

ELECTIONS (AMENDMENT) ACT, 2020*(Act 24 of 2020)***ARRANGEMENT OF SECTIONS****SECTIONS**

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ELECTIONS (AMENDMENT) ACT, 2020

(Act 24 of 2020)



I assent

A handwritten signature in blue ink, appearing to read "Danny Faure".

Danny Faure
President

17th August, 2020

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

ENACTED by the President and the National Assembly..

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

Short title and commencement

Amendment of
section 2 of
Cap 262

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

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

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

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

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

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

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

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

Amendment of
section 3

3. Section 3 of the principal Act is amended —

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

therefor the words “Deputy Electoral Officers and Assistant Electoral Officers”;

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

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

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

Amendment of section 5

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

Amendment of section 7

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

- (a) the Chief Registration Officer shall, on 31st December in every year, prepare, from the register of voters, a list of all voters attaining the age of 100, on or before that date, for each electoral area;
- (b) the list prepared under paragraph (a) shall be checked and a verification of residence and presence of all such voters shall be carried out in accordance with paragraphs 7 and 8 of Chapter I of Schedule 3;
- (c) if, during the verification under paragraph (b), the voter is found, no action shall be taken and the name of the voter shall remain on the register of voters;

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- (d) if, during the verification under paragraph (b), any such voter is not found, a list of all such voters, containing their identity numbers, names and surnames, date of birth and the page and serial number as they appear in the register of voters, shall be prepared for each electoral area and kept at every administrative district and at such other places as may be considered necessary by the Electoral Commission for public reference;
 - (e) a list of voters prepared under paragraph (d) shall be published in a local newspaper, and a copy thereof shall be provided to every political party, indicating that the name of persons referred to in this subsection shall be deleted from the register unless it is ascertained that they are not yet deceased;
 - (f) any person who is aware that any of the persons listed on the list of voters prepared under paragraph (d) is still alive may make an objection against the deletion within 14 working days from the date of the first publication;
 - (g) if any voter in the list prepared under paragraph (d) is not found by 31st March, the entry of such voter shall be removed from the register of voters and the register shall be certified in accordance with section 9(1);
 - (h) any person whose name is deleted under this section and who, it later transpires, is still alive, shall be reinstated upon a written application made to the Commission and upon the Commission being satisfied that the person is qualified to be registered.”.

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

Insertion of new section 7A

Voters' census

“7A.(1) The Electoral Commission shall cause to be conducted a voters' census at five-year intervals.

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

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

Amendment of section 9

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

(2B) In case of any discrepancy in the register of voters divided into different parts under subsection (2A), the register of voters as certified under subsection (1) shall prevail.”.

8. Section 15 of the principal Act is amended —

Amendment of section 15

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

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

For the purposes of this subsection, there shall be a presumption that the name of a voter in the nomination paper of a candidate was made by the voter with the voter's consent.

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

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

Substitution of
new section for
section 15A

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

Adjournment of
nomination day
due to force
majeure

“**15A.**(1) Where proceedings on a nomination day are interrupted or obstructed by *force majeure*, the Chief Electoral Officer or the Electoral Officer, as the case may be —

- (a) may adjourn the proceedings until the following day;
- (b) shall affix a notice to that effect in a conspicuous place at the place appointed in the notice under section 14; and
- (c) shall forthwith notify the Electoral Commission and the Chief Electoral Officer of the adjournment.

(2) Where proceedings are adjourned on a nomination day under subsection (1), the hours of submission of nomination papers on the

following day shall be the same as those specified for the nomination day originally scheduled to take place.”.

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

Amendment of
section 20

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

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

Amendment of
section 21

“(4) The Electoral Officer shall make special arrangements in the polling station for the aged, pregnant women and voters requiring assistance to vote.”.

12. Section 23 of the principal Act is amended —

Amendment of
section 23

(a) by renumbering the section (1), and adding a new subsection to read —

“(2) The ballot paper shall be perforated to facilitate removal from the stub and each stub shall have a serial number.”.

13. Section 25 of the principal Act is amended —

Amendment of
section 25

(a) in subsection (1) —

(i) in paragraph (a) —

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

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

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

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

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

(b) by repealing in subsection (3), the words “incapacitated by blindness or other physical cause or otherwise or is illiterate, the voter” and substituting therefor the words “an incapacitated voter”;

(c) by inserting after subsection (3), the following subsections —

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

(a) unless the person has attained the age of 18 years and makes a declaration in the form prescribed by the Electoral Commission;

(b) if the person is a candidate or a polling or counting agent

in the electoral area where the incapacitated voter is a voter;

- (c) for more than 2 incapacitated voters at an election.

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

(3C) For the purposes of subsections (3), (3A) and (3B), the expression “incapacitated voter” means a registered voter who is unable, by reason of any physical or mental condition or blindness or being illiterate, to receive and evaluate information or make or communicate decisions to such an extent that the voter lacks capacity to vote without assistance.’.

14. Section 29 of the principal Act is amended —

Amendment of section 29

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

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

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- (g) reconcile the total tally of all marks against the tally-sheet and the number of ballot papers issued for voting, excluding spoiled ballots, and make an entry in the occurrence book.”;
- (ii) by inserting after subsection (2), the following subsections —
- “(2A) In the case of a National Assembly election, the Electoral Officer shall in complying with subsection (1)(b) —
- (a) count the unused ballot papers received from the Electoral Commission and record the serial numbers;
 - (b) count the unused ballot papers received from any other polling station;
 - (c) count the ballot papers (in envelopes) received from any other polling station;
 - (d) count the spoiled unstamped ballot papers received from any other polling station;
 - (e) count the spoiled stamped ballot papers received from any other polling station;
 - (f) tally the total number of ballot papers received against the number of printed ballot papers received from the Electoral Commission; and
 - (g) send a certified statement to that effect for each electoral

area to the Chief Electoral Officer.

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

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

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

Amendment of
section 34

“(1A) The Chief Electoral Officer shall, at the time of delivery of the ballot papers, explain and give, in a sealed envelope, the security features of the ballot papers to all Electoral Officers.

(1B) The Electoral Officer or the Designated Electoral Officer shall, before opening of the first ballot box for sorting and counting, disclose to candidates, if they are present, and the counting agents of candidates and enumerators who may be present, the security features of the ballot papers in the sealed envelope.

(1C) No person shall be allowed to copy or photograph the security features of the ballot papers in the envelope.

(1D) A candidate or a counting agent of the candidate may request the Electoral Officer or the Designated Electoral Officer to verify the security features of a ballot paper and the Electoral Officer or the Designated Electoral Officer upon such request shall verify such ballot paper from the security features in the envelope and record the finding of the verification, which shall be signed by the candidate or counting agent, as the case may be, in the occurrence book.”.

Amendment of
section 51

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

“(ca) uses the name of voter without the consent or knowledge of the voter to support the person's nomination on the nomination paper;”.

Amendment of
section 94

17. Section 94 of the principal Act is amended —

(a) by repealing subsection (1);

(b) in subsection (2), by repealing the words “statement of the funds received”, and

substituting therefor the words “statement of the number of persons and the amount of funds received”;

- (c) in subsection (3A), by repealing the words “(1 or”;
- (d) by repealing subsections (3B) and (3C) and substituting therefor the following subsections —

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

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

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

Insertion of
new section
94A

Limits on
expenditure
by
candidates
and political
parties

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

(2) Where an independent candidate contests the Presidential Election, the candidate shall not incur expenses exceeding R250,000 multiplied by the number of electoral areas contested by the candidate during the electioneering period.

(3) Where at an election a candidate stands in National Assembly election or by-election in an electoral area, being a candidate on behalf of a registered political party or as an independent candidate, the candidate shall not incur expenses exceeding R250,000, during the electioneering period.”;

Insertion of
new section
97A

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

Voting
records
analysis by
Electoral
Commission

“**97A.**(1) The Electoral Commission shall, at any time after the expiry of 6 months but not later than 24 months following an election, publish in such manner as it considers appropriate, a report on voting records analysis.


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

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

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

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

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 5th August, 2020.


Mrs. Tania Isaac

Mrs. Tania Isaac
Clerk to the National Assembly