ELECTIONS

Division 1 *General*

General election and by-election

10 of 1998

32.- (1) A general election shall be at such times as are required by the Constitution.

(2) When a member of the National Assembly dies or resigns, or the Speaker gives notice under the relevant provision of the Constitution that a seat of a member of the National Assembly has become vacant, a by-election shall be held.

(3) A candidate may stand for an election as a member of the National Assembly or for election to the office of the President 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 it applies to political parties.

(4) Subject to this Act, in a general election, the poll for election of members of the National Assembly may be taken simultaneously with the poll for election to the office of President.

Delay in publication of notice pending appeal

33. When a member of the National Assembly has been sentenced by a court to death or imprisonment for a term exceeding twelve months, is adjudged or declared by court to be of unsound mind or bankrupt, or has been convicted of any offence prescribed under this Act, it shall not be necessary for the Speaker to give notice that such member’s seat has become vacant until the time for appeal against such decision has expired or, if there is an appeal, until the determination of that appeal.

Appointment of returning officers

34.- (1) The Commission shall appoint a returning officer with respect to every constituency who shall receive the nominations of candidates for election in that constituency as member of the National Assembly.

(2) For the purpose of subsection (1), the Commission may designate the District Commissioner as the returning officer in respect of every constituency in his District.

Election representative

35. Every candidate may appoint one person to be his election representative and notify in writing the returning officer of the constituency in which he is, or intend to be, a candidate of the name so appointed.

Division 2 - *Nomination of Members of the National Assembly*

Procedure for commencing conduct of elections

36.- (1) Whenever a general election or by-election is to be held, the Commission shall issue an order, notice of which shall be published in the Gazette -

(a) Declaring-

(i) in the case of a general election, that an election be held throughout Malawi;

(ii) in the case of a by-election or by-elections, the constituency or constituencies in which an election is to be held;

(b) appointing the place, date and time for the receipt by the returning officer of the nominations of candidates, in respect of each such constituency;

(c) appointing the day or days on which a poll shall be taken if a poll becomes necessary in accordance with this Act.

(2) The date appointed under subsection (1) (b) shall be not less than fourteen days after the publication of the order.

(3) The period appointed under subsection (1) (c) during which a poll should be taken shall commence not less than fourteen days after the nomination of candidates.

(4) Upon receipt of a copy of the order required by this section, the returning officer for each constituency named in the order shall proceed to hold an election in the manner prescribed by or under this Act.

Nomination of candidates

37.- (1) On the day or days and at the time or times and placed fixed for the nomination of candidates the returning officer shall attend in the open court at the place notified to receive the nomination of candidates and shall receive such nomination papers as may be tendered to him, and which appear to him to comply with this Act.

(2) Subject to subsection (7), the nomination of every candidate shall -

(a) be made by means of a nomination paper in the prescribed form;

(b) be made 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;

(c) be endorsed with the candidate's consent to 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 in conjunction with him; and

(e) in the case of an independent candidate, specify the name of the candidate or abbreviation of the name of the candidate, and a distinctive symbol, which the candidate wishes to appear on the ballot paper in conjunction with him.

(3) Every nominated candidate shall produce to the returning officer evidence, satisfactory to the returning officer, identifying him as the person nominated.

(4) Where a nomination paper specifies the matters referred to in paragraph (d) of subsection (1), the nomination paper shall be countersigned by a person who is an office-bearer of the political party concerned and who has authority to certify that the candidate is to stand for that political party.

(5) The fact that subsequent to nomination the name of any person who nominated a candidate under subsection (2) (b) is struck off the voters register shall not invalidate the nomination of the candidate.

(6) No candidate may be nominated for election in more than one constituency or, in the case of by-election, while he is a member of the National Assembly.

(7) A voter shall not be entitled to subscribe to more than one nomination paper.

Nomination paper and supporting documents

10 of 1998

38.- (1) Every candidate or his election representative shall at the time of his nomination deliver to the returning officer-

(a) a nomination paper completed and executed in the prescribed form;

(b) evidence, or a statutory declaration by the candidate made before a magistrate or a commissioner for oaths, that the candidates-

(i) is a citizen of Malawi and has attained the minimum age required by the Constitution for election to the National Assembly; and

(ii) is able to speak and to read the English language well enough to take an active part in the proceedings of the National Assembly; and

(c) evidence that he is registered as a voter in any constituency.

(2) The returning officer shall, if the candidate or his election representative so requests, examine the nomination paper and supporting

documents of the candidate before they are tendered and advise the candidate or his election representative whether in his opinion they 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 his election representative of any defect in the candidate's nomination paper or supporting documents and the candidate or his election representative may, before the closure of such period, rectify the defect.

Invalid nominations

39. Where a nomination paper is delivered in conformity with this Part and it is not withdrawn, the candidate shall be deemed to stand nominated unless the returning officer is satisfied of the candidate's death or decides that the nomination paper is invalid on one of the following grounds, but on no other grounds, namely-

(a) that the description of the candidate is insufficient to identify him;

(b) that the nomination paper does not comply with this Act;

(c) that the nomination paper was not tendered within the time prescribed;

(d) that any supporting document required to accompany the nomination paper has not been lodged with the returning officer; or

(e) that the evidence delivered to the returning officer under section 37 (3) is insufficient.

Rejected nominations

40.- (1) If, after the close of the period allowed for nominations but before the polling day, the returning officer is of the opinion that-

(a) a candidate whose nominations paper has been lodged with him has not been duly nominated in accordance with this Act or is not qualified for election or has obtained nomination by fraud or false pretences;

(b) any symbol or abbreviation specified in respect of a candidate pursuant to paragraph (d) or (e) of section 37 (2) is indecent or obscene or is too complex or elaborate to be reproduced on a ballot paper or so closely resembles the symbol of any candidate contesting the election in the constituency concerned or the recognized symbol or abbreviation of any other candidate or of any political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him as to be likely to cause confusion; or

(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; or

(d) the nomination paper lodged with the returning officer in respect of any candidate is for any other reason not in order; or

(e) the deposit referred to in section 45 was not lodged with the candidate's nomination paper; or

(f) a candidate is not qualified for election at that election; or

(g) a candidate has been duly nominated for election for another constituency, the returning officer shall forthwith notify such candidate or his election representative giving the reasons for such opinion, and, if so requested by the candidate or his election representative, the returning officer shall draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the nomination paper and any certificate or affidavit which has been lodged with such nomination paper, to the Registrar of the High Court for hearing and decision by the High Court at the earliest opportunity; and a copy of the statement shall, at the same time, be delivered to the candidate or his election representative and to the Commission.

(2) If no request is made under subsection (1) the candidate shall be deemed not to have been duly nominated.

(3) The High Court may call for further information from the person making the request or from the returning officer.

(4) The High Court shall after determination of the matter direct the returning officer either to accept or to reject the nomination and the returning officer shall comply with such direction.

(5) Where any nomination has been referred to the High Court under the provisions of this section, the proceedings under sections 41, 42 and 43 shall be suspended pending determination of the matter.

(6) Without derogation from subsection (1), the returning officer shall not take the action under that subsection-

(a) 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;

(b) any other imperfection in the nomination paper if the returning officer is reasonably satisfied that there has been substantial compliance with this Part.

No nomination of candidate

41. If at the end of the period allowed for nomination no candidate has been duly nominated for a constituency, 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.

Publication of names of candidates for elections as member of Parliament

10 of 2013

41A. After receiving nominations of candidates for election as member of Parliament under this Part, the Commission shall, fourteen days after receiving the nominations, cause to be published in the *Gazette* and on the radio and in at least two newspapers in general circulation in Malawi the names of all candidates who have been validly nominated for election as member of Parliament in alphabetical order of surnames.

Procedure for uncontested election

42. If at the end of the period allowed for nomination there shall be only one candidate duly nominated in a constituency, the returning officer shall publicly declare that candidate to be elected and shall immediately thereafter inform the Commission of the name of the elected candidate and the constituency for which he has been elected. Such candidates shall thereupon be a member of the National Assembly.

Procedure when poll to be held

43.- (1) When two or more persons have been duly nominated as candidates for election in any constituency, the returning officer in such constituency shall, as soon as practicable after the close of the period for nomination, 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 the polling station or stations.

(2) The returning officer may, with the consent of the Commission, alter the provisions of the public notice given under subsection (1) for the purpose of fulfilling the requirements of this Act and any such alterations shall be published in the same manner as the notice.

Special provisions with respect to by-elections

44.- (1) A vacancy in the membership of the National Assembly which exists otherwise than by reason of a dissolution of Parliament shall be published by the Speaker by notice in the *Gazette* stating the cause of the vacancy.

(2) If-

(a) within fourteen days of the publication of a notice referred to in subsection (1), the person to whom the notice relates has not presented a petition to the High Court seeking an order declaring that he has not ceased to be a member of the National Assembly; or

(b) after presenting a petition referred to in paragraph (a), the petitioner by his own default does not prosecute his petition within fourteen days of presenting the petition;

(c) after hearing the petition, the High Court confirms the declaration of the Speaker,

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

(3) If, after hearing a petition referred to in subsection (2), the High Court makes an order declaring that the petitioner has not ceased to be a member of Parliament, the Registrar of the High Court shall forthwith give notice of that fact to the Speaker, who shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

(4) The Attorney General shall be respondent on the hearing of a petition referred to in subsection (2).

Deposit on nomination

10 of 2013

45.- (1) At the same time as the nomination paper for a candidate is lodged, there shall be deposited with the returning officer by or on behalf of the person nominated, such sum as may be determined by the Commission, which shall not be refundable.

(2) If a poll for the constituency concerned does not take place, the sum deposited under subsection (1) shall be refundable to the payee.

(3) The Commission shall, six months before the nomination day-

(a) determine the sum 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 sum determined under subsection (1).

Withdrawal of a candidate

46.- (1) Subject to this section, a duly nominated candidate for elections for a constituency may withdraw his nomination at any time before the polling day.

(2) A withdrawal of a candidate under subsection (1) shall be effected 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.

(3) Where a candidate has withdrawn his nomination under this section the sum deposited by or on his behalf under section 45 shall be forfeited and paid into the Consolidated Fund.

(4) In the event of a candidate withdrawing his 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; and

(b) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.

10 of 1998

(5) A withdrawal of a candidate under this section shall be voluntary and shall be under oath sworn by the candidate before a commissioner of oaths.

10 of 1998

(6) Any person who, in any way induces or influences a candidate to withdraw from an election shall be guilty of an offence.

Death of a candidate

47.- (1) If the returning officer of a constituency is satisfied that a duly nominated candidate for election in that constituency died before the close of the poll in that constituency, he shall stop all proceedings relating to the election in that constituency and forthwith notify the Commission of that fact.

(2) Where -

(a) the Commission is satisfied that a duly nominated candidate for election for a constituency died before the poll commenced or, if the poll has commenced, before the close thereof;

(b) the proceedings relating to an election for a constituency have been stopped under subsection (1),

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

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

Division 3 *Nominations for Election to the office of the President*

Notice of election to office of President

48- (1) For the purpose of election to the office of President, the Commission shall publish in the *Gazette* a notice declaring-

16 of 1994

(a) 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 sit in the open for the purpose of receiving nominations of candidates for election to the office of President; and

(b) a day or days, not less than twenty-one days after the nomination day or last nomination day, as the case may be, fixed under paragraph (a), on which a

poll shall be taken if a poll becomes necessary in accordance with this Act.

(2) The Commission may, by further notice published in the *Gazette*, alter any day, time or place fixed under subsection (1)

Nominations of candidates for election to office of President

16 of 1994

49.- (1) The nomination of a candidate for election to the office of President shall be made by at least ten registered voters in each district each of whom shall sign the nomination paper in the prescribed form which -

(a) the candidate or his election representative shall lodge with the Commission;

(b) shall be countersigned by the candidate, endorsing thereby his acceptance of the nomination;

(c) shall, 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, the name of the candidate and an abbreviation of the name of the candidate and the distinctive symbol and other particulars approved by the Commission which the candidate wishes to appear on the ballot paper in conjunction with him;

(d) in the case of an independent candidate, shall specify the name of the candidate or an abbreviation of the name of the candidate and the distinctive symbol and other particulars approved by the Commission which the candidate wishes to appear on the ballot paper in conjunction with him; and

(e) shall be accompanied with 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 the election to the office of President.

(f) specify the name of the Vice-President appointed by him as his running mate in the elections.

(2) Where a nomination paper specifies the matters referred to in paragraph (c) of subsection (1), the nomination paper 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.

(3) Subject to this section, the provision of sections 37 (2) and (3), 38 and 39 shall apply, *mutatis mutandis*, in relation to the nomination of candidates for election to the office of President, and references in that sections to the returning officer shall be read as references to the Commission.

Deposit on nomination

50.- (1) At the same time as nomination papers are lodged by or on behalf of a candidate for election as President, there shall be deposited with the Commission by or on behalf of the person nominated, such sum as may be fixed by the Commission.

(2) Save as provided in section 52 (3), a deposit under subsection (1) shall, *mutatis mutandis*, be treated in the same manner as a deposit under section 45.

Publication of names of Presidential candidates

10 of 2013

51.- 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 on the radio and in at least two newspapers in general circulation in Malawi the names of all candidates who have been validly nominated for election to the office of President in alphabetical order of surnames.

Withdrawal of a candidate

52.- (1) A nominated candidate for election to the office of President may, by notice in writing addressed to the Commission, withdraw his candidature at any time before the day on which the poll in an election to the office of President is to be taken.

(2) On receipt of a notice of withdrawal under subsection (1), the Commission shall cause the withdrawal to be published in the *Gazette* and on the radio and in a newspaper in general circulation in Malawi.

(3) Where a candidate for election as President has withdrawn his nomination under this section, the sum deposited by or on his behalf under section 50 shall be forfeited and paid into the Consolidated Fund.

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

When fresh nominations are to be held

54. Where-

(a) no candidate for the election to the office of President has been validly nominated at the expiry of the time fixed for lodging nomination papers with the Commission; or

(b) no candidate nominated for election to the office of President is qualified in accordance with the Constitution for election as President; or

(c) a candidate nominated for election of President dies on or before the day on which the poll in the election is to be taken; or

(d) a candidate nominated for election to the office of President who would otherwise have been entitled to be declared duly elected as President dies after the poll has begun in the election to the office of President, but before he has been declared duly elected as President, the Commission shall, by notice published in the *Gazette*, declare that all proceedings relating to the election to the office of President are void and that proceedings shall be immediately commenced afresh in accordance with this Act.

Procedure when poll to be held for election to office of President

55.- (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 and the times on which the poll shall be held as determined by the Commission under section 48 (1) (b); and

(c) the location of the polling stations.

(2) The Commission may, for the purpose of fulfilling the requirements of this Act, alter the provision of a public notice given under subsection (1) and any such alteration shall be published in the same manner as the notice.

PART V
CAMPAIGNING

Campaigning by political parties

56. - (1) All political parties shall have the right to campaign in an election.

(2) Campaigning by or in the name of any political party shall not be conducted in any public place unless the political party has notified the District Commissioner in writing, with a copy of such notification to the officer-in-charge of Police.

(3) The District Commissioner shall stamp every notification he has received under subsection (2) with his official date stamp showing the date the notification was received by him.

(4) Where two or more political parties have given notification under subsection (1) to hold a public meeting at the same venue, the political party whose notification was first received by the District Commissioner shall be the party entitled to hold the public meeting at such venue.

Period of campaigning

57. For the purposes of this Act the period of campaigning in public by every political party under this Part shall be a period of two months closing forty-eight hours before the opening of the poll on the first polling day:

Provided that in the case of the first general election such period shall be of any duration closing forty-eight hours before the opening of the poll on the first polling day.

Equal treatment of political parties

58. Every public officer and public entity or authority shall give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely.

Freedom of expression and information

59. Every political party and every representative, member or supporter thereof shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign under this Act and no person shall, during or after the period of campaigning, be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced, published or possessed while campaigning in the election.

Freedom of assembly

60. Subject only to section 56 (2), every political party and any representative, member or supporter thereof shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in any election.

Ethical norms during campaigning

61.- (1) Notwithstanding 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 may prescribe a code of conduct to be complied with by every political party in conducting its campaign in an election.

Prohibited places for campaigning

62. No person shall hold a campaign meeting under this Act in or within the premises of-

(a) military units or police stations;

(b) public institutions and workplaces during normal working hours;

(c) educational institutions during periods of classes.

New broadcasts and reports

10 of 2013

63.- (1) Every political party shall have the right to have the substance of its campaign propaganda reported on television and radio news broadcasts of the Malawi Broadcasting Corporation and in any newspapers in circulation in Malawi:

Provided that in the case of news broadcasts by the Malawi Broadcasting Corporation-

(a) the content of the news shall be professionally determined by the Malawi Broadcasting Corporation;

(b) the Malawi Broadcasting Corporation shall maintain neutrality in the manner of reporting the news of the campaign propaganda of political parties and generally in its commentaries;

(c) the Commission shall monitor such news broadcasts and shall ensure equal news coverage of the campaigning by all political parties;

(d) no political party or candidate shall be entitled to make commercial advertisement for its campaign.

10 of 2013

(2) The Commission may, by arrangements with the Malawi Broadcasting Corporation, allocate time on the television and radio during which political parties may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every political party.

(3) For the purposes of this section, "campaign propaganda" means any activity, statement or any other form of expression aiming directly or indirectly at promoting votes for any candidate or political party contesting in an election.

Publication of books, pamphlets etc.

64. During the campaign period any political party may publish campaign materials in the form of books, booklets, pamphlets, leaflets, magazines or newspapers and shall, in any such publication, specify particulars sufficient to identify the political party.

Campaign posters

65. The District Commissioner shall designate places or spaces in parts of his district on which may be posted or affixed campaign materials of political parties and every political party shall be entitled to equal access to such place or space.

Campaign financing

66. Every political party may, for the purpose of financing its campaign, appeal for and receive voluntary contributions from any individual or any non-governmental organization or other private organization in or outside Malawi.

Campaigning by independent candidate

10 of 2013

66 A. The provisions of this Part shall apply, *mutatis mutandis*, in relation to the campaigning by independent candidates for election to the office of the President and candidates for election as Member of Parliament.

PART VI
POLLING STATIONS

Polling Stations

10 of 1998

67. - (1) The Commission shall establish polling stations throughout the Republic and there shall be at least one polling station for every registration centre established under section 21.

(2) All polling stations shall be established and located in public buildings, including schools, community or social halls, administrative offices or the Government or local authorities, but not-

(a) at a military unit or police station;

(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) places of worship or dedicated to worship; and

(f) hospitals or other health centres.

(3) Notwithstanding subsection (2) (a), the Commission may establish polling stations at any military unit or police station for purposes of enabling members of the Defence Forces of Malawi, the Malawi Police Force 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, publish in the *Gazette* and in more than one issue of a newspaper in general circulation in

Malawi and by radio announcements and by any other appropriate means the names of all places throughout Malawi at which polling stations have been established.

Polling Stations officers

68. - (1) The Commission shall appoint polling station officers in its service whose duty shall be to administer the proceedings at polling stations, including more particularly the casting of votes, and to count the votes cast at polling stations.

(2) The Commission shall post at every polling station at least five polling station officers one of whom the Commission shall designate as the presiding officer for that polling station and at least one of whom shall be a person able to speak the language commonly spoken in the area of the polling station.

(3) Polling station officers may be appointed from amongst persons who served as registration officers and every person appointed as a polling station officer shall receive vocational training in his duties.

Working hours for polling station officers

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

Work items for polling station officers

10 of 1998

70. The Commission shall ensure, in due time, that polling station officers at every polling station are supplied with all necessary items, namely-

(a) an authenticated copy of the voters register of the voters registered at the centre served by the polling station;

(b) the ballot papers and accompanying envelopes for use by voters in casting their votes;

(c) the ballot boxes;

(d) the seals, sealing wax and envelopes for the votes;

(e) indelible ink;

(f) record sheets for the record required under section 93;

(g) a lamp or lamps to be lit and used for counting votes at the close of the poll;

(h) a log book in which formal complaints under section 89 shall be recorded.

Security of work items at polling stations

71. Presiding officers at polling stations and, in general, the Commission shall be responsible for creating and guaranteeing all necessary and indispensable conditions for the custody, conservation, security and inviolability of the items specified in section 70, including more particularly the ballot papers and ballot boxes.

Monitoring of voting by political parties

72. - (1) Every political party shall have the right to monitor the voting process at polling stations and shall do so through its designated representatives who shall be notified to the Commission in writing specifying their names and the polling stations to which they are to be assigned and in the absence of such notification by any political party it shall be presumed that the political party does not desire to monitor the voting process at that polling station.

(2) The Commission shall issue to every person designated as a representative of a political party under subsection (1) a document of identity in the prescribed form.

Rights and duties of representatives of political parties

73. Representatives of political parties shall have-

(a) the following rights-

(i) to be present at the polling stations and to occupy the nearest seats or positions 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 the votes, the ballot boxes and the polling booths;

(iii) to request and obtain from the polling station officers any information which they consider necessary relating to the voting process and the counting of the votes;

(iv) to be consulted about any question raised on the operation of the polling station whether during the casting or the counting of the votes;

(v) to consult the voters registers at any time;

(b) The following duties-

(i) to act conscientiously and objectively in the exercise of the rights under this section;

(ii) to co-operate with polling station officers in the 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 the votes;

(iv) to maintain the secrecy of the ballot.

PART VII
THE VOTE AND THE VOTING PROCESS

Characteristics of a vote

74.- (1) The right of a person to vote in the general elections shall be exercised individually by him and he shall be required to be physically present.

(2) Voting shall be by secret ballot.

(3) A voter shall be entitled to cast his vote only once and one person shall have one vote.

Place where to cast the vote

75.- (1) Subject to subsection (2), a person shall be allowed to exercise his right to vote at a polling station located at the registration centre where he is registered.

(2) If it is not possible for a person to vote at a polling station located at the registration centre where he is registered, the registration officer of that centre or other duly authorized officer may, on the request of such person, grant him written authorization in the prescribed form to vote at a polling station located in the place where he will be present on the polling day and in that case the polling station officers at such other polling station shall record in the manner prescribed by the Commission instructions in writing his name, the number of his voters registration certificate and the place of his registration:

Provided that the registration officer or other authorized officer may at his sole discretion refuse to grant the request

Ballot papers

10 of 1998

76. The Commission shall arrange for the printing of sufficient quantities of ballot papers-

(a) for candidates for election as member of Parliament; and

(b) for candidates for election as President, on which shall be printed clearly and legibly, in respect of each candidate, his name or abbreviation thereof and his election symbol or the election symbol of his political party, and such other particulars as the Commission may determine to identify him distinctly from other candidates.

Voting booths

10 of 1998

77. The Commission shall establish one voting booth or more at each polling station and a voting booth shall be constructed in such a way as to screen a voter from observation when he is selecting ballot papers according to his choice consistent with the doctrine of secret ballot.

Ballot boxes

78.- (1) The Commission shall procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.

(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 the polling station one ballot box in such a way that when voters cast their votes in the ballot box they shall do so in full view of the polling station officers and other officials present thereat.

Right of employees to be released for voting

79. Notwithstanding any provision to the contrary in any contract of employment, all persons in paid employment including those working by shift, shall have the right to be released for the necessary time to exercise their right to vote.

Hours of voting

80. On the polling day voting shall begin at 6 o'clock in the morning and close at 6 o'clock in the evening, but before voting begins the presiding officer, together with the other polling station officers and representatives of political parties, shall verify that there are no irregularities with the voting booth and the working documents of the polling station officers and, shall in particular, exhibit in front of all present the ballot box to verify that it is empty after which the ballot box shall be closed and sealed.

Order of voting

81. Upon verification in accordance with section 80 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 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, they shall form

a line; but subject thereto, the presiding officer shall exercise general powers for keeping order at the polling station and for regulating the number of persons to be admitted to vote at any time and may, if circumstances require, use his discretion to allow certain persons to vote inconsistently with the order of priority required by this section.

Continuity of voting process

82. Subject to section 83, voting at every polling station shall continue uninterrupted until closed.

Adjournment in certain

83.- (1) Voting at any polling station may be adjourned 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 occurs some commotion which causes voting to be interrupted for more than three hours; and

(c) in the area where the polling station is located there has occurred some public disaster or a serious disturbance of public order, not being the death of any person, which affects the voting.

(2) Where voting has been adjourned 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

(d) the votes cast on the original day shall be null and void and shall be classified as such in the records of that polling station prepared under section 93.

Prohibited presence, etc., at polling stations

84. - (1) No form of propaganda, campaign material or advertisement shall be exhibited inside a polling station or within a radius of one hundred metres outside a polling station.

(2) Unless his presence is otherwise permitted under this Act, no person shall be allowed while voting continues within the premises of a polling station or to remain within the premises of a polling station if-

(a) he is not a registered voter; and

(b) he has already voted at that polling station or at any other polling station.

(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 to the polling station officers by presenting his credentials from the organization he represents.

(4) No person shall be present at a polling station in the capacity of a member of the armed forces or the police or as a member of any paramilitary force or a uniformed organization, unless he 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 metres 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 the peace at the polling station.

Requirements for exercising the right to vote

85. For a person to be allowed to vote he must first present to the polling station officers his voters registration certificate and must not yet have exercised his right to vote.

Manner of casting the vote

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86. - (1) After a voter has cast his vote in accordance with section 70 of the Local Government Elections Act with respect to the election of a councillor, he shall immediately be led to the next desk of polling station officers who, on verifying that the voter has had his right index finger dipped in indelible ink, shall hand to him a ballot paper for candidates in the constituency for election as member of Parliament for use by the voter in accordance with subsection (2), and then direct the voter to the voting booth for the election of a member of Parliament.

(2) The voter shall then proceed to cast his vote in such manner as the Commission may determine.

(3) After a voter has cast his vote in accordance with subsection (2) with respect to the election of a member of Parliament, he shall immediately be led to the next desk of polling station officers who, on verifying that the voter has had his right index finger dipped in indelible ink, shall hand to him a ballot paper for candidates for election to the office of President for use by the voter in accordance with subsection (4), and then direct the voter to the voting booth for the poll for election to the office of President.

(4) The voter shall then proceed to cast his vote in a such manner as the Commission may determine.

Voting by blind and disabled persons

87. A voter who is blind or is affected by disease or other physical disability may vote accompanied by another registered voter of his own choice or, failing such voter, by a polling station officer who shall assist such person in casting his vote and shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person.

Null and void votes

10 of 1998

88. - (1) A vote cast is null and void if-

(a) the ballot paper has been torn into two or more parts; or

(b) has been classified as such pursuant to section 83 (2) (c).

(2) A null and void vote shall not be regarded as valid and shall not be counted in determining the results of the elections.

Doubts and complaints

89.- (1) In addition to representatives of political parties, any voter present at a polling station may raise doubts and present in writing complaints relating to the 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 him under subsection (1) and shall initial every such presentation and annex it as part of the official record of the polling station.

(3) Any presentation received by polling station officers 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 VIII

DETERMINATION OF RESULTS OF THE ELECTIONS

Unused ballot papers

90. At the close of the poll at any polling station, the presiding officer shall proceed by first collecting together and separately all unused ballot papers and placing them in a separate envelope provided to him for the purpose and then sealing the envelope and initialing or stamping it over the sealed area.

Classification of votes cast

91. For the purposes of determining the results of the elections at a polling station and, in particular, in counting the votes thereat, the votes cast at a polling station shall be separately classified into-

(a) null and void votes;

(b) votes for each of the candidates for election as members of Parliament;

(c) votes for each of the candidates for election to the office of the President.

Opening of ballot box and counting of votes

10 of 1998

92. After the close of the poll at any polling station, and only thereafter, the presiding officer shall, in the presence of other polling station officers and representatives of political parties if any be present, open the ballot box and order the counting of the votes to proceed separately according to a procedure entailing the polling station officers-

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(a) picking out of the ballot box one paper and displaying the ballot paper to all present and announcing aloud the classification of the vote as specified in section 91;

(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.

Record of the polling process

93. - (1) The presiding officer shall cause to be prepared by the polling station officers-

(a) a record of the entire polling process at his polling station containing-

(i) the full particulars of the polling station officers and representatives of political parties;

(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) the number of complaints and responses thereto and decisions taken thereon by the polling station officers;

(viii) any other occurrence which the polling station officers consider to be important to record; and

(b) a brief summary of the final result,

and such record and summary shall be legibly signed by the presiding officer and each of the other polling station officers and, if any be present, at least one representative of each political party.

(2) Representatives of political parties 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.

(3) The presiding officer shall post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

Delivery of ballot papers, etc., from polling stations

94. The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner of his district under conditions of absolute security against loss, tampering or interference-

(a) the record prepared under section 93;

(b) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;

(c) all unused ballot papers; and

(d) all voters registers and other work items provided to that polling station.

Compilation of the district result of the elections

10 of 1998

95.- (1) On receipt of records from polling stations, the Returning Officer or an officer of the Commission duly authorized in that behalf shall, at the office of the District Commissioner, compile the result of the elections in his district 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 each constituency in the district and also in respect of the entire district showing-

(a) the total number of persons who registered as voters;

(c) the total number of persons who voted;

(d) the total number of votes for or under each classification of votes in accordance with section 91;

(e) the discrepancies, if any, between the votes counted and the number of persons who voted; and

(f) the complaints, if any, received by him and his decisions thereon.

(2) Representatives of political parties duly designated for the purpose, shall be entitled to observe the entire procedure followed at the office of the District Commissioner in compiling the district result of the elections under subsection (1).

(3) The record prepared under subsection (1) shall be legibly signed by the returning officer or other officer supervising the compilation thereof and, if any be present, by at least one representative of a political party which shall in addition, be entitled to receive a copy of the record.

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(4) The returning officer or an officer of the Commission duly authorized in that behalf shall publicly announce the result of the election in each constituency and in the entire district in accordance with the record prepared under subsection (1).

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(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 concerned.

Determination of the national result of a general election

96. - (1) The Commission shall determine and publish the national result of a general election based on the records delivered to it from the districts and polling stations.

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(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.

10 of 1998

(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 Chairman of the Commission shall take

necessary steps to rectify the situation and may, in such case, suspend the determination for a period not exceeding seventy-two hours.

(4) Representatives of political parties designated in writing to the Commission shall be entitled to observe the determination of the national result of the election.

(5) Subject to this Act, in any election the candidate who has obtained a majority of the votes at the poll shall be declared by the Commission to have been duly elected.

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

97. At the beginning of determining 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 null and void, and may affirm or correct the determination thereof at the polling stations and at the offices of District Commissioners but without prejudice to the right of appeal conferred under section 114.

Records of the national result of general election

98. 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;

(b) the complaints and responses thereto and the decisions taken on them, and the Chairman of the Commission shall legibly seal the national result of the election by signing the summary and every political party shall be entitled to receive a signed copy of the summary.

Publication of the national result

99. The Commission shall publish in the *Gazette* and by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi the national result of an election within eight days from the last polling day and

not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify-

(a) the total number of voters registered for the election;

(b) the total number of voters who voted;

(c) the total number of null and void votes; and

(d) the total number of valid votes cast for each classification of votes as specified in section 91.

PART IX
ELECTION PETITION IN RESPECT OF ELECTION AS MEMBER OF THE NATIONAL ASSEMBLY OR TO OFFICE OF PRESIDENT

Election petition in respect of election as member of the National Assembly or to office of President

16 of 1994

10 of 2013

100.- (1) A complaint alleging an undue return or an undue election of a person as a member of the National Assembly or to the office of President by reason of irregularity or any other cause whatsoever shall be presented by way of petition directly 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 himself 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 respondent.

(3) If, on the hearing of a petition presented under subsection (1), the High Court makes an order declaring-

(a) that the member of the National Assembly or the President, as the case may be, was duly elected, such

election shall be and remain valid as if no petition had been presented against his election; or

(b) that the member of the National Assembly or the President, 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 which shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

(4) Pursuant to an order of the High Court under subsection 3 (b) declaring that the member of the National Assembly or the President, as the case may be, was not duly elected, a fresh election for the seat of the member of the National Assembly or to the office of the President, as the case may be, shall be held in accordance with this Act.

(5) A declaration by the High Court under subsection (3) (b) shall not invalidate anything done by the President before that declaration.

PART X
INTERNATIONAL OBSERVATION

Meaning of international observation

101. For the purposes of this Act, international observation means the verification of the various stages of the election by international organizations, non-governmental organizations, foreign governments and foreign personalities duly recognized for the purpose in accordance with this Part.

Scope of international observation

102.- (1) International observation shall consist of the following activities-

(a) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with this Act;

(b) to verify and monitor the impartiality and legality of the decisions taken by the Commission and its officers in settling disputes;

(c) to verify and monitor the registration of voters;

(d) to observe the course of the campaigning for elections;

(e) to verify and monitor the voting process;

(f) to verify and monitor the determination of the results of the elections at all stages of determination;

(g) to observe access to and the use of the media.

(2) Any irregularities noted by international observers shall be reported to the Commission or to the competent officers of the Commission and the Commission or such officers shall examine the activities reported as irregularities and shall, where the irregularities are confirmed, take corrective measures necessary to bring the elections into conformity with this Act.

Beginning and end of international observation

103. International observation shall begin with the appointment of the Commission and end with the determination of the national result of the election or the settlement thereafter of all election disputes.

Collaboration by competent authorities

104. It shall be the duty of the Commission, every officer thereof and every competent public officer or other competent authority in Malawi to co-operate with international observers in their role and to offer to them the guarantees and other facilities necessary to fulfill their role.

Invitation to international observers

105. The Commission may send invitations for international observation and may do so on its own initiative or on request by a political party or by any government, organization or person competent under this Act to undertake international observation.

Categories of observes

106.- (1) For purposes of recognition under this Act, international observers shall be categorized as follows-

(a) observers from the United Nations Organization and its agencies, the Organization of African Unity 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 foreign governments; and

(d) individual observers.

(2) A person shall not be recognized as an international observer unless-

(a) in the case of the first three categories specified in subsection (1), he has been designated by the relevant organization or foreign government in writing to the Commission disclosing his particulars and credentials;

(b) in the case of the category of individual observers, he is a person of recognized international experience and prestige.

Recognition and identification of international observers

107. Recognition of international 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 international observers and issue to every recognized observer the card corresponding to his category;

(c) devise a common and easily identifiable badge for all international observers and issue the badge to every recognized international observer.

Compulsory use to identify cards and the common badge

108. Every international observer recognized under this Act shall, while exercising his functions, use the identity card and the badge issued to him.

Rights of international observers

109. International observers shall, in Malawi, have the right-

(a) to obtain a multiple entry visa to enter Malawi for the duration of the period of international observation as specified in section 103;

(b) to have unimpeded access to all election events and to observe all aspects of the civic education programmes, the registration of voters, the nomination of candidates, the campaign, the voting and counting of votes at all stages;

(c) to enjoy freedom of circulation throughout Malawi;

(d) to seek and obtain information on the official organs involved in the conduct of an election and regarding the election itself;

(e) to communicate freely with any political party and with any organization or person;

(f) to have access to information transmitted by or to the Commission and its officers;

(g) to have access to complaints and responses about any occurrence or matter relating to the conduct of elections;

(h) to open offices within Malawi for the performance of their functions;

(i) to communicate any specific concerns they may have to members and officers of the Commission; and

(j) to communicate to the local and international media.

Obligation of international observers

110.- (1) International observers shall have the following obligations-

(a) to exercise their role with impartiality , independence and objectivity;

(c) to respect the Constitution and the laws of Malawi;

(d) not to interfere in, or to impede, the normal course of the election;

(e) to maintain the secrecy of the ballot;

(f) to provide to the Commission copies of written information and statements which they have produced; and

(g) to return the identity cards, the badge and any other identification material issued to them by the Commission after the end of their mission as observers.

(2) The Commission may revoke the accreditation of any international observer who persistently violates the obligations laid down in subsection (1) and thereupon his status as an international observer shall cease.

Position of diplomats

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

Separate and joint operation of international observers

112. International observers may operate separately or jointly with other international observers of the same or different categories.

PART XI
COMPLAINTS AND APPEALS

Commission to decide on complaints

113. 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 the effects thereof.

Appeals to the High Court

10 of 1998

114.- (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 affidavits of evidence, 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;

(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 shall under subsection (2) 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 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 to them were improperly granted ballot papers; or

(c) that persons entitled to them were improperly refused ballot papers:

Provided that the court shall not declare an election void, after proof of any ground in paragraphs (a), (b) or (c), if it is satisfied that the number of votes involved could not have affected the result of the election;

(d) non-compliance with this Act in the conduct of the election:

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;

(e) that the candidate was at the time of his election a person not qualified for the election or that he was not properly nominated, or that a duly qualified candidate had his nomination improperly rejected by the returning officer.

(4) The court shall have power to direct scrutiny and recounting 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 trial of an election petition the court shall determine whether the member whose nomination or election is complained of, or any other and what person was duly nominated or elected, or whether the election was void, and shall report such determination to the Commission. 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.

10 of 1998

(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 void the election.

10 of 1998

PART XII
OFFENCES AND PENALTY

Offences

115. A person who-

(a) in relation to registration of voters:

(i) obtains his registration by giving false information;

(ii) gives false information to obtain his registration;

(iii) obtains registration in more than one registration area;

(iv) registers another person knowing that that other person is not eligible for registration;

(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 knows to be incorrect;

(vii) falsifies a register;

(viii) with fraudulent intent, modifies or substitutes a voters registration certificate;

(ix) through violence, threat or fraudulent intent prevents the registration of another person;

(x) knowingly obstructs the detection of incorrect registration or the verification of voters rolls;

(b) in relation to campaigning for elections-

(i) holds a public meeting contrary to section 56 (2);

(ii) prevents the holding, or interrupts the proceedings of a public meeting authorized under section 56 (2);

(iii) campaigns or causes another person to campaign within forty-eight hours before opening of the poll on the first polling day contrary to section 57;

(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) is entrusted, by virtue of his 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 61 (1);

(viii) because 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 prevents or threatens to prevent that other 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 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 at a polling station;

(ii) knowing that he 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 to 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 metres of a polling station, reveals his 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 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 voted for or did not vote 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 paper or removes an uncounted ballot paper from a ballot box;

(xiv) being a polling station officer, purposely neglects his 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 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 police 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 duties;

(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 the 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; and

(g) without justification neglects to fulfil obligations imposed on him by or under this Act.

shall be guilty of an offence.

Maintenance of secrecy

116.- (1) Every election officer, candidate, election representative of a political party or other person in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting 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 he has received a ballot paper and before he has placed a ballot paper in a ballot box.

(2) No person, other than a person aiding a blind or an incapacitated voter 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 has voted.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.

Offences under this Act cognizable

Cap. 8:01

117. Every offence under this Act shall be a cognizable offence within the meaning of the Criminal Procedure and Evidence Code.

General Penalty

10 of 2013

118.- (1) A person guilty of an offence under this Act for which no other penalty has been specified shall be liable to a fine of K500,000 and to imprisonment for two 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 connexion 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, giving such directions as the court considers to be warranted in the circumstances.

PART XIII
GENERAL

Preservation of the election documents

119. At the end of its functions, the Commission shall deposit all documents forming the official record of an election (including voters registers, ballot papers, records from districts and polling stations and summaries thereof and the record and summary of the national result) with the Clerk of Parliament who shall retain and preserve such documents in safe and secure custody without destruction for a period of twelve months.

Failure to elect a member of the National Assembly

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

Regulations

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

PART XIV
REPEALS AND SAVINGS

Repeals
Cap. 2:01
Cap. 2:02
Cap. 2:03

122. The Presidential Elections Act, the Parliamentary Elections Act and the Registration of Voters Act are hereby repealed.

Savings

123. A person who at the commencement of this Act is a member of the National Assembly shall continue as such member until dissolution of Parliament next following the Referendum.

CHAPTER 22:02

LOCAL GOVERNMENT ELECTIONS ACT

ARRANGEMENT OF SECTIONS

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24 of 1996

7 of 1999

An Act to provide for the conduct of local government elections and to provide for matters incidental thereto or connected therewith

ENACTED by the Parliament of Malawi as follows-

PART I
PRELIMINARY

Short title

1. This Act may be cited as the Local Government Elections Act, 1996.

Interpretations

2. In this Act, unless the context otherwise requires-

"candidate" means a person who has been nominated under this Act as a candidate for election as a councillor;

Cap. 2:03

"Commission" means the Electoral Commission established under section 75 of the Constitution and appointed in accordance with section 4 of the Electoral Commission Act;

"by-election" means the election of a councillor to fill a seat on the council which has become vacant otherwise than by dissolution of the council;

"Chief Elections Officer" means the person appointed as such under section 4;

"councillor" means a person elected under this Act to the office of councillor of a council;

“election” means an election to the office of councillor of a council;

“election officer” means the Chief Elections Officer and any officer subordinate to him and any other officer in the service of the Commission, including an officer appointed or designated as a registration officer, polling station officer, presiding officer and returning officer;

“irregularity” in relation to the conduct of an election, means non-compliance with the requirements of this Act;

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

“polling day” means any day appointed by the Commission under section 28 for the holding of a poll;

“polling station” means a place established as such under section 51;

“polling station officer” means a person appointed as such under section 52;

“presiding officer” means a polling station officer designated as such under section 52;

“registration” means the registration of voters in an election;

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

"voter's register" means the register of voters established under section 13;

"voters' registration certificate" means a certificate issued to a voter under section 15;

"voting booth" means a compartment at a polling station for screening a voter from view when he is making his choice in the poll; and

"ward" means an area delimited as such under section 3.

PART II
FUNCTIONS AND POWERS OF THE COMMISSION
[3 -5 Repeated by Act No. 7 of 1999]

PART III
REGISTRATION OF VOTERS

Eligibility

6. Any person residing in Malawi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election.

Right and duty to register

7. It shall be the right and the civic duty of every eligible person residing in Malawi to present himself for registration as a voter and further he shall have the right to verify with the Commission or its officers that he has been registered and to request that any error or omission with respect to his registration be corrected.

Duty to promote registration

8. The Commission shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness amongst persons residing in Malawi of the need to register as a

voter for the purpose of an election and of the need for their full participation in the election.

Single registration place of registration

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

10. A person shall be registered as a voter in the area where he ordinarily resides or was born or is employed or carries on business.

Temporary registration officers

11.- (1) The Commission may employ temporary staff, on such terms and conditions as it shall determine, as registration officers who shall register voters throughout Malawi.

(2) No person shall be employed as a registration officer with respect to any ward, unless-

(a) he is an eligible voter and has attained the age of eighteen years;

(b) he has attained the minimum educational qualification of Junior Certificate of Education or its equivalent; and

(c) he has knowledge of the language commonly spoken in the ward.

(3) Every registration officer shall, before commencing his duties, receive vocational training in the identification and registration of voters and generally in the requirements of this Act with respect to the registration of voters.

(4) In the performance of their duties, registration officers shall be under the supervision of the Chief Elections Officer and such of the other election officers as he or the Commission shall designate for the purpose.

Registration centres

12.- (1) The Commission shall establish centres throughout every ward in Malawi as places where voters are to be registered and for this purpose the Commission shall endeavour 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 campaign material shall be exhibited at a registration centre or within a radius of one hundred metres of a registration centre.

Voters registers

13. Voters registers shall be in the prescribed form and the Commission shall procure sufficient copies thereof for the registration of voters throughout Malawi and for distribution to registration officers at every registration centre and for that purpose may adopt existing voters registers which shall, as necessary, be updated by registration officers with new registrations.

Evidence of a person's eligibility to vote

14. An eligible person wishing to be registered as voter in an election shall in person state that he is not registered at any other registration centre and shall present to a registration officer sufficient and cogent proof of his eligibility and may do so by producing

(a) a passport, driver's licence, even if expired, marriage certificate, an employment identity card or employment

discharge certificate or a birth certificate or a similarly authentic document of identity;

(b) written, verbal or visual testimony of-

(i) the chief, a village headman or a registered voter of the area; or

(ii) the registration officer.

Registration and issue of voters' registration certificate

15.- (1) Upon a registration officer being satisfied with proof of eligibility of a person to vote, he shall-

(a) issue to that person a voters' registration certificate in the prescribed form;

(b) register that person in the voters register by entering the particulars of that person as prescribed therein.

(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 he shall issue to the voter a duplicate copy of that voter's original voters registration certificate with the word "DUPLICATE" clearly marked or printed thereon.

Updating of voters register

16.- (1) In updating a voters register the registration officer shall do so by-

(a) adding the names and other prescribed particulars of the voters resulting from new registrations;

(b) drawing a line, without affecting legibility, over the particulars of the persons who are known to be deceased or who have lost eligibility to vote and indicating in the margin the reasons therefor.

(2) The registration officer making new entries in a voters register or deleting entries therefrom shall initial every such new entry or deletion.

(3) Upon the registration officer being satisfied with proof of loss of eligibility of a registered voter, he shall immediately update the voters register in accordance with the procedure under this section.

Initialing of pages in voters rolls

17. In the case of registration in a new voters register, the registration officer shall initial both sides of every page at a point where registration on the page ends.

Monitoring of registration by political parties

18.- (1) Every political party sponsoring a candidate in an election shall have the right to monitor the registration of voters and shall do so through its designated representatives assigned to a specified registration centre and whose names shall be notified in writing to the Commission, and in the absence of such notification by any political party it shall be presumed that such party does not desire to monitor the registration of voters at such registration centre.

(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) There may be assigned to one registration centre more than one representative of a political party.

Rights and duties of representatives of political parties

19.- (1) Representatives of political parties shall have the following rights-

(a) to be treated with due respect and consideration by all persons administering the registration of voters and by the representatives of other political parties;

(b) to request and obtain information on activities relating to the registration of voters; and

(c) to submit to the Commission in writing complaints and appeals about any irregularities in the registration of voters.

(2) It shall be incumbent upon the representatives of political parties in exercising their rights under subsection (1)-

(a) to monitor the registration activities conscientiously and objectively;

(b) to co-operate with registration officers;

(c) to refrain from submitting complaints or appeals in bad faith or with the purpose of paralysing the registration process; and

(d) to refrain from divulging any information about a voter or prospective voter obtained as a consequence of acting as a representative and which is not relevant to the registration process.

(3) In addition to political parties and their representatives any person eligible to be registered as a voter and any registered voter may submit to the Commission in writing complaints and appeals about any irregularity in the registration of voters.

(4) The Commission shall endeavour to determine every complaint or appeal relating to registration of voters before the polling day and to remedy any confirmed irregularity.

Period for registration of voters

20. The period for registration of voters shall be determined by the Commission and notified in the *Gazette*, being a period of not less than fourteen days expiring not less than twenty-one days before the first polling day.

Closing of registration

21. At the close of registration, every registration officer shall sign off the voters register assigned to him and shall forward it for custody to the Chief Elections Officer or to such other officer as is designated by the Commission for the purpose and shall submit to such officer a summary of the total number of voters registered in the area assigned to him.

Voters registration open to inspection

22. A voters register shall be open to inspection, for purposes of verifying the entries therein, by voters, representatives of political parties and observers, and for this purpose the Commission shall make copies of voters registers and post them for inspection at appropriate public places made known to the public.

PART IV
HOLDING OF ELECTIONS AND BY-ELECTIONS
Division 1 - *General*

Election and by-election

23.- (1) An election shall be held every five years.

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(2) When a councillor dies or resigns, a new ward is created, or the Commission gives notice that a seat of a councillor has become vacant, a by-election shall be held.

(3) A candidate may stand for election as 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.

Delay in publication of notice pending appeal

24. When a councillor has been sentenced by a court to death or imprisonment for a term exceeding six months without the option of a fine, is adjudged or declared by court to be of unsound mind or bankrupt, or has been convicted or any offence prescribed under this Act, it shall not be necessary for the Commission to give notice that such member's seat has become vacant until the time for appeal against such decision has expired or, if there is an appeal, until the determination of that appeal.

Appointment of returning officers

25.- (1) The Commission shall appoint a returning officer with respect to every ward who shall receive the nominations of candidates for election in that ward as councillor.

(2) For the purposes of subsection (1), the Commission may designate the chief executive officer of the Council as the returning officer in respect of every ward in his Council.

Election representative

26. Every candidate may appoint one person to be his election representative and notify in writing the returning officer of the ward in which he is, or intends to be a candidate, of the name of the person so appointed.

Division 2 – *Nomination of Councillors*

Qualifications of councillors

27.- (1) A person shall not be qualified to be nominated or elected as a councillor unless that person-

(a) has, at the time of nomination, attained the age of twenty-one years;

(b) is able to speak and to read the English language well enough to take an active part in the proceedings of the Council; and

(c) is registered as a voter.

(2) Notwithstanding subsection (1), no person shall be qualified to be nominated or elected as a councillor who-

(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;

(e) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Malawi;

(f) holds or acts in any public office of appointment;

(g) belongs to and is serving in the Defence Forces of Malawi, the Malawi Police Force or the Malawi Prison Service; and

(h) has, within the last seven years, been convicted by a competent court of any law relating to elections.

Procedure for commencing conduct of elections

28.- (1) Whenever an election or a by-election is to be held, the Commission shall issue an order notice of which shall be published in the *Gazette*-

(a) declaring-

(i) that an election be held throughout Malawi;

(ii) in the case of a by-election or by-elections, the ward or wards in which an election is to be held;

(iii) appointing the place, date and time for the receipt by the returning officer of the nominations of candidates, in respect of each such ward;

(iv) appointing the day or days on which a poll shall be taken if a poll becomes necessary in accordance with this Act.

(2) The date appointed under subsection (1)(b) shall be not less than fourteen days after the publication of the order.

(3) The period appointed under subsection (1)(c) during which a poll shall be taken shall commence not less than fourteen days after the nomination of candidates.

(4) Upon receipt of a copy of the order required by this section, the returning officer for each ward named in the order shall proceed to hold an election in the manner prescribed by or under this Act.

Nomination of candidates

29.- (1) On the day or days and at the time or times and place fixed for the nomination of candidates the returning officer shall attend in the open court at the place notified to receive the nomination of candidates and shall receive such nomination papers as may be tendered to him and which appear to him to comply with this Act.

(2) Subject to subsection (7), the nomination of every candidate shall-

(a) be made by means of a nomination paper in the prescribed form;

(b) be made 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 endorsed with the candidate's consent to 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 together with his photograph; 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 together with his photograph.

(3) Every nominated candidate shall produce to the returning officer evidence, satisfactory to the returning officer, identifying him as the person nominated.

(4) Where a nomination paper specifies the matters referred to in paragraph (d) of subsection (1), the nomination paper shall be countersigned by a person who is an office-bearer of the political party concerned and has authority to certify that the candidate is sponsored by that political party.

(5) The fact that subsequent to nomination the name of any person who nominated a candidate under subsection (2)(b) is struck off the voters register shall not invalidate the nomination of the candidate.

(6) No candidate may be nominated for election in more than one ward, or in the case of a by-election, while he is a councillor.

(7) A voter shall not be entitled to subscribe to more than one nomination paper.

Nomination paper and supporting documents

30- (1) Every candidate or his election representative shall at the time of his nomination deliver to the returning officer-

(a) a nomination paper completed and executed in the prescribed form;

(b) evidence, or a 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 years; and

(ii) is able to speak and to read the English language well enough to take an active part in the proceedings of the council;

(c) evidence that the is registered as a voter.

(2) The returning officer shall, if the candidate or his election representative so requests, examine the nomination paper and supporting documents of the candidate before they are tendered and advise the candidate or his election representative whether in his opinion they 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 his election representative of any defect in the candidate's nomination paper or supporting documents and the candidate or his election representative may, before the close of such period, rectify the defect.

Invalid nominations

31. Where a nomination paper is delivered in conformity with this Part, and it is not withdrawn, the candidate shall be deemed to stand nominated unless the returning officer is satisfied of the candidate's death or decides that the nomination paper is invalid on one of the following grounds, but on no other grounds, namely-

(a) that the description of the candidate is insufficient to identify him;

(b) that the nomination paper does not comply with this Act;

(c) that the nomination paper was not tendered within the time prescribed;

(d) that any supporting document required to accompany the nomination paper has not been lodged with the returning officer; or

(e) that the evidence delivered to the returning officer under section 29(3) is insufficient.

Rejected nominations

32.- (1) If, after the close of the period allowed for nominations but before the polling day, the returning officer is of the opinion that-

(a) a candidate whose nomination paper has lodged with him has not been duly nominated in

accordance with this Act or is not qualified for election or has obtained nomination by fraud or false pretences;

(b) any symbol or abbreviation specified in respect of a candidate pursuant to paragraph (d) or (e) of section 29 (2) is indecent or obscene or is too complex or elaborate to be reproduced on a ballot paper or so closely resembles the symbol of any candidate contesting the election in the ward concerned or the recognized symbol or abbreviation of another candidate or of any political party, other than the political party, if any, for which the candidate concerned is standing or which is sponsoring him as to be likely to cause confusion; or

(c) where the nomination paper states that a candidate is to be sponsored by a political party, there is reason to believe that fact is not true; or

(d) the deposit referred to in section 37 was not lodged with a candidate's nomination paper; or

(d) a candidate is not qualified for election in that election; or

(e) a candidate is not qualified for election in that election; or

(f) a candidate has been duly nominated for election for another ward, the returning officer shall forthwith

notify such candidate or his election representative giving the reason for such opinion, and, if so requested by the candidate or his election representative, the returning officer shall draw up and sign a statement of the facts and his opinion based thereon and transmit it, together with the nomination paper and any certificate or affidavit which has been lodged with such nomination papers, to the Registrar of the High Court for hearing and decision by the High Court at the earliest opportunity; and a copy of the statement shall, at the same time, be delivered to the candidate or his election representative and to the Commission.

(2) If no request is made under subsection (1) the candidate shall be deemed not to have been duly nominated.

(3) The High Court may call for further information from the person making the request or from the returning officer.

(4) The High Court shall after determination of the matter direct the returning officer to accept or to reject the nomination and the returning officer shall comply with such direction.

(5) Where any nomination has been referred to the High Court under the provisions of this section, the proceedings under sections 33, 34 and 35 shall be suspended pending determination of the matter.

(6) 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.

No nominations of candidate

33. If at the end of the period allowed for nomination no candidate has been duly nominated for 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.

Publication of names of candidates for election as councillor

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33A. After receiving nominations of candidates for election as councillor under this Part, the Commission shall within twenty-one days after receiving the nominations, cause to be published in the *Gazette* and on the radio and in at least two newspapers in general circulation in Malawi the names of all candidates who have been validly nominated for election as a councillor in alphabetical order of surnames.

Procedure for uncontested election

34. If at the end of the period allowed for nomination there shall be only one candidate duly nominated in a ward, the returning officer shall publicly declare that candidate to be elected and shall immediately thereafter inform the Commission of the name of the elected candidate and the ward for which he has been elected, and each candidate shall thereupon be a member of the council.

Procedure when poll to be held

35.- (1) When two or more persons have been duly nominated as candidates for election in any ward, the returning officer in such ward shall, as soon as practicable after the close of the period for nomination, declare and give 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 times, as declared by the Commission under section 28, on which the poll shall be held; and

(d) the location of the polling station or 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.

Special provisions with respect to by-elections

36.- (1) A vacancy in the membership of a council which exists otherwise than by reason of a dissolution of the Council shall be published by the Commission by notice in the *Gazette* stating the cause of the vacancy.

(2) If -

(a) within fourteen days of the publication of a notice referred to in subsection (1), the person to whom the notice relates has not presented a petition to the High Court seeking an order declaring that he has not ceased to be a member of the council; or

(b) after presenting a petition referred to in paragraph (a), the petitioner by his own default does not prosecute his petition within fourteen days of presenting the petition; and

(c) after hearing the petition, the High Court confirms the declaration of the Commission,

(d) the Registrar of the High Court shall forthwith give notice of that fact to the Commission.

(3) If, after hearing a petition referred to in subsection (2), the High Court makes an order declaring that the petitioner has not ceased to be a member of the council, the Registrar of the High Court shall forthwith give notice of that fact to the Commission, who shall publish a notice in the *Gazette* stating the effect of the order of the High Court.

(4) The Commission shall be respondent on the hearing of a petition referred to in subsection (2).

Deposit on nomination

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37.- (1) At the same time as the nomination paper for a candidate is lodged, there shall be deposited with the returning officer by or on behalf of the person nominated, such sum as may be determined by the Commission, which shall not be refundable.

(2) If a poll for the ward concerned does not take place. The sum deposited under subsection (1) shall be refundable to the payee.

(3) The Commission shall, six months before the nomination day-

(a) determine the sum 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 sum determined under subsection (1).

Withdrawal of a candidate

38.- (1) Subject to this section, a duly nominated candidate for election for a ward may withdraw his nomination at any time before the polling day.

(2) A withdrawal of a candidate under subsection (1) shall be effected 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.

(3) Where a candidate has withdrawn his nomination under this section the sum deposited by or on his behalf under section 37 shall be forfeited and paid into the Consolidated Fund.

(4) In the event of a candidate withdrawing his 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 ward; and

(b) the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.

39.- (1) If the returning officer of a ward is satisfied that a duly nominated candidate for election in that ward died before the close of the poll in that ward, he shall stop all proceedings relating to the election in that ward and forthwith notify the Commission of that fact.

(2) Where-

(a) the Commission is satisfied that a duly nominated candidate for election for a ward died before the poll commenced or, if the poll has commenced, before the close thereof;

(b) the proceedings relating to an election for a ward have been stopped under subsection (1), the Commission shall, so far as concerns that ward, declare that all proceedings relating to the election in that 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:

Provided that no fresh nomination shall be necessary in the case of a candidate who was duly nominated at the time when the proceedings were declared void if such candidate or his election representative notified the returning officer of the ward in writing of his intention to remain a candidate.

PART V
CAMPAIGNING

Campaigning by candidates

40. All candidates shall have the right to campaign in an election.

Period of campaigning

41. For the purpose of this Act, the period of campaigning by every candidate under this Part shall be a period of two months closing forty-eight hours before the opening of the poll on the first polling day:

Provided that in the case of the first election such period shall be of any duration closing forty-eight hours before the opening of the poll on the first polling day.

Equal treatment of candidates

42. Every public officer and public entity or authority shall give and be seen to give equal treatment to all candidates to enable each candidate to conduct his campaign freely.

Freedom of expression and information

43. Every candidate and every representative or supporter the candidate shall enjoy complete and unhindered freedom of expression and information in the exercise of the right to campaign under this Act and no person shall, during or after the period of campaigning, be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced, published or possessed while campaigning in the election:

Provided that 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.

Freedom of assembly

44. Every candidate and any representative or supporter of the candidate shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in any election.

Code of conduct

45. The Commission may prescribe a code of conduct to be complied with by every candidate in conducting his campaign in an election.

Prohibited places for campaigning

46. No person shall hold a campaign meeting under this Act in or within the premises of-

(a) military units or police stations;

(b) public institutions and workplaces during normal working hours;

(c) educational institutions during periods of classes.

News broadcast and reports

47.- (1) Every candidate shall have the right to have the substance of his campaign propaganda reported on television news, radio news broadcasts of the Malawi Broadcasting Corporation and in any newspaper in circulation in Malawi:

Provided that in the case of television news and news broadcasts by the Malawi Broadcasting Corporation-

(a) the content of the news shall be professionally determined by the television station and that Malawi Broadcasting Corporation;

(b) the television station and the Malawi Broadcasting Corporation shall maintain neutrality in the manner of reporting the news of the campaign propaganda of candidates and generally in their commentaries;

(c) the Commission shall monitor such news broadcasts and shall ensure equal news coverage of the campaigning by all candidates;

(d) a candidate shall be entitled to make commercial advertisement for his campaign.

(2) The Commission may, by arrangement with the Malawi Broadcasting Corporation, allocate time on the radio during which candidates may be allowed to speak in campaigning for an election and the Commission shall allocate equal time to every candidate.

(3) For the purposes of this section, "campaign propaganda" means any activity, statement or any other form of expression aiming directly or indirectly at promoting votes for any candidate contesting in an election.

Publication of books, pamphlets, etc.

48. During the campaign period any candidate may publish campaign materials in the form of books, booklets, pamphlets, leaflets, magazines or newspapers and shall, in any such publication, specify particulars sufficient to identify the candidate.

Campaign posters

49. The District Commissioner shall designate places or spaces in parts of his district on which may be posted or affixed campaign materials of candidates and every candidate shall be entitled to equal access to such place or space.

Campaign financing

50. Every candidate may, for the purpose of financing his campaign, appeal for and receive voluntary contributions from any individual or any

non-governmental organization or other private organization in or outside Malawi.

PART VI
POLLING STATIONS

Polling stations

51.- (1) The Commission shall establish polling stations throughout the Republic and there shall be at least one polling station for every registered centre established under section 12.

(2) All polling stations shall be established and located in public buildings, including schools, community or social halls, administrative offices of the Government or local authorities but not-

(a) at a military unit of police station;
(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) places of worship or dedicated to worship; and
(f) hospitals or other health centres.

(3) The Commission shall, before the polling day, publish in the *Gazette* and in more than one issue of a newspaper in general circulation in Malawi and by radio announcements and by any other appropriate means the names of all places throughout Malawi at which polling stations have been established.

Polling station officers

52.- (1) The Commission shall appoint polling station officers in its service whose duty shall be to administer the proceedings at polling stations,

including more particularly the casting of votes, and to count the votes cast at polling stations.

(2) The Commission shall post at every polling station at least five polling station officers one of whom the Commission shall designate as the presiding officer for that polling station and at least one of whom shall be a person able to speak the language commonly spoken in the area of the polling station.

(3) Polling station officers may be appointed from amongst persons who served as registration officers and every person appointed as a polling station officer shall receive vocational training in his duties.

Working hours for polling station officers

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

Work items for polling station officers

54. The Commission shall ensure, in due time, that polling station officers at every polling station are supplied with all necessary items, namely-

(a) an authenticated copy of the voters register of the voters registered at the centre served by the polling station;

(b) the ballot papers for use by voters in casting their votes;

(c) the ballot boxes;

(d) the seals, sealing wax and envelopes for the votes;

(e) indelible ink;

(f) record sheets for the record required under section 77;

(g) a special container to be positioned in the polling booth into which a voter shall deposit the ballot paper;

(h) a lamp or lamps to be lit and used for counting votes at the close of the poll; and

(i) a log-book in which formal complaints under section 73 shall be recorded.

Security of work items at polling station

55. Presiding officers at polling stations and, in general, the Commission shall be responsible for creating and guaranteeing all necessary and indispensable conditions for the custody, conservation, security and inviolability of the items specified in section 54, including more particularly the ballot papers and ballot boxes.

Monitoring of voting by candidates

56.- (1) Every candidate shall have the right to monitor the voting process at polling stations and shall do so through his designated representatives who shall be notified to the Commission in writing specifying their names and the polling station to which they are to be assigned and in the absence of such notification by any candidate it shall be presumed that the candidate does not desire to monitor the voting process at that polling station.

(2) The Commission shall issue to every person designated as a representative of a candidate under subsection (1) a document of identity in the prescribed form.

Rights and duties of representatives of candidates

57.- (1) Representatives of candidates shall have the right-

(a) to be present at the polling stations and to occupy the nearest seats or positions to the polling station officers so as to be able to monitor all the operations relating to the casting and counting of votes;

(b) to verify and inspect, before the beginning of the casting of the votes, the ballot boxes and the polling booths;

(c) to request and obtain from the polling station officers any information which they consider necessary relating to the voting process and the counting of the votes;

(d) to be consulted about any question raised on the operation of the polling station whether during the casting or the counting of the votes;

(e) to consult the voters registers at any time.

(2) Representatives of candidates shall have the following duties-

(a) to act conscientiously and objectively in the exercise of their rights under this section;

(b) to co-operate with polling station officers in the operations relating to the casting and counting of votes;

(c) 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 the votes;

(d) to maintain the secrecy of the ballot.

PART VII
THE VOTE AND THE VOTING PROCESS

Characteristics of the vote

58.- (1) The right of a person to vote in the election shall be exercised individually by him and he shall be required to be physically present.

(2) Voting shall be by secret ballot.

(3) A voter shall be entitled to cast his vote only once and one person shall have one vote.

Place where to cast the vote

59.- (1) Subject to subsection (2), a person shall be allowed to exercise his right to vote at a polling station located at the registration centre where he is registered.

(2) If it is not possible for a person to vote at a polling station located at the registration centre where he is registered, the registration officer of that centre or other duly authorized officer may, on the request of such person, grant him written authorization in the prescribed form to vote at a polling station located in the place where he will be present on the polling day and in that case the polling station officers at such other polling station shall record in the manner prescribed by the Commission in writing

his name, the number of his voters registration certificate and the place of his registration.

Ballot papers

60. The Commission shall arrange for the printing of sufficient quantities of ballot papers for candidates for election as a councillor on which shall be printed clearly and legibly, in respect of each candidate, his name or an abbreviation thereof and his election symbol, and such other particulars as the Commission may determine to identify him distinctly from other candidates.

Voting booths

61. The Commission shall establish one voting booth or more at each polling station and a voting booth shall be constructed in such a way as to screen a voter from observation when he is casting his vote according to his choice consistent with the doctrine of secret ballot.

Ballot boxes

62.- (1) The Commission shall procure ballot boxes of suitable material, specification and design for use in the casting of votes by voters.

(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 voters cast their votes in the ballot box they shall do so in full view of the polling station officers and other officials present thereat.

Right of employees to be released for

63. Notwithstanding any provision to the contrary in any contract of employment, all persons in paid employment, including those working by

shift, shall have the right to be released for the necessary time to exercise their right to vote.

Hours of voting

64. On the polling day voting shall begin at 6 o'clock in the morning and close at 6 o'clock in the evening, but before voting begins the presiding officer, together with the other polling station officers and representatives of candidates, shall verify that there are no irregularities with the voting booth and the working documents of the polling station officers, and shall, in particular, exhibit in front of all present the ballot box to verify that it is empty after which the ballot box shall be closed and sealed.

Order of voting

65. Upon verification in accordance with section 64 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 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, they shall form a line; but subject thereto, the presiding officer shall exercise general powers for keeping order at the polling station and for regulating the number of person to be admitted to vote at any time and may, if circumstances so require, use his discretion to allow certain persons to vote inconsistently with the order of priority required by this section.

Continuity of voting process

66. Subject to section 67, voting at every polling station shall continue uninterrupted until closed.

Adjournment in certain cases

67.- (1) Voting at any polling station may be adjourned 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 occurs some commotion which causes voting to be interrupted for more than three hours; and

(c) in the area where the polling station is located there has occurred some public disaster or a serious disturbance of public order, not being the death of any person, which affects the voting.

(2) Where voting has been adjourned 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 null and void and shall be classified as such in the records of that polling station prepared under section 77.

Prohibited presence, etc., at polling stations

68.- (1) No form of propaganda, campaign material or advertisement shall be exhibited inside a polling station or within a radius of one hundred metres outside a polling station.

(2) Unless his presence is otherwise permitted under this Act, no person shall be allowed while voting continues within the premises of a polling station or to remain within the premises of a polling station if:

(a) he is not a registered voter;

(b) he has already voted at that polling station or at any other polling station.

(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 to the polling station officers by presenting his credentials from the organization he represents.

(4) No person shall be present at a polling station in the capacity of a member of the armed forces or the police or as a member of any paramilitary force or a uniformed organization, unless he 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 metres 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 the peace at the polling station.

Requirements for exercising the right to vote

69. For a person to be allowed to vote, he must first present to the polling station officers his voters registration certificate and must have not yet exercised his right to vote.

Manner of casting the vote

70- (1) To be able to cast a vote at any polling station, a voter shall present himself to the polling station officers at the first desk as he approaches the polling station and hand to them his voters registration certificate whereupon the polling station officers shall proceed to verify his identity by examining the voters register.

(2) If the polling station officers are satisfied with the identity of a voter in accordance with subsection (1), they shall-

(a) mark his voters registration certificate and record his name and registration number and hand back the certificate to him;

(b) dip the right index finger of the voter in the indelible ink provided for the purpose to the polling station officers after which the presiding officer or other polling station officer authorized in the at behalf shall hand to the voter a ballot paper for use by the voter in accordance with subsection (3), and direct the voter to the voting booth for the poll for election of a councillor.

(3) The voter shall then proceed to cast his vote in such a manner as the Commission may determine.

71. A voter who is blind or is affected by disease or other physical disability may vote accompanied by another registered voter of his own choice, or failing such voter, by a polling station officer who shall assist such person in casting his vote and shall act faithfully to the wish expressed by such person and with absolute secrecy regarding the vote cast by such person.

Null and void

72.- (1) A vote cast is null and void if-

(a) the ballot paper has been torn into two or more parts; or

(b) it has been classified as such pursuant to section 67(2)(c).

(2) A null and void vote shall not be regarded as valid and shall not be counted in determining the results of the elections.

Doubts and complaints

73.- (1) In addition to representatives of candidates any voter present at a polling station may raise doubts and present in writing complaints relating to the 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 him under subsection (1) and shall initial every such presentation and annex it as part of the official record of the polling station.

(3) Any presentation received by polling station officers under this section shall be deliberated upon among, and be resolved by the polling 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 VIII

DETERMINATION OF RESULTS OF THE ELECTIONS

Unused ballot papers

74. At the close of the poll at any polling station, the presiding officer shall proceed by first collecting together and separately all unused ballot papers and placing them in a separate envelope provided to him for the purpose and then sealing the envelope and initialing or stamping it over the sealed area.

Classification of votes cast

75. For the purposes of determining the results of the elections at a polling station and, in particular, in counting the votes thereat, the votes cast at a polling station shall be separately classified into-

(a) null and void votes;

(b) votes for each of the candidates for election as councillors.

Opening of ballot box and counting of votes

76. After the close of the poll at any polling station, and only thereafter, the presiding officer shall, in the presence of other polling station officers and representatives of candidates if any be present, open the ballot box and order the counting of the votes to proceed separately according to a 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 75;

(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.

Record of the polling process

77.- (1) The presiding officer shall cause to be prepared by the polling station officers-

(a) a record of the entire polling process at his polling station containing-

(i) the full particulars of the polling station officers and representatives of 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) the number of complaints and responses thereto and decisions taken thereon by the polling station officers;

(viii) any other occurrence which the polling station officers consider to be important to record; and

(b) a brief summary of the final result,

and such record and summary shall be legibly signed by the presiding officer and each of the other polling station officers and, if any be present, at least one representative of each candidate.

(2) Representatives of candidates 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.

(3) The presiding officer shall post at the polling station a copy of the duly signed summary of the final result of the poll at that polling station.

Delivery of ballot papers etc., from polling stations

78. The presiding officer of a polling station shall, with all dispatch, deliver to the office of the District Commissioner of his district under conditions of absolute security against loss, tampering or interference-

(a) the record prepared under section 77;

(b) all the ballot papers collected in separate lots corresponding to the classification under which they were counted;

(c) all unused ballot papers; and

(d) all voters registers and other work items provided to that polling station.

Compilation of the district result of the election

79.- (1) On receipt of records from polling stations, the District Commissioner or other officer of the Commission duly authorized in that behalf shall, at the office of the District Commissioner, compile the result of the elections in his district 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 each ward in the area of the council and also in respect of the area of the council 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 75;

(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 candidates duly designated for the purpose shall be entitled to observe the entire procedure followed at the office of the

District Commissioner in compiling the result of the election under subsection (1).

(3) The record prepared under subsection (1) shall be legibly signed by the District Commissioner or other officer supervising the compilation thereof and, if any be present, by at least one representative of a candidate who shall, in addition, be entitled to receive a copy of the record.

(4) The District Commissioner or an officer of the Commission duly authorized in that behalf shall publicly announce the result of the election in each ward and in the entire area of the council in accordance with the record prepared under subsection (1);

(5) The District Commissioner 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 concerned.

Determination of the national result of the election

80.- (1) The Commission shall determine and publish the national result of the election based on the records delivered to it from the district and polling stations.

(2) The determination of the national result of the 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 of the determination of the national result of the election is missing, the Chairman of the Commission shall take necessary steps to rectify the situation and may, in such case, suspend the determination for a period not exceeding twenty-four hours.

(4) Representatives of candidates designated in writing to the Commission shall be entitled to observe the determination of the national result of the election.

(5) Subject to this Act, in any election the candidate who has obtained a majority of the votes at the poll shall be declared by the Commission to have been duly elected.

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

81. At the beginning of determining the national result of an 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 null and void and may affirm or correct the determination thereof at the polling stations and at the offices of District Commissioners but without prejudice to the right of appeal conferred under section 97.

Records of the national result of the election

82. The Commission shall summarize its determination of the national result of an election in a written record indicating-

(a) the national result of the election as determined;

(b) the complaints and responses thereto and the decisions taken on them,

and the Chairman of the Commission shall legibly seal the national result of the election by signing the summary and

every candidate shall be entitled to receive a signed copy of the summary.

Publication of the national result

83. The Commission shall publish in the *Gazette* and by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi the national result of an election within eight days from the last polling day and not later than forty-eight hours from the conclusion of the determination thereof and shall, in such publication, specify-

(a) the total number of voters registered for the election;

(b) the total number of voters who voted;

(c) the total number of null and void votes; and

(d) the total number of valid votes cast for each classification of votes as specified in section 75.

PART IX
OBSERVATION

Meaning of observation

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

Scope of observation

85.- Observation shall consist of the following activities-

(a) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with this Act;

(b) to verify and monitor the impartiality and legality of the decisions taken by the Commission and its officers in settling disputes;

(c) to verify and monitor the registration of voters;

(d) to observe the course of the campaigning for elections;

(e) to verify and monitor the voting process;

(f) to verify and monitor the determination of the results of the election at all stages of determination;

(g) to observe access to and the use of the media.

(2) Any irregularities noted by observers shall be reported to the Commission or to the competent officers of the Commission and the Commission or such officers shall examine the activities reported as irregularities and shall, where the irregularities are confirmed, take corrective measures necessary to bring the election into conformity with this Act.

Beginning and end of observation

86. Observation shall begin with the registration and end with the determination of the national result of the election or the settlement thereafter of all election disputes.

Collaboration by competent authorities

87. It shall be the duty of the Commission, every officer thereof and every competent public officer or other competent authority in Malawi to co-operate with observers in their role and to offer to them the guarantees and other facilities necessary to fulfill their role.

Invitation to observers

88. The Commission may send invitations for 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.

Categories of observers

89.- (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 Organization of African Unity 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 the first four categories specified in subsection (1), he has been designated by the relevant organization or foreign government in writing to the Commission disclosing his particulars and credentials;

(b) in the case of the category of individual observers, he is a person of recognized experience and prestige.

Recognition and identification of observers

90. 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 observer the card corresponding to his category;

(c) devise a common and easily identifiable badge for all observers and issue the badge to every recognized observer.

Compulsory use of identity cards and the common badge

91. Every observer recognized under this Act shall, while exercising his functions, use the identity card and the badge issued to him.

Rights of observers

92. Observers shall have the right-

(a) to obtain a multiple entry visa to enter Malawi for the duration of the period of observation as specified in section 86;

(b) to have unimpeded access to all election events and to observe all aspects of the civic education programmes, the registration of voters, the nomination of candidates, the campaign, the voting and the counting of votes at all stages;

to enjoy freedom of circulation throughout Malawi;

(d) to seek and obtain information on the official organs involved in the conduct of an election and regarding the election itself;

(e) to communicate freely with any candidate and with any organization or person;

(f) to have access to information transmitted by or to the Commission and its officers;

(g) to have access to complaints and responses about any occurrence or matter relating to the conduct of the election;

(h) to open offices within Malawi for the performance of their functions;

(i) to communicate any specific concerns they may have to members and officers of the Commission; and

(j) to communicate to the local and international media.

Obligations of observers

93.- (1) Observers shall have the following obligations-

(a) to exercise their role with impartiality, independence and objectivity;

(b) to respect the Constitution and the laws of Malawi;

(c) not to interfere in, or to impede, the normal course of the election;

(d) to maintain the secrecy of the ballot;

(e) to provide to the Commission copies of written information and statements which they have produced; and

(f) to return the identity cards, the badge and any other identification materials issued to them by the Commission after the end of their mission as observers.

(2) The Commission may revoke the accreditation of any observer who persistently violates the obligations laid down in subsection (1) and thereupon his status as an observer shall cease.

Position of diplomats

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

Separate and joint operation of observers

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

PART X

COMPLAINTS AND APPEALS

Commission to decide on complaints

96. Save as otherwise provided in this Act, any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved by the Chief Elections Officer or by the Returning Officer, 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 the effects thereof.

Appeals to the High Court

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97.- (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, within seven days from the date the Commission made the decision, supported by affidavits of evidence, 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;

(b) may, in its absolute discretion, 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 shall under subsection (2) 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 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 to them were improperly granted ballot papers; or

(c) that persons entitled to them were improperly refused ballot papers:

Provided that the court shall not declare an election void, after proof of any ground in paragraphs (a), (b) or (c), if it is satisfied that the number of votes involved could not have affected the result of the election;

(d) non-compliance with this Act in the conduct of the election:

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;

(e) that the candidate was at the time of his election a person not qualified for election or that he was not properly nominated, or that a duly qualified candidate had his nomination improperly rejected by the returning officer.

(4) The court shall have 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 trial of an election petition the court shall determine whether the member whose nomination or election is complained of, or any other and what person was duly nominated or elected, or whether the election was void, and shall report such determination to the Commission, and upon such report being given such determination shall be final.

PART XI
OFFENCES AND PENALTIES

Offences

98.- (1) A person who-

(a) in relation to registration of voters-

(i) obtains his registration by giving false information;

(ii) gives false information to obtain his registration or the registration of another person;

(iii) obtains registration in more than one registration area;

(iv) registers another person knowing that that the person is not eligible for registration;

(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 knows to be incorrect;

(vii) falsifies a register;

(ix) with fraudulent intent, modifies or substitutes a voters registration certificate;

(x) through violence, threat or fraudulent intent, prevents the registration of another person;

(xi) knowingly obstructs the detection of incorrect registration or the verification of voters rolls;

(b) in relation to campaigning for the election-

(i) prevents the holding or interrupts the proceedings of a meeting;

(ii) denies any candidate equal treatment with any other candidate;

(iii) destroys, defaces, tears or in any manner causes to be totally or partially useless or illegible any campaign material displayed in any place or superimposes thereon any other material concealing the earlier material;

(iv) being entrusted, by virtue of his office or functions, with displaying or depositing any campaign material, fails to display or deposit such campaign material or misplaces, steals, removes or destroys such material;

(v) because 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 prevents or threatens to prevent that other 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 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 at a polling station;

(ii) knowing that he 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 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 metres of a polling station, reveals his 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 to abstain from voting;

(ix) being a public officer, uses his office to coerce or induce another person to vote for or against a particular 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 or did not vote for a particular candidate 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 paper or removes an uncounted ballot paper from a ballot box;

(xiv) being a polling station officer, purposely neglects his 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 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 police 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 duties;

(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 the election;

(f) in bad faith, submits a complaint, or a response to a complaint or challenges or questions the decision thereon by a competent person or body; and

(g) without justification neglects to fulfil obligations imposed on him by or under this Act;

(h) induces the sale or surrender of a registration certificate;

(i) sales or surrenders or buys a registration certificate,

shall be guilty of an offence.

(2) Any person convicted of an offence under section 98(1)(h) or (i) shall be liable to a sentence of three years without the option of a fine.

Maintenance of secrecy

99.- (1) Every election officer, candidate, election representative of a candidate or other person in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting at such station, and shall not communicate, except for the same 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 he has received a ballot paper and before he has placed a ballot paper in a ballot box.

(2) No person, other than a person aiding a blind or an incapacitated voter 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 has voted.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence.

Offences under this Act cognizable offences

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100. Every offence under this Act shall be a cognizable offence within the meaning of the Criminal Procedure and Evidence Code.

101.- (1) A person guilty of an offence under this Act for which no other penalty has been specified shall be liable to a fine of K500,000 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 connexion 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, giving such directions as the court considers to be warranted in the circumstances.

PART XII
GENERAL

Preservation of election documents

102. At the end of its functions, the Commission shall deposit all documents forming the official record of an election (including voters registers, ballot papers, records from council areas and polling stations and summaries thereof and the record and summary of the national result) with the Chief Elections Officer which shall retain and preserve such documents in safe and secure custody without destruction for a period of twelve months.

Failure to elect a councillor

103. If after the holding of an election, no person has been elected in one or more wards, a session of the council may commence notwithstanding any such vacancy.

Regulations

104. The Minister may make regulations for carrying into effect the provision of this Act and for matters necessary or required to be prescribed or specified under this Act.