

CHAPTER 2: 01 ELECTORAL ACT

Part I - PRELIMINARY **(pp78/79)**

1. **Short Title:** Electoral Act.
2. **Application:** Act shall apply to election members of Parliament and elections to the office of President for the purposes of the Constitution.
3. **Interpretation:** See pages 78/79 for specific definitions of particular terms/words used in the Act.

Part II - ELECTION DIRECTORATE **(pp80)**

4. Appointment and function of the Election Directorate

Election Directorate shall be responsible for:

- coordinating activities of Ministries and departments of government re delimitation of constituencies, registration of voters, conduct of polls and other matters connected with elections;
- giving instructions to and make recommendations to: Registrar-General with regard to exercise of his functions under the Act and other persons employed by State to ensure "efficient, proper, free and fair conduct of elections";
- shall consist of Chairman appointed by President for his ability and experience in admin or his professional qualifications or suitability otherwise for appointment; Registrar-General (see section 15) and no less than 2 or more than 10 others appointed by the Minister. Chairman and other members hold office for period fixed on appointment. [Does not describe duties of Chairman/other members].

5. Allowances payable to members of Election Directorate

Members can be paid allowances as may be prescribed.

Part III - ELECTORAL SUPERVISORY COMMISSION: PROCEDURE AND CONDITIONS OF SERVICE OF MEMBERS **(pp 80/81)**

6. Interpretation in Part III

"Commission" means Electoral Supervisory Commission appointed under s61 of Constitution.

"member" means member of the Commission.

7. Conditions of office of members

President fixes member's period of office - no longer than 5 years. On expiry of period member shall continue to hold office until reappointed or a successor is appointed. Cannot continue to hold for a period exceeding 6 months. Conditions of service fixed by President (subject to section 13).

8. Disqualification for appointment as a member

Member cannot be appointed or hold office if:

- he is not a Zimbabwe citizen permanently resident in Zimbabwe;
- he is adjudged insolvent or bankrupt and has not been rehabilitated or discharged or made an assignment or arrangement or composition with his creditors which has not been rescinded or set aside - in terms of law in force in any country;
- within 5 years of the date of his proposed appointment been convicted and has been sentenced to prison without option of a fine, whether or not sentence suspended and has not received a free pardon (a) in Zimbabwe of a criminal offence, or (b) convicted (and sentenced as above) of an offence outside of Zimbabwe which would amount to a criminal offence in Zimbabwe.

9. Vacation of office by member

Member shall vacate office 1 month after giving notice in writing to the President or after expiry of shorter period agreed with the President.

10. Removal of members from office

President may remove member of office on grounds of inability to discharge functions of his office, misbehaviour or failure to comply with any conditions of his office fixed by President in terms of section 7.

11. Staff of Commission

At request of Commission the Minister may appoint secretarial and administrative staff from the Public Service as may be necessary. The person performing such function has no right to vote on any question before the Commission.

12. Meetings and procedure of Commission

Subject to ss61 and 114 of Constitution the Commission shall meet for the dispatch of business and otherwise conduct the meeting as it thinks fit.

A special meeting may be convened by the Chairman at any time or by request of at least 2 members in writing.

If the Chairman is absent at any meeting one of the members present may be elected to preside as Chairman at that meeting.

Any proposal circulated amongst all members and agreed by a majority in writing will have same effect as a resolution passed at a meeting of the Commission (unless a member wishes the proposal to be dealt with at a constituted meeting).

The Chairman may invite any person who has special knowledge or experience of a matter being considered by the Commission to any meeting, however that person is not entitled to vote.

13. Remuneration and expenses of members

Remuneration of members is fixed by the Minister. The Minister fixes the allowance to meet reasonably incurred expenses.

14. Duties of Registrar General - towards Commission

Registrar General:

- shall provide reports re registration of voters and conduct of elections as Commission may from time to time require;
- keep Commission informed on all matters relating to exercise of his functions within the Act;
- refer to Commission for advice on matters relating to registration of voters and conduct of elections;
- may attend meetings but is not entitled to vote on any question before the Commission.

Part IV - REGISTRAR - GENERAL OF ELECTIONS AND CONSTITUENCY REGISTRARS **(pp81/82)**

15. Registrar-General of Elections

Registrar-General's office will be a public office and form part of Public Service.

He shall exercise such functions as imposed or conferred upon by this Act and shall not be subject to direction or control of anyone other than the Electoral Directorate but shall have regard to any report or recommendation of the Electoral Supervisory Commission.

He may assume and exercise any function of the officers mentioned in s.15(3)(a). He may delegate any of his functions with the consent of the Minister to any other member of the Public Service (15(3)(b)). He may assign or authorise the delegation of all or any of functions vested in persons named in this section - s15(3)(c).

16. Constituency registrars and other officers

Lists various constituency registrars who shall be members of the Public Service and states that they exercise their functions under the supervision of the Registrar-General.

17. Voters rolls to be kept by constituency registrars

Each constituency registrar to have charge and custody of voters roll for his constituency.

18. Voters rolls open to inspection and printing of rolls

Voters roll in every constituency shall be open to inspection by the public , free of charge, at the office of the constituency registrar during office hours. A person inspecting may make free copies thereof during office hours.

Constituency registrar may have voters rolls printed. If printed immediately before an election or by-election the roll may be used for the purposes of identifying the voters entitled to vote at that election.

19. Powers to demand information

Constituency registrar has powers to demand information from a claimant or voter as to whether in the former he is qualified to be registered to vote and in respect of the latter to ascertain his place of residence.

Also has power to require any voter or claimant to complete a prescribed form of claim within a reasonable period as he shall specify.

Part V - RESIDENCE QUALIFICATION OF VOTERS **(p82)**

20. Residence qualifications

To vote in a particular constituency the claimant must be resident in that constituency at the date of his claim; unless the claimant satisfies the Registrar-General that for reasons related to his place of origins, political affiliations or otherwise, it is appropriate for him to be registered as a voter in a constituency in which he is not resident.

A claimant who is absent from his constituency for a temporary purpose will be deemed to be residing in that constituency.

A voter who is registered on the voters roll for a particular constituency will have his name removed from the roll, if for a continuous period of 12 months, he has ceased to reside in that constituency.

Provided: the claimant does not become registered in another constituency or becomes disqualified for registration as a voter.

Part VI - REGISTRATION OF VOTERS **(pp 82/83)**

21. Claims for registration

Any person who wishes to be registered as a voter on the voters roll for any constituency must complete prescribed claim for and lodge it with the constituency registrar. Any

claimant who wishes to register in a constituency in which he is not resident shall lodge his claim form with the Registrar-General. The claimant must provide an address in that constituency where he shall be deemed to be registered.

If the constituency registrar/Registrar-General is satisfied the claimant is entitled to be registered as a voter on the voters roll for that constituency he will enter the claimant's name and particulars on that voters roll.

If the constituency registrar considers that the claimant should be entered on the voters roll for some other constituency he shall forward the claim to that particular constituency.

22. Claims for transfer of registration

Any voter whose name is registered on the voters roll for a constituency and who has become resident in another constituency or wishes for reasons related to his place of origin, political affiliations or otherwise to be registered in constituency in which is not resident may apply in the prescribed form for the transfer of his name to that other constituency.

If the Registrar-General is satisfied that the applicant is entitled to transfer to that other constituency his name will be removed from the voters roll for his constituency and forwarded to the constituency to which the applicant has applied to be transferred. An address in that other constituency must be provided.

Notwithstanding the above the Registrar-General may direct any constituency registrar to register on the voters roll for that constituency any person or class of persons who is or are registered in the terms of the National Registration Act.

23. Voters registration cards

On registration the voter will be given a voters registration card. Similarly upon transfer a new voters registration card will be provided.

Any voter who has applied for registration under the terms of the National Registration Act and who has been issued with the documents required under ss(1) and (2) of that Act need not be issued with a voters registration card under the terms of this Section.

24. New registration of voters

The President may at any time by proclamation in the Gazette order that there be an entirely new registration of voters. A day shall be fixed when such new registration shall begin. The latest day for which claims and applications shall be received for registration will be not less than six months after the day for such new registration has been fixed.

Part VII - OBJECTIONS TO REGISTRATION OF VOTERS **(pp83-85)**

25. Objections by constituency registrar

If a constituency registrar has reason to believe that:

(a) a claimant is not entitled to be registered; or

(b) a claimant is not entitled to be registered on the voters roll on which he has claimed to be registered; or

(c) a voter on voters roll is not qualified for registration on that voters roll; he shall send to the claimant/voter written notice of objection to which a form of appeal shall be annexed.

Where notice of appeal is given within the time limits prescribed in this Section a hearing shall take place before a magistrate of the province in which the claimant or voter resides.

26. Objections by voters

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

Procedure and time limits for notifying the constituency registrar of any objection are laid down in this section.

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

This section sets out the procedures necessary for hearing of the objection and the matters to be attended to by the person lodging the objection and the person to whom the objection relates.

28. Statement of case for opinion of judge in chambers

If the magistrate is doubtful as to the proper decision to be given in relation to the objection he may draw up a statement of facts and state a question for decision and transmit the statement to a registrar of the High Court to be laid before a judge in chambers. A party to the proceedings may also request the magistrate to draw up such statement to be transmitted to the High Court.

This section goes on to deal with the procedure for the hearing before a judge in chambers.

29. Posting of names of persons objected to

The name of every person whose registration is objected to shall be publicly exhibited outside the court of the designated magistrate and at any other place as the constituency registrar may direct; and shall be maintained there until the objection is heard and determined.

Part VIII - MISCELLANEOUS PROVISIONS RELATING TO REGISTRATION OF VOTERS

(pp 85-86)

30. Removal of duplications

The constituency registrars shall take for duplications from time to time. If a person is registered more than once for any constituency or he is on the voters roll for more than one constituency his name will be removed where it occurs on the second or any subsequent occasion.

31. Removal from voters roll on disqualification or death

If a constituency registrar is satisfied that a voter whose name is registered on the voters roll has become disqualified or is dead his name shall be removed.

32. Removal from voters roll owing to absence

If a constituency registrar is satisfied that a voter on a voters roll has been absent from his constituency for a period of 12 months or longer or has left Zimbabwe with the intention of residing permanently outside Zimbabwe he shall remove the voter's name from the roll. There are exceptions, ie the person is in service with an international organisation of which Zimbabwe is or was at the time a member, is occupied in the discharge of his duties outside of Zimbabwe while in the service of the state, resides outside Zimbabwe on account of ill-health or disability or is attending an educational institution outside Zimbabwe. Check this Section for further exceptions. The constituency registrar must notify the person of the intention to remove his name who will have the right of appeal.

33. Registration of voter no longer disqualified

A person who has previously been disqualified in the terms of Section 31 when no longer disqualified may claim to be registered as a voter.

34. Additional powers to alter voters rolls

A constituency registrar has additional powers to alter the voters rule to correct any obvious mistake or omission or by changing the address of a voter.

35. How alterations to be made

Any alterations made to the voters roll shall not be made without obliterating the original entry and the reason and date of the alteration must also be stated and initialled by the person making the alteration.

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

No stamp duty shall be charged in relation to the registration of voters or revisions of the rolls.

Part IX - OFFENCES IN RELATION TO REGISTRATION OF VOTERS (pp 86)

37. Offences in relation to registration of voters

Any person shall be guilty of offence and liable to a fine if he:

- fails to deal with a claim form as required by the Act;
- makes a false statement of fact in any claim or application for registration;
- fails to furnish information demanded of him under Section 19 or furnishes information which he knows to be false or does not believe to be true;
- fails to comply with any requirement of Section 19;
- signs a fictitious claim form;
- transmits or is concerned in transmitting a false declaration;
- procures the registration of himself or any other person knowing that he or that other person is not entitled to be registered on that voters roll or is already registered thereon;
- causes or induces any person or attempts to cause or induce any person or class of persons to refrain from registering or taking steps to register a voter by means of duress including threats or by fraud or contrivance. Such an offence could be punishable by imprisonment;

Part X - PROCLAMATION OF GENERAL ELECTIONS OR BY-ELECTIONS **(pp 86-87)**

38. General elections

The President must under Section 58 of the Constitution fix a day or days for the holding of a general election to elect members of Parliament or to elect chiefs. The various time limits and procedures from the proclamation of an election are set out in this Section.

39. Vacancies and by-elections

Where a vacancy in the membership of Parliament exists (otherwise than by reason of a dissolution) such vacancy shall be notified to the President in writing by the Speaker. The President shall, after various steps described in this Section have been taken to ensure the vacancy does actually exist, issue a proclamation ordering a new election to fill the vacancy in the same manner as provided in Section 38 for a general election.

Part XI - ELECTION OF CHIEFS TO PARLIAMENT **(pp 87-88)**

40. Electoral Colleges

The Council of Chiefs referred to in Section 18 of the Chiefs and Headman Act shall constitute an electoral college which shall be convened at a time and place and on the day or days fixed by the President for the purposes of electing two chiefs to be members of Parliament.

Each provincial assembly of chiefs referred to in Section 16 of the Chiefs and Headman Act shall constitute an electoral college which shall be convened at a time and place and on the day or days fixed by the President for the purpose of electing one chief to be a member of Parliament to represent that province.

41. Presiding officers

The Minister shall appoint a member of the Public Service to be the presiding officer of each electoral college referred to in Section 40.

42. Quorum of electoral colleges

One-half of the total membership of each electoral college shall constitute a quorum (ie minimum number of members) of that electoral college.

43. Nomination of chiefs as candidates

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

Chiefs must be nominated by a chief who is a member and seconded by a chief who is a member, both of whom must be present at the meeting of the electoral college.

The candidate must signify his acceptance of his nomination.

If at a meeting of an electoral college of the Council of Chiefs only two candidates are nominated they shall be declared by the presiding officer to be duly elected. If more than two candidates are elected then a poll shall take place. The Minister will be notified of the election and the names of the candidates will be published in the Gazette.

If at a meeting of an electoral college which is a provincial assembly of chiefs only one candidate has been nominated to represent the province concerned he shall be declared elected and notification and publication of the name of the candidate will be effected as above. If more than one candidate has been nominated a poll shall take place.

44. Conduct of poll for election of chief

Where a poll is to take place in accordance with Section 43 above after the close of nominations the presiding officer shall adjourn the meeting of the electoral college for three hours, whereupon the meeting of the electoral college shall be reconvened for the purpose of conducting the poll.

Before reconvening the presiding officer shall make a declaration of secrecy before a commission of oaths and no stamp duty is payable on such declaration.

The presiding officer shall during the adjourned period, in the presence of candidates, seal a ballot box for each candidate which is clearly labelled with the name of each candidate.

When the meeting the electoral college has been reconvened:

- the presiding officer shall conduct a secret poll;
- each member of the electoral college shall be entitled to one vote in relation to each member of Parliament to be elected;
- no member can cast no more than one vote per candidate;
- the presiding officer shall count the votes in the presence of the members and candidates;
- after the counting of the votes the presiding officer shall prepare a list with the candidate(s) who receive the greatest number of votes at the top and the rest of in descending order and the Council of Chiefs/provincial assembly of chiefs shall declare which candidate(s) have been duly elected as members of Parliament;
- if two or more candidates receive the same number of votes the presiding officer shall arrange for a fresh vote. If after a fresh vote the candidates still receive the same number of voters the presiding officer, in the presence of the members of the electoral college and the candidates, will draw lots and after the lots are drawn, will declare the candidate or candidates concerned to have been duly elected.

Any declaration by the presiding officer under this Section shall be final and subject to reversal only on petition in terms of Part XXIII to the High Court that such declaration be set aside.

The presiding officer shall notify the Minister of the names of the candidates elected, whose names will be published in the Gazette.

Part XII - APPOINTED MEMBERS OF PARLIAMENT **(pg88)**

45. Notification of appointment of members of Parliament

Whenever the President appoints a member of Parliament under Section 38(1)(d) of the Constitution the Minister shall notify the Secretary to Parliament and the names of the person so appointed will appear in the Gazette on the day they were appointed.

Part XIII - NOMINATION OF CANDIDATES FOR ELECTION AS MEMBERS OF PARLIAMENT **(pp89-91)**

46. Nomination of candidates

A candidate for election as a member of Parliament shall be nominated by means of a separate nomination paper in the prescribed form (see sub-sections (a)-(c) for details). Where the candidate is to stand for or by sponsored by any party the nomination paper shall be counter-signed by an office-bearer of the party concerned.

Nomination papers may be lodged with the constituency registrars for the constituencies concerned at any time after the publication of the proclamation referred to in ss(1) of s.38 but before the time on nomination day or the last nomination day as specified in ss(5).

At the same time as the nomination paper is lodged the candidate, or his agent, must provide the constituency registrar with an address, including a telephone number where possible, where the candidate may be contacted during the period between nomination day and polling day or the last polling day, as the case may be in the election concerned.

On the day and at the place fixed in terms of ss(2) of s.38 the constituency registrar shall hold a public court commencing at 10.00am for receiving nomination of candidates for election as a member of Parliament for the constituency.

In open court the constituency registrar will announce the name of every candidate who has lodged his nomination paper and receive further nominations for election as a member of Parliament for that constituency.

Nomination papers must be received prior to 4.00pm on the nomination day or last nomination day as the case shall be.

The constituency registrar shall examine every nomination paper lodged with him which has not previously been examined in order to ascertain whether it is in order and to give any candidate or his election agent an opportunity to rectify any defect not previously rectified and, may adjourn the sitting of the court for that purpose, provided that the sitting shall not be adjourned to any other day that is not a nomination day.

If on examination of a nomination paper which specifies that the candidate concerned is to stand for or be sponsored by a party and the constituency registrar is doubtful that such fact is true he may require the candidate or his election agent to produce proof as to such fact and, may adjourn the sitting of the court for that purpose, provided that the sitting shall not be adjourned to any other day that is not a nomination day.

The constituency registrar in open court shall reject any nomination paper at any time if:

- he considers that any symbol or abbreviation specified in the nomination paper is indecent or obscene, too complex or elaborate to be reproduced on a ballot paper; or closely resembles the symbol of any other candidate contesting the election in the constituency concerned, or the recognised symbol or abbreviation of any party other than the party for which the candidate concerned is standing or which is sponsoring him; as to be likely to cause confusion; or
- if any symbol is prohibited; or
- the nomination paper states that the candidate concerned is to stand for or be sponsored by a party and the constituency registrar has reason to believe that that fact is not true; or
- if in his opinion the nomination paper is not in order for any other reason.

The constituency registrar shall not reject any nomination paper:

- solely on account of any minor variation between the name appearing on the nomination paper and the name appearing on the voters roll if he is satisfied that it is due to an error;;

- or on account of any other imperfection if he is satisfied that there has been substantial compliance with this section.

The constituency registrar shall announce the name of every candidate duly nominated in open court and the sitting of the nomination court shall end immediately after. No nomination papers may be lodged after close of the court.

A candidate shall not be regarded as having been duly nominated if:

- his nomination was not lodged in terms of this section with the constituency registrar for the constituency in which the candidate seeks election;
- his nomination paper has not been signed or countersigned or is otherwise not properly completed;
- the deposit referred to in ss(1) of s.47 was not lodged with his nomination paper;
- he is not qualified for election at that election;
- he has been duly nominated for election for another constituency for which the poll has not taken place.

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

If at the close of the sitting of the nomination court:

- no person has been duly nominated for election for the constituency the constituency registrar shall report the fact to the Minister and the Secretary to Parliament;
- only one person is nominated the constituency registrar shall forthwith declare such candidate to have been duly elected as a member of Parliament with effect from the polling day or last polling day, as the case may be. He shall notify the Minister who will cause to be published in the Gazette notice of the name of the candidate declared elected and the day on which he was so elected (subject to appeal - see ss(19) discussed below);
- more than one person has been duly nominated for election for a constituency, a poll shall take place in accordance with Part XIV.

Any voter may inspect any nomination paper registered with the constituency registrar at times prescribed in ss(18).

If a nomination paper has been rejected in terms of ss(10) (discussed above) or is void by virtue of the candidate being nominated in more than one constituency ss(16):

- the constituency registrar shall notify the candidate or his election agent given reasons for his decision; and

- the candidate shall have the right of appeal to a judge in the High Court in Chambers, who may confirm, vary or reverse the decision of the constituency registrar and there shall be no appeal from the decision of that judge; and
- if no appeal is lodged within 4 days of receipt of notice of the decision of the constituency registrar, the right of appeal shall lapse and the decision of the constituency registrar will be final; and
- if an appeal is lodged the judge concerned may suspend any further proceedings under this section, pending determination of the appeal and specify a day or days on which any poll in terms of Part XIV shall be held, and if he does so the constituency registrar shall cause notice thereof to be published in the Gazette.

47. Deposit on nomination

At the same time as the nomination paper is lodged there shall be deposited with the constituency registrar, by or on behalf of the person nominated, such sum as may be prescribed. If at a poll the number of valid votes cast for an unsuccessful candidate is less than one-fifth of the number of valid votes cast for the successful candidate, the sum deposited by the unsuccessful candidate shall be forfeited and paid into the Consolidated Revenue Fund.

48. Procedure when poll to be held

If a poll becomes necessary in the terms of section 46 the constituency registrar shall, as soon as practicable after nomination day:

- publish in alphabetical order the names of the candidates in the Gazette;
- the polling day or days;
- notify by such means as he thinks fit the situation of and hours specified in terms of section 53 for the opening and closing of each polling station for the constituency.

49. Withdrawal of a candidate

Subject to this section a candidate may withdraw his nomination for election for a constituency at any time before the polling day or the first polling day as the case may be.

Withdrawal shall be effected by written notification to the constituency registrar signed by the candidate personally.

The sum deposited on the candidate's behalf in terms of section 47 shall be forfeited and the money paid into the Consolidated Revenue Fund.

If the withdrawal of a candidate means that only one candidate remains duly nominated for election in the constituency concerned, the constituency registrar shall forthwith declare such candidate to have been duly elected. The constituency registrar shall notify the

Minister who shall cause to be published in the Gazette the name of the candidate so elected and the day with effect from which he was declared so elected. Provided that if by virtue of an appeal in terms of ss(19) of section 46 an additional candidate is to be regarded as duly notified the constituency registrar shall revoke his declaration and shall notify the Minister, who shall cause to be published in the Gazette notice thereof, and a poll shall take place in accordance with Part XIV.

If after withdrawal of a candidate two or more candidates remain duly nominated, the constituency registrar shall take all such steps as are reasonably practicable to ensure that the withdrawal is brought to the attention of voters in the constituency, and that the name of the candidate who has withdrawn is either omitted or deleted from all ballot papers.

50. Death of a candidate

If the Minister is satisfied that a candidate for election in a particular constituency died before the poll commenced or if the poll has commenced before close thereof he shall declare all proceedings relating to that election void, and proceedings shall be commenced afresh as if a vacancy has occurred.

Part XIV - PREPARATION FOR AND VOTING AT POLL **(pp91-93)**

51. Polling stations

A constituency registrar shall establish at such places as may determine as many fixed polling stations as he may consider convenient for the voters of his constituency. A polling station may be established outside the boundaries of the particular constituency but there must be at least one polling station within the boundaries of the constituency concerned. A polling station shall not be established as a polling station for more than one constituency.

A constituency registrar may provide for mobile polling stations and he must make known in such manner as he thinks fit the places to be visited during the polling period.

Additional stations may be established under the terms of this section whether before or after commencement of the poll.

A constituency registrar must cause to be published on each day during the polling period in a newspaper circulating in the constituency the places at which fixed polling stations are to be established and the opening hours.

52. Provision of requisites and officers for purpose of poll

The constituency registrar in any election shall make such arrangements to facilitate the taking of the poll as he may consider necessary including obtaining ballot boxes, papers etc.

The constituency registrar shall also appoint sufficient presiding officers, polling agents and counting agents.

53. Hours polling stations to be open

A fixed or mobile polling station shall be open during such hours as a constituency registrar may fix but must be open for at least 8 hours continuously on each polling day in the case of a fixed polling station. In respect of a mobile polling station unless the opening hours are fixed the presiding officer of that station may permit a voter to record his vote at any time on any polling day and at any place where such station is.

54. The ballot box

Not more than 30 minutes before the commencement of the poll on the first polling day at any polling station the presiding officer must satisfy himself that the ballot box is empty and, must show the empty ballot box to the persons described in ss1(b) of section 55 and immediately thereafter close and seal the box. Any additional ballot boxes used must be subject to the same procedure. A sealed ballot box shall not be opened except in accordance with section 72. Ballot boxes must be sealed at the aperture at the close of each polling day and re-opened at the next succeeding polling day in the presence of persons described in ss1(b) of section 55.

The ballot box must be placed in a position where it can be seen by a presiding officer or designated polling officer at all times during the continuance of the poll. The presiding officer shall be responsible for the safekeeping of the ballot box until it is delivered to the appropriate constituency registrar.

55. Conduct of poll

The presiding officer and other officers at the polling stations shall keep order and regulate the number of voters to be admitted at a time. Persons other than as may be prescribed shall be excluded from the polling station. The presiding officer may arrest any person, other than a person who is actually recording his vote, who refuses to leave the polling station. The presiding officer may arrest any person who he suspects on reasonable grounds has committed personation as defined in section 107.

56. Number of votes and identification of voters

Any an election for a member of Parliament every voter on the voters roll for the constituency concerned shall be entitled to vote; subject to sections 57 and 58 a voter may not be entitled to vote more than once.

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

An applicant for a ballot paper shall be required to produce his voters registration card and the presiding officer shall make or otherwise deal with the card as directed by the Registrar-General and hand the applicant a ballot paper. Provided that:

- an applicant who has received a postal ballot paper for that election and who hands it, together with the form of declaration of identity and the covering envelope and the postal ballot envelope to the presiding officer he may be handed a ballot paper;
- if the Registrar-General has made a declaration in terms of ss4 of s.18 it shall not be necessary for an applicant to produce his voters registration card;
- an applicant who has in terms of section 7 of the National registration Act been issued with a notice or identity document may produce this instead of a voters registration card.

Before handing an applicant a ballot paper a presiding officer, if so directed by the Registrar-General shall:

- require the applicant to submit to an examination (specified by the Registrar-General to ascertain whether or not he has previously received a ballot paper at that election. If the applicant refuses to submit to an application or such examination shows that the applicant has previously received a ballot paper the presiding officer shall not hand him a ballot paper;
- after handing the applicant a ballot paper mark the applicant in the manner specified by the Registrar-General. Any person who refuses to be marked will be guilty of an offence.

57. Manner of voting

Voting at an election shall be by ballot. See this section for further details as to the prescribed form of ballot paper.

Before the ballot paper is handed to the applicant the presiding officer shall mark the ballot paper with the official mark.

When the person claiming the vote has received the ballot paper he shall:

- take the paper to the compartment provided for the purpose; and
- signify the candidate for whom he desires to vote by secretly placing a cross in the rectangle opposed the candidate's name; and
- fold the ballot paper so the official mark is visible and having held up the ballot paper so the presiding officer can recognise the official mark, drop the ballot paper in the ballot box placed in front of the presiding officer.

If he has spoilt the ballot paper he may return it to the presiding officer in terms of section 58 and shall deal with the second ballot paper given to him in accordance with the terms of this paragraph.

58. Spoilt ballot papers

If a voter inadvertently spoils a ballot paper he may return it the presiding officer who, if satisfied of the inadvertence, will give him another ballot paper. The spoiled ballot paper shall be cancelled immediately and the fact of cancellation noted on the counterfoil.

59. Voting by physically incapacitated or illiterate voters

If any voter is incapacitated by blindness or other physical cause or is illiterate shall request the presiding officer to cast his vote for him in the manner he (the voter) directs. If his instructions to the presiding officer are not sufficiently clear the presiding officer may put questions to the voter to elicit further directions.

60. Procedure at close of poll

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

- close and seal the aperture in the ballot box and affix his seal thereto and permit any such candidates and election agents to affix their seals thereto; and
- make up two separate packets sealed with his own seal and with the seals of those candidates and elections, if any, who desire to affix their seals: unused and spoiled ballot papers and counterfoils of unused ballot papers; counterfoils of the used ballot paper, including counterfoils of the spoiled ballot papers; list of votes marked by the presiding officer; and the postal ballot papers and declarations of identity delivered therewith;

and shall forthwith deliver or cause to be delivered the ballot box and packets to the constituency registrar, accompanied by a statement showing the number ballot papers entrusted to him and accounting for them under the heads of used ballot papers, excluding spoiled ballot papers, unused ballot papers and spoiled ballot papers.

Part XV - VOTING BY POST

(pp93-97)

61. Applications for postal ballot papers

This section lists persons who shall be deemed to have resided in his constituency during any period in which he resided outside his constituency for example:

- while in service of the State;
- or employed by a person resident in Zimbabwe, or a society or body of persons or company in the control and management of which are in Zimbabwe, or a body incorporated directly by an enactment in force in Zimbabwe;
- or by his attendance at a university;
- or on account of ill-health or disability.

When an election is to take place in a constituency, a voter ordinarily resident in Zimbabwe who is resident or was resident in that constituency within 12 months of the polling day or first polling day, as the case may be, fixed in relation to that constituency, resident therein and:

- has good reason to believe he will not be in the constituency on polling day during polling hours; or
- has good reason to believe that on account of any ill-health, infirmity or other cause or duty as a member of a disciplined force will prevent him from attending a polling station on any such polling day; or
- resides more than 20 kilometres from the nearest polling station for that constituency;

may apply to the constituency registrar for that constituency for postal ballot paper - see ss(3), (5) and (6) for the procedure for making such an application. Applications for postal ballot papers are open for public inspection.

A voter shall not lose his residential qualifications for the purposes of this section by reason of an alteration of the boundaries as a result of delimitation carried out within 12 months prior to the polling day or first polling day, as the case may be, fixed in relation to that constituency.

62. Issue of postal ballot papers

If the constituency registrar is satisfied with an application for a postal ballot paper he shall issue to the applicant a ballot paper in the manner provided in this section - see ss(3), (4) and (5). The ballot paper shall be in the same form and indistinguishable from the ballot papers delivered to voters at the polling stations.

63. Refusal of application for postal ballot paper

If the constituency registrar is not satisfied with an application made for a postal ballot paper he shall send a notice to the applicant that he is not so satisfied and that the applicant must attend personally at the polling station to record his vote.

64 Recipients of postal ballot papers not entitled to voter at polling stations

A voter who has been issued with a postal ballot paper shall not be entitled to vote at a polling station unless he first cancels the postal ballot paper by delivering the same, together with the form of declaration of identity and all envelopes received therewith to the presiding officer.

A constituency registrar may send to the presiding officer of every polling station in that constituency a list of persons to whom postal ballot papers have been issued.

65. Voting by post

This section sets out the procedure for voting by post.

66. Postal ballot boxes

This section sets out the procedure for dealing with the postal ballot box for the reception of covering envelopes when returned by voters, before the close of the poll.

67. Opening of postal ballot boxes

After the close of poll and before the time fixed for counting the votes the constituency registrar shall open the postal ballot box in the presence of such candidates and their election agents as are present. The constituency registrar must give each candidate or his election agent at least 24 hours' notice in writing of the time and place where he will open the ballot box. See ss(3) for further details as to who may be present at the opening of the ballot box.

When the ballot box has been opened the constituency registrar shall count and note the number of envelopes and then open each one comparing the number on the declaration of identity with the number on the ballot paper envelope. If the numbers agree and the declaration of identity is duly signed and witnessed the constituency registrar will place the declaration of identity and the unopened ballot paper enveloped into separate receptacles. If the constituency registrar is not satisfied that the declaration of identity has been duly signed and witnessed he shall endorse it with "Vote Rejected" and attach it to the ballot paper envelope, if one. See ss(7) for other circumstances in which a postal vote will be rejected and the manner of dealing..

68. Rejected declarations of identity

The constituency registrar shall show to every candidate and their election agents present every declaration of identity he proposes to reject and written statement of a competent witness in terms of ss(3) of s.65. If a candidate objects to his decision the returning officer shall add to the endorsement "Rejection Objected To".

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

69 Postal ballot papers to be placed in ballot box

When all the covering envelopes in a postal ballot box have been opened and their contents dealt with in accordance with sections 67 and 68, the constituency registrar shall open each unopened ballot paper envelope and compare the number on the envelope with the number on the ballot paper therein.

If the number on the ballot paper envelope agrees with that on the ballot paper the constituency registrar shall make the ballot paper with the official mark and place in a ballot box previously shown open and empty to the candidates and their election agents.

If the number on the ballot paper envelope does not agree with that on the ballot paper the constituency registrar shall endorse "Rejected" on the ballot paper and shall attach the ballot paper to the envelope.

If a written statement by a competent witness in terms of ss(3) of section 65 accompanies a ballot paper in a ballot paper envelope and the constituency registrar is not satisfied from

such statement that the competent witness was entitled in terms of that section to mark the ballot paper, the constituency registrar shall mark “Rejected” on the ballot paper and attach the ballot paper to the ballot paper envelope and the written statement.

The constituency registrar shall show to the candidates and their election agents present every written statement of a competent witness in terms of ss(3) of section 65, where the constituency registrar proposes to reject the vote concerned on the ground that the witness was not entitled to mark the ballot paper concerned, and if a candidate or his election agent objects to his decision, the constituency registrar shall add the words “Rejection Objected To” on the relevant ballot paper.

70. Safe-keeping of documents

The constituency registrar shall, immediately after the declaration of the result of the poll, seal in a packet -

- (a) all original applications for postal ballot papers;
- (b) counterfoils of ballot papers issued in terms of s.62;
- (c) ballot papers referred to in s.62 which are unused;
- (d) declarations of identity not dealt with under paragraph (e) or (f);
- (e) declarations of identity rejected in terms of ss(6), (10) or 12 of s.67 with the ballot paper envelopes and ballot papers, if any, attached thereto;
- (f) ballot papers rejected in terms of ss(8) or (10) of s.67 with the ballot paper envelopes and declarations of identity, if any, attached thereto;
- (g) the ballot papers rejected in terms of paragraph (b) of ss (2) or (3) of s.69 with the ballot paper envelopes attached thereto.

Where a covering enveloped is received by the constituency registrar after the close of the poll, or an envelope addressed to an application for a postal ballot paper is returned as undelivered, the constituency registrar shall not open such envelope but shall seal all such envelopes in a packet.

71. Offences in relation to postal votes

A person who attempts to induce any other person to obtain a postal ballot paper with the intention of influencing him by bribery or intimidation to record his vote in favour of a particular candidate shall be guilty of an offence and liable to a fine or imprisonment or both, and in may in addition be declared by the High Court to be disqualified for voting at an election for a period not exceeding five years.

Any person who makes or induces any other person to make a false statement in an application for a postal ballot paper or in a written statement in terms of ss(3) of s.65, or fails to deliver or post forthwith an envelope containing or purporting to contain a ballot paper

entrusted to him by a voter for the purpose of delivering or posting it to a constituency registrar, shall be guilty of an offence and liable to a fine or imprisonment or both.

Any person who, having marked a postal ballot paper in terms of proviso (iii) to ss(1) of s.65, fails to ensure that a written statement is enclosed with the ballot paper in terms of SS(3) of that section, shall be guilty of an offence and liable to a fine or imprisonment or both.

Part XVI - PROCEDURE AFTER CLOSE OF POLL **(pp97-99)**

72. Procedure on receipt of ballot boxes after poll

The constituency registrar shall receive into his custody the ballot boxes and sealed packets mentioned in s.60. As soon as practicable after receipt he will make arrangements for verification of the statements in terms of ss(3) of s.60 and for counting the votes given at that poll. He shall give written notice to each candidate or his election agent of the time and place where he will verify the said statements and count the votes. The constituency registrar, such counting officers as he may consider necessary and other persons as may be prescribed will be present, together with the candidates and one election agent for each candidate.

Once the above procedure has been undertaken (see ss.3(a)-(d) for more precise details) and the constituency registrar has complied with s.74 he shall report to the Registrar General the result of such verification. Upon request he shall allow a candidate or election agent to take a copy of the report before it is sent.

All the ballot papers contained in each of the ballot boxes are mixed together with one container in the presence of the persons mentioned above so that it is impossible to determine from which ballot box a particular ballot paper was taken.

73. Counting and rejection of votes

The votes shall be counted in the manner provided by this part and the regulations.

Subject to ss (3) and (4) any ballot paper will be rejected:

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

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

If the aggregate of the ballot papers which do not bear the official mark mentioned above does not exceed 5% of the votes cast at the election and together with all other ballot papers

mentioned in ss(4) of s.72 does not exceed the total number of ballot papers issued the constituency registrar shall not reject any ballot paper merely by reason of the fact that it does not bear the official mark.

If the constituency registrar rejects as invalid a ballot paper he shall endorse on the ballot paper "Rejected". If an objection is made by the a candidate or his election agent he shall add the endorsement "Rejected Objected To". All such ballot papers are placed together in one envelope.

If the constituency registrar accepts as valid a ballot paper he shall endorse on the ballot paper "Acceptance Objected To" if an objection to his decision is made by a candidate or his election agent. All such ballot papers are placed together in one envelope.

74. Determination and declaration of result of poll

After the counting is completed the constituency registrar shall forthwith declare the candidate who has received:

- where there are two candidates, the greater number of votes
- where there are more than two candidates, the greatest number of votes

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

Where an equality of votes is found to exist between two or more candidates and the addition of one vote would entitle any of the candidates to be declared elected, the constituency registrar shall communicate the fact to the Registrar-General. The Registrar-General as soon as practicable thereafter shall arrange for the drawing of lots by the himself in the presence of a judge of the Supreme Court or High and shall thereafter declare the candidate so determined by the drawing of lots to be duly elected as a member of Parliament with effect from the date of such declaration. The candidates for have received an equality of votes or his election agent shall be present.

A declaration made by the Registrar-General or the constituency registrar under this Section shall be final, subject to reversal on petition to the High Court that such declaration be set aside or to the proceedings relating to that election being declared void under ss(1) of s.42.

75. Secrecy of voting to be maintained

Whilst counting the ballot papers for the purpose of the verification of the statements under s.72 and while counting the votes a constituency registrar shall take all such precautions as may be appropriate to prevent any person from seeing the number printed on any ballot paper.

76. Notification of result of election

As soon as a candidate has been declared the constituency registrar shall without delay by telegram in the prescribed form notify the Registrar General, who shall transmit to the

Minister and to the Secretary of Parliament, the names of the persons duly elected, the number of votes received by the respective candidates and the number of rejected ballot papers. Such information will be confirmed in writing and signed by the constituency registrar and sent to the Registrar-General by the first postal delivery after the transmission of the telegram.

77. Minister to cause names of candidates elected to be published in the Gazette

Notification of the names of the persons duly elected, the date of their election and details of their constituency will be caused to be published in the Gazette by the Minister.

78. Custody and disposal of ballot and other papers

As soon as may be after polling day or the last polling day as the case may be in his constituency, the constituency registrar shall enclose in separate sealed packets the counted and rejected ballot papers. He shall not open any sealed packets whilst they remain in his custody. All such packets are then transmitted to the Registrar-General who shall retain such for six months and then, unless otherwise directed by an order of the High Court, shall cause them to be destroyed. No sealed packets will be opened except in the terms of an order of the High Court (eg, for inspection for the purpose of maintaining a prosecution for an offence in relation to any election).

Part XVII - GENERAL PROVISIONS RELATING TO POLLS
(p99)

79. Constituency registrars and other persons to make declaration of secrecy

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

80. Offences in relation to ballot papers

Any person shall be guilty of an offence and liable to imprisonment for a period not exceeding one year who:

- forges, counterfeits or fraudulently destroys a ballot paper or the official mark on a ballot paper;
- without due authority supplies any ballot paper to any person;
- without due authority puts any paper other than the ballot paper into the ballot box;
- without due authority takes the ballot paper out of the polling station;
- without due authority destroys, takes, opens or otherwise interferes with the ballot box or packet of ballot papers the in use for the purposes of the election.

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

Every officer, candidate and election or polling agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of voting at that station and shall not communicate to any person any information likely to defeat the secrecy of the voting, except for some purpose authorised by law.

No person, except provided by the Act, shall:

- interfere or attempt to interfere with a voter when making his vote or otherwise attempt to obtain in the polling station information as to the candidate for whom the voter is about to vote for or has voted for;
- communicate at any time any information obtained in a polling station as to the candidate for the voter is about to vote or has voted for, or as to the number on the ballot paper given to the voter at such station.

No person shall directly or indirectly induce a voter to display his ballot paper after he has marked the same.

No person shall place upon a ballot paper any mark or writing which indicates the identity of the particular voter.

No person shall attempt directly or indirectly to ascertain or aid in ascertaining for which candidate a voter has given his vote (subject to s.59 and ss(1) (iii) of s.65).

Any person who contravenes any provision of this section shall be guilty of an offence and liable to a fine or imprisonment not exceeding one year.

82. Persons wilfully failing in their duties guilty of offence

Any officer or other person who wilfully fails to perform any of the duties required to perform under the Act shall be liable to a fine.

83. Abrogation of elections

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

An such order made shall be published in the Gazette and in any other such manner the Minister thinks appropriate.

Where the President has ordered the abrogation of an election in any constituency: all proceedings relating to that election shall be terminated immediately upon the order being made and everything done in relation to that election prior to the order shall be void.

The President shall as soon as circumstances permit a free and fair election to be held in that constituency, issue a proclamation ordering the election to be held.

Part XVIII - ELECTION EXPENSES AND ELECTION AGENTS
(pp 99-101)

84. What expenses permissible

No election expenses of a candidate, not exceeding a total of \$1,000, shall be lawful except in respect of those listed in this section.

85. Election agents

Before, on or after nomination day but not later than seven days before polling day or the first polling day, as the case may be in the election concerned, a candidate may appoint only one person as his election agent and forthwith notify in writing the full name and address of his election agent to the constituency registrar, who in turn will give public notice of the full name and address of the election agent appointed.

If a candidate revokes the appointment of his election agent or the election agent dies he may appoint another and notify the constituency registrar not later than three days before the polling day or earliest polling day, as the case may be, of his appointment. The candidate must give public notice of the appointment by an advertisement in a newspaper circulating in the constituency of the full name and address of the election agent so appointed.

If a candidate fails to give notice of appointment of an election agent or on the revocation or death of his election agent does not appoint another election agent the candidate will be deemed to be his own election agent.

86. Polling agents

Not later than three days before the polling day of the first polling day, as the case may be, an election agent may appoint one or more persons (not exceeding such number as may be prescribed) to be his polling agents. Notification and the full names and address of every polling agent must be made to the constituency registrar and must give public notice by advertisement in a newspaper as in the case of election agents above.

The election agent or a candidate shall be vicariously responsible for any actions of the polling agent eg. corrupt or illegal practices or other offence in the terms of Parts XX, XXI or XXII.

If an election agent ceases to be an election agent this will not terminate the appointment of a polling agent.

If an election agent revokes the appointment of a polling agent or a polling agent dies, the election agent may appoint another. If he appoints another polling agent he must notify the constituency registrar of the full name and address of the appointed polling agent, and give

public notice by advertisement in a newspaper circulating in the constituency as in the case of an election agent.

87. Appointments made and expenses incurred by candidates or agents

The election agent of a candidate shall by himself or through a polling agent shall appoint every person employed for hire or reward on behalf of an candidate. He will also hire every committee room on behalf of the candidate. He must, no later than 3 days before polling day or the earliest polling day, as the case may be, send to the constituency registrar a list containing the full names and addresses of the persons employed by him for hire or reward and if any such person is enrolled on the voters roll, his number on such roll. If he fails to do this the election agent will be guilty of an offence and liable to a fine.

Any contract whereby expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate unless made by the candidate himself or his election agent, either by himself or through a polling agent. A candidate will not be relieved from the consequences of any corrupt practice or illegal practice committed by his election agent.

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

Except as permitted by the Act, no payments in respect of expenses incurred at any time whether before or during or after that election in respect of the conduct or management of that election otherwise than by or through the election agent of the candidate, whether acting in person, or through a polling agent, shall be made.

All moneys provided by an association or group of persons or by any person for election expenses of a candidate, whether as a gift, loan, advance or deposit, shall only be paid or promised to the candidate or his election agent.

This section does not apply to any monies deposited under s.47 (deposit on nomination).

89. Receipts for election expenses

Every payment in respect of any election expenses shall, except where it is less than \$10 in any account be vouched for by a bill stating the particulars, and by a receipt or some other evidence of payment.

90. Claims for election expenses

This section provides for claims for election expenses which will be allowed under prescribed time limits set out in this Part. Any claims not sent to the election agent within these time limits will be disallowed. Subject to exceptions, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.

An election agent may dispute a claim brought within the time limits prescribed in this section. A person making a disputed claim may bring an action in any competent court by application.

If a court reports that a claim has been made in contravention of this Part without the sanction or connivance of a candidate the election of such candidate shall not be void.

91. Limit of personal expenses that candidates may incur

This Section provides for personal expenses paid by the candidate and those incurred by paid supporters of the candidate. There are prescribed time limits within which claims should be sent to the election agents, together with written particulars of payments supported by documentary evidence. Failure to send a statement or provision of false statements will render a person who has made a payment guilty of an offence and liable to a fine.

92. Claims by election agents

This Part applies to a claim by an election agent for his remuneration.

Part XIX - PROVISIONS RELATING TO ELECTIONS TO THE OFFICE OF PRESIDENT
(pp 102-103)

93. When election to office of President to be held

Pursuant to ss(3) of the Constitution an election to the office of President shall be held within 90 days:

- before the term of the office of the President expires in the terms of s.29 of the Constitution; or
- after the office of President becomes vacant by reason of his death, resignation or removal from office terms of the Constitution.

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

94. Notice of election to office of President

Not later than 10 days after the commencement of the period referred to in s.93 above the Registrar-General shall publish in the Gazette a notice announcing:

- the place or places at which and a day or days, not less than 14 and not more than 21 days after the publication of the notice, on which a nomination court shall sit for the purposes of receiving nominations of candidates for the election to the office of President;

- a day or days, not less than 21 and not more than 45 days after the nomination day or the last nomination day on which the poll shall be taken which has been fixed in terms of s.101;
- a day on which the voters roll for that election shall be regarded as closed, which day may be one or after the date of publication of the notice or not more than 31 days before that date.

The Registrar-General may by further notice published in the Gazette alter any day, time or place fixed.

95 Nomination of candidates for election to office of President

A candidate for election to the office of President shall be nominated by means of a nomination paper in the prescribed form described in ss(1)(a)-(d) and s(2). Subject to this Section s.46 shall apply mutatis mutandis.

96 Deposit on nomination

Such sum as may be prescribed shall be deposited with the Registrar-General at the same time as a nomination paper is lodged on or behalf of a candidate.

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

97. Publication of the names of Presidential candidates

As soon as practicable after the day fixed for the sitting of the nomination court in terms of s.94 the Registrar-General shall caused to be published in the Gazette and in all newspapers of mass circulation in Zimbabwe the names of all election candidates who have been validly nominated for election to the office of President.

98. Withdrawal of candidature

A candidate may in writing addressed to the Registrar-General withdraw his candidature at any time before 21 days from the day or first day, as the case may be, on which the poll for election to the office of President is to be taken.

The Registrar-General will cause to be published in the Gazette and in all newspapers of mass circulation in Zimbabwe notice of withdrawal.

Where a candidate has withdrawn his candidature the sum deposited in his behalf shall be forfeited and the money paid into the Consolidate Revenue Fund.

99. When fresh nominations to be held

Where:

- no candidate for election as President has been validly nominated at the expiry of time fixed for lodging nomination papers with the Registrar-General;
- no candidate for election as President is qualified in terms of s.28 of the Constitution;
- a candidate for election as President dies on or before polling day; or a candidate for election as President dies after polling day but before he has been declared duly elected as President; the Registrar-General shall forthwith publish in the Gazette a notice announcing in the same manner as provided for in s.94 the sitting of a new nomination court and thereafter the provision of this Part shall apply.

100. Procedure when poll to be taken

Where two or more candidates for election as President are validly nominated a poll shall be taken in each constituency for the election of President (ss(2)s.101) the Registrar-General as soon as practicable after the day fixed for the sitting of a nomination court in terms of s.94 shall:

- by notice in the Gazette notify the names of the candidates in alphabetical order; and
- the polling day or days; and
- notify by such means as he thinks necessary in the situation the hours specified for the opening and closing of each polling station in each constituency.

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

Where only one candidate for President is validly nominated the Registrar-General shall declare such candidate to be duly elected without the necessity of a poll.

Where there are two or more candidates validly nominated a poll shall be taken in each constituency for the election of a President. If after a poll no candidate receives a majority of the votes cast a second election shall be held within 21 days after the previous election. In a second election only the two candidates with the highest and second highest numbers of valid votes cast shall be eligible to contest the election.

If after the second election the two candidates receive an equal number of votes the Parliament shall, as soon as practicable after the declaration of the result of that election, meet as an electoral college and elect one of the two candidates by secret ballot and without prior debate. The result of such an election shall be delivered by the Speaker who shall forthwith publish such result in the Gazette and in such manner as he considers necessary to give sufficient publicity to the result.

Notwithstanding ss(5) of s.23 of the Constitution a person elected as President in a secret ballot shall assume office on the day upon which he is declared to be elected by the Speaker.

102. Election petitions in respect of election to the office of President

An election petition complaining of undue return or an undue election of a person to the office of President by reason of irregularity or any other cause whatsoever, may be presented to the High Court within 30 days of the declared result of the election in respect of which the petition is presented, by any person:

- claiming to have a right to be elected at that election; or
- alleging himself to have been a candidate of such election.

If at trial the High Court makes an order:

- that the President was duly elected, such election shall remain valid as if no petition had been presented against his election;
- that the President was not duly elected, the High Court shall give forthwith notice of that fact to the Registrar-General who shall publish a notice in the Gazette stating the effect of the order of the High Court. Such an order shall not invalidate anything done by the President before that declaration.

See ss(4) for sections that shall not apply to an election petition presented in the terms of this section.

103. Application of Parts XIV, XV, XVI and XVII shall apply

Part XX - CORRUPT PRACTICES **(pp103-105)**

104. Treating

Any person who corruptly by himself or by any person before, during or after an election directly or indirectly gives or provides or pays wholly or in part the expenses of providing any food, drink, entertainment, lodging or provisions to or for any person, for the purpose of corruptly influencing that person or another person to give or refrain from giving his vote at an election; or on account of such persons or any other person having voted or refrained from voting or being about to vote or refrain from voting at an election will be guilty of the offence of treating.

Any voter who corruptly accepts or takes food, drink, entertainment, lodging or provisions supplied by a person guilty of an offence in terms of the above paragraph shall also be guilty of the offence of treating.

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

105. Undue Influence

Any person who, directly or indirectly, by himself or another person:

- makes use or threatens the use of force, violence, restraint or any unnatural means whatever ; or
- inflicts or threatens to inflict any temporal or spiritual injury, damage, harm, loss; or
- does or threatens to do anything to the disadvantage upon or against any person in order to induce or compel that person to:
 - sign a nomination paper or refrain from signing a nomination paper; or
 - vote or refrain from voting; or
 - on account of that person:
 - having signed or refrained from signing a nomination paper; or
 - having voted for refrained from voting at any election; or
- any person who by abduction, duress, threats to invoke any unnatural means whatsoever or references to such means by fraudulent device or contrivance:
 - impedes or presents the exercise of his vote by a voter; or
 - compels, induces or prevails upon a voter either to vote or to refrain from voting at an election;

shall be guilty of the offence of undue influence.

106. **Bribery**

In brief, any person who directly or indirectly, by himself or by any other person gives, lends or procures or agrees to give or promises to procure or loans any money or gifts or conveys or transfers property for the purpose of influencing a person to vote or to refrain from voting at an election or to join in any procession or demonstration, shall be guilty of an offence of bribery.

107. **Personation**

Any person shall be guilty of an offence of personation if:

- at an election he applies for a ballot paper in the name of some other person, living or dead, or a fictitious person; or

- having voted once at an election, applies again at the same election for a ballot paper; or not being entitled to do so in terms of s.65, marks a postal ballot paper so as to indicate thereon a vote for a candidate.

108. Illegal transportation of voters

Any person who corruptly conveys any other person or causes any other person to be conveyed to any constituency for the purpose of enabling or assisting that other person to vote unlawfully in that constituency, shall be guilty of the offence of illegally transporting voters.

109. Penalties for corrupt practices

Any person guilty of an offence of personation shall be liable to imprisonment for a period not exceeding three years.

Any person guilty of a corrupt practice other than personation shall be liable to a fine not exceeding \$2,000 or imprisonment for a period not exceeding one year or both.

In addition any person convicted of a corrupt practice by the High Court may be declared incapable for a period not exceeding 5 years from the date of his conviction of being registered as a voter or voting at an election or filling a public office or moving removed from a public office.

Part XXI - ILLEGAL PRACTICES **(pp105-107)**

110. Certain expenditure an illegal practice

No person shall for the purpose of promoting or procuring the election of a candidate at an election:

- incur election expenses in respect of any matter or in any manner constituting an offence under this Act; or
- receive any payment or be a party to any contract for payment, whether before, during or after an election for any matters specified in the above paragraph or to a voter on account of the use of any premises for the exhibition of any address, bill, poster or notice. This paragraph shall not apply in respect of any payment or contract made in the ordinary course of business to or with a voter whose ordinary course of business is as an advertising agent to exhibit bills and advertisements for payment.

Any person who contravenes this section shall be guilty of an illegal practice.

111. Unauthorised election expenses

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

112. Penalty for providing money payments contract to this Act

Any person who knowingly provides money, election expenses in excess of the maximum amount allowed under this Act, or replaces such monies except where is allowed under this Act, shall be guilty of an illegal practice and liable to a fine not exceeding \$2,000 or imprisonment for a period not exceeding one year or both.

113. Certain employment prohibited

Any person may not engage or employ any other person for the purpose of promoting or procuring the election of a candidate for any purpose or any capacity whatever for which election expenses may not be incurred. Any person who engages or employees another person in contravention of this section and the person who is so engaged or employed knowingly, shall be guilty of an illegal practice.

114. Corrupt procurement of a candidate

Any person or corruptly induces or procures any other person to become a candidate or withdraw from being a candidate at any election in consideration of any payment or promise of any nature shall be guilty of an illegal practice. Any person who becomes a candidate or withdraws from being a candidate in pursuance of such inducement or procurement shall also be guilty of an illegal practice.

115. Betting prohibited

Any person who bets on any event or contingency of or relating to the nomination of a candidate for election in terms of this Act as a result of a poll taken in terms of this Act, shall be guilty of an illegal practice and liable to a fine not exceeding A\$4,000 or imprisonment for period not exceeding two years, or both.

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

Every bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear the names and addresses of the printer and publisher thereof, otherwise any person who prints, publishes or posts or causes to be printed, published or posted any printed matter shall be guilty of an illegal practice.

See this section for more detail as to printed matter containing a reference to an election.

117. Prohibited symbols

See this section regarding symbols which are prohibited for use, possession or display which will amount to an illegal practice.

118. Prohibition of certain activities in vicinity of polling stations

No person shall within 100 metres of any polling station on any polling day:

- convoke or take part in any gathering of more than 12 persons;
- canvass for votes;
- utter slogans;
- distribute leaflets or pamphlets for an on behalf of any candidate or party;
- organise or engage in public singing or dancing;
- use bands or music or loudspeaker vans or apparatus.

Any person who contravenes this section shall be guilty of an illegal practice.

119. Premises licensed for the sale of liquor not to be used for certain purposes

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

Any person who contravenes this section shall be guilty of an illegal practice.

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

Any person who induces or procures any person to vote knowing that he or that person is prohibited from voting at an election shall be guilty of an illegal practice.

Any person who before or during an election publishes a false statement of the illness, death or withdrawal of a candidate shall be guilty of an illegal practice.

A candidate shall not be liable nor shall his election be rendered void by any illegal practice under this section committed by his agent other than this election agent.

121 Obstruction of voters

Any person who wilfully obstructs a voter either on his way to or from an election or at the polling station will be guilty of an illegal practice.

122. Philanthropical societies not to devote funds for political purposes

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

123. General penalties for illegal practice

This section sets out the penalties for illegal practices not expressly provided for in the previous sections.

Part XXII - FURTHER PROVISIONS RELATING TO CORRUPT PRACTICES, ILLEGAL PRACTICES AND OTHER OFFENCES (pp107-108)

124. When election void owing to corrupt or illegal practices

Subject to sections 120, 125 and 126 if upon trial of an election petition the High Court certifies to the Minister that any corrupt or illegal practice has been committed by or with the knowledge, consent or approval of the candidate or any of his agents, the election of that candidate shall be void and a fresh election shall be held.

If at trial a candidate or his election agent is found to have committed any corrupt or illegal practice the High Court may deem that they be incapable of being registered as a voter or voting at an election, filling a public office or shall declare that they vacate a public office, for a period not exceeding 5 years.

125. When election not void

If at trial a candidate is found guilty by his agent of the offence of treating or undue influence or of an illegal practice with reference to that election and the candidate has proved to the High Court that:

- no corrupt or illegal practice was committed by himself or by his agent and the offences mentioned were committed without his sanction;
- the candidate and his election agent took all reasonable precautions for preventing the commission of corrupt and illegal practices at that election; and
- the offences mentioned were trivial, unimportant and limited character;

then the election of that candidate shall not be void and nor will the candidate or election agent be subjected to any incapacity under this Act.

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

When it appears to the High Court either upon application or upon any election petition that any act or omission of a candidate or of his election agent or of another agent or person has been done or made in good faith through inadvertence or accidental miscalculation or some other reasonable cause, which but for this section would amount to an illegal practice, the High Court may make an order allowing the act or omission to be an exemption from the provisions of this Act.

127. Hearing of person before he is found guilty of corrupt practice or illegal practice

Before any person, not being a party to an election petition or a candidate on behalf of whom the seat is claimed by an election petition, is found by a High Court to have been guilty of a corrupt or illegal practice, the High Court must give him notice, which shall give him the opportunity of being heard and of calling evidence.

128. Finding on charge of corrupt practice or illegal practice

Any person charged with corrupt practice may if circumstances warrant be found guilty of an illegal practice.

Any person charged with an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to corrupt practice.

129. Time within which proceedings must be commenced

Proceedings in respect of a corrupt or illegal practice shall be commenced within six months after the offence is alleged to have been committed or within three months after a report to the High Court (if any under s.136), whichever period last expires.

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

See also ss(2) where the offender has absconded or concealed his act.

130. When creditors not prejudiced in respect of prohibited payment

Certain payments prohibited under the Act shall not affect the right of any creditor who when the contract was made or the expense occurred, was ignorant of the same being in contravention of the Act.

Payment for liquor, food or refreshments supplied to a candidate or his election agent for their personal consumption and which forms part of personal expenses under the Act is allowed.

Part XXIII - ELECTION PETITIONS
(pp108-110)

131. Interpretation in Part XXIII

"Respondent" in this Part means the member of Parliament whose election or qualification for election is complained of in an election petition.

132. Who may present election petition

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

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

133. Provisions governing election petitions

This section governs the procedures for presenting an election petition to the High Court, including time limits.

134. Notice of election petition to be served on respondent

Notice of presentation of a petition must be served in writing on the respondent within 10 days after presentation.

135. Respondent may object to security provided

This section sets out the procedures and time limits for any respondent to object to the security provided by the petitioner under section 133.

136. Provisions as to trial of election petition

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

If at trial it is proved that any person who voted for the respondent was bribed, treated or subjected to undue influence by the respondent or anyone on behalf of the respondent; or was guilty of personation or of an illegal practice, or was not qualified or was disqualified as a voter at the election, the vote given by such person shall be deducted from the total number of votes given for the respondent at the election.

At the conclusion of the trial the High Court shall determine whether the respondent was duly elected or whether any other person is entitled to be declared duly elected.

See ss (3) for further details of procedure if the respondent is duly elected or if another is declared elected or where a vacancy arises.

See ss(4) and (5) for procedure where a charge is made in an election petition of any corrupt or illegal practice.

See ss (6) and (7) with regard to costs where it is found that a respondent was not duly elected.

137. Procedure where High Court reports cases of corrupt practice or illegal practice

If the High Court states in a report that any person is or may have been guilty of a corrupt or illegal practice the report must be transmitted to the Attorney-General and the Registrar-General.

138. Witnesses

This section sets out the procedure for dealing with witnesses at the trial of an election petition.

Any witness who makes a false statement of fact material to the proceedings which he knows to be false or does not know or believe to be true shall be guilty of an offence and liable to a fine and/or imprisonment not exceeding two years.

139. Witnesses not excused from answering incriminating questions

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

If a witness fully answers every question to the satisfaction of the High Court and which may incriminate him he shall be absolutely freed and discharged from all liability to prosecution for any offence committed under this Act (except under s.138).

140. Respondent may testify that election of petitioner undue

The respondent may give evidence to prove that the election of the petitioner was undue.

141. Withdrawal of election petition

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

ss(2) allows for the petition to be substituted. In most circumstances security must be given upon substitution.

If a petition is withdrawn the petitioner shall be liable for the costs of the respondent.

If there are multiple petitioners, application to withdraw cannot be made without the consent of all the petitioners.

142. Election petition abated on death of petitioner

An election petition may be abated by the death of the petitioner(s) but such abatement shall not affect the liability of the estate of the petitioner(s) for the payment of costs previously incurred.

Substitution on abatement of a petition (within 21 days after abatement) is possible on application to the High Court. Security will need to be provided.

143. Position when respondent does not oppose election petition

Where a respondent gives notice that he does not intend to oppose the election petition, he shall not without leave of the High Court, be allowed to appear or act as a party against the election petition in any proceedings thereon, and shall not sit or vote in Parliament, pending the result of the trial of the petition. Where such notice is given the High Court shall report this to the Speaker.

144. Costs of election petition

All costs, charges and expenses of and incidental to the presentation of an election petition and to the proceedings consequent thereon shall be paid by the parties in such manner and in such proportion as the High Court may determine.

See this section for further detail as to disallowance, taxation and recovery of costs.

Part XXIV - GENERAL
(pp111-112)

145. When incapacity may be removed

A person who has become subject to any incapacity under the Act or any other law by reason of any conviction or by reason of a declaration or report of a court, and any witness who gave evidence against such incapacitated person is convicted of perjury or of contravening ss(2) of s.138 in respect of that evidence, the incapacitated person may apply to the Court for an order that his incapacity shall cease.

146. No person required to divulge how he voted

No person shall in any legal proceedings be required to state for whom he has voted.

147. Evidence as to holding of election

With regard to any offences committed under this Act in relation to an election, the certificate of the constituency registrar for the constituency concerned certifying that the election mentioned was being or had been held shall be sufficient evidence of the fact of an election.

148. Certificate of member's death

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

149. When non-compliance with this Act invalidates election

An election shall be set aside by reason of any mistake or non-compliance with the provisions of this Act by the High Court, if: the election was not conducted in accordance with the principles laid down in this Act; and such mistake or non-compliance did affect the result of the election.

150. Penalty for interruptions in connection with elections

Anyone who wilfully interrupts, obstructs or disturbs any proceedings taken under this Act in connection with an election shall be guilty of an offence and liable to a fine not exceeding \$1,000 or to imprisonment for a period not exceeding 6 months.

151. Maintenance of secrecy

Every person in attendance at the counting of the votes after a poll under this Act shall maintain and aid in maintaining secrecy.

152. How public notice may be given and documents served

Where public notice has to be given by any person under this Act, then unless expressly directed to publish the notice in the Gazette or in any other particular manner, notice may be published in any newspaper in circulation in the constituency or area intended to be affected by such notice, or if it is posted outside the principle outer door of every magistrates court in such constituency or area.

Save where as provided under this Act (or under s.40 of the Interpretation Act) when any notice or other document is to be served on any person under this Act it may be served:

- by delivering it to the person to whom it is addressed; or
- by leaving it at his last known place of residence or any place of residence dated on the voters roll; or
- by sending it to any place of residence referred to above through the post by registered letter marked "electoral notice letter" and which notice will be deemed to have been served at the time at which such registered letter would have been delivered in the ordinary course of post.

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

Whenever under this Act anything is required to be done on a particular day which falls on a Saturday, Sunday or public holiday, such thing shall be commenced, conducted or done on the next succeeding Saturday, Sunday or public holiday. Provided that the President may by statutory instrument declare this section shall not apply in relation to anything specified in the notice.

154. Validation of certain documents despite misnomer or inaccurate description.

No misnomer or inaccurate description of any person or place in any voters roll, any list, nomination paper, ballot paper, notice or other document required for the purposes of this Act shall affect the full operation of the document where the description of the person or place is commonly understood.

155. General penalty

Where no penalty is expressly provided for an offence for the contravention of any provision of this Act, the offender shall be liable to a fine not exceeding \$1,000.

156. Rules of court

The Chief Justice and Judge President of the High Court may make rules as to the practice and procedure to be observed in respect of any jurisdiction exercisable or to be exercised by the High Court under this Act. See ss(2) and (3) for provisions which can be made.

157. Regulations

The Minister may by regulation prescribe all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act. See ss(2) for examples regulations which may be provided for.

158. Regulatory powers of President

The President may make such statutory instruments as he considers necessary or desirable to ensure that any election is properly and efficiently conducted and to deal with any matter or situation connected with, arising out of or resulting from the election.

Statutory instruments may provide for:

- suspending or amending any provision of this Act or any other law in so far as it applies to any election;
- altering any period specified in this Act within which anything connected with, arising out of or resulting from any election must be done;
- validating anything done in connection with, arising out of or resulting from any election in contravention of any provision of this Act or any other law;
- empowering any person to make orders or give directions in relation to any matter connected with, arising out of or resulting from any election;
- penalties for contraventions of any such statutory instrument, not exceeding the maximum penalty referred to in s.155.