

REFERENDUM ACT

CHAPTER 02:08

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REFERENDUM

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Procedural requirement
4. Matter to be posed as a question
5. Writ of referendum
6. Persons entitled to vote
- ✓ 7. Form of ballot and manner of voting
8. Polling hours
9. Control of polling stations
10. Arrangement of polling stations
11. Ballot boxes and discard boxes
- ✓ 12. Method of voting
13. Assistance to voters by election officers
14. Interference with voters
15. Voters objected to
16. Spoilt ballot envelopes
17. Additional counters
18. Personal attendance
19. Where to vote
20. Voting by election officers and police officers
21. Tendered ballot envelopes
22. Control of polling station
23. Removal of persons misconducting themselves
24. Adjournment of poll in case of riot
25. Closing of poll
26. Procedure on closing poll
27. Counting of votes
28. Verification of ballot envelopes accounts
29. Method of counting
30. Rejected ballot envelopes
31. Returning officer's decision final
32. Method of dealing with papers
33. Certificate and declaration of result
34. Publication of result
- ✓ 35. Documents to be delivered to High Court
36. Corrupt and illegal practices
37. Who may present a petition
38. Presentation of petition
39. Registrar to give notice to the Attorney-General
40. Trial of petition

SECTION

41. Form of petition
42. Offences

Schedule

Act 16, 1987,
Act 17, 1987.

An Act to provide for the holding of a Referendum

[Date of Commencement: 7th August, 1987]

- Short title 1. This Act may be cited as the Referendum Act.
- Interpretation 2. (1) Unless the context otherwise requires or this section otherwise provides, terms used in this Act shall have the same meaning as that which they have under the Electoral Act.
Cap. 02:07 (2) In this Act unless the context otherwise requires—
“poll” means a poll conducted in accordance with this Act;
“polling day” means the day appointed by writ as the day upon which a poll shall be taken under this Act;
“writ” means a writ issued under section 5.
- Procedural requirement 3. Where under any law, any matter is required to be submitted to a vote of the electors qualified to vote in the election of the Elected Members of the National Assembly for approval by a majority of them, it shall be submitted in accordance with the provisions of this Act.
- Matter to be posed as a question 4. The matter requiring the approval of the majority of the electors shall be submitted in the form of a question requiring an affirmative or negative reply and shall, where it is an amendment to any law, contain a full text of the proposed amendment.
- Writ of referendum 5. (1) When any matter is required under any law to be submitted to a vote of the electors qualified to vote at an election of the Elected Members of the National Assembly, the President shall issue a writ in Form A set out in the Schedule under the Public Seal of Botswana addressed to the Supervisor of Elections fixing the day and the hours for the taking of the poll and setting out the matter on which the poll is to be taken.
(2) If at any time between the publication of the notice under subsection (1) and polling day, the President is satisfied that it is expedient in the public interest to do so, he may, by proclamation published in the Gazette, adjourn the taking of the poll to some other day specified by him.

(3) A proclamation made under subsection (2) shall apply only to such constituencies as are specified in the proclamation, and not to any other constituency.

6. (1) Subject to the provisions of section 19, any person registered as a voter in any constituency shall be entitled to vote, at the polling station at which he has been so registered, in accordance with section 51 of the Electoral Act.

Persons entitled to vote

(2) No person shall be entitled to vote—

(a) more than once at a referendum;

(b) at a referendum if he is at the date of the referendum, disqualified from voting at any election under the provisions of the Electoral Act or any other law pursuant to section 67(4) of the Constitution.

7. (1) The ballot of every person voting at a referendum shall consist of a ballot envelope in a form to be determined by the Supervisor of Elections and having a serial number printed or stamped on the back into which the voter shall place the counter which, in terms of this section, indicates the manner in which he wishes to vote.

Form of ballot and manner of voting

(2) A voter wishing to vote in the affirmative on the question posed by the referendum shall do so by placing a "Yes (Ee)" counter marked with a "√" mark in his ballot envelope and a voter wishing to vote in the negative on the question posed in the referendum shall do so by placing a "No (Nnyaa)" counter marked with an "X" mark in his ballot envelope.

8. (1) Every poll shall commence at six-thirty o'clock in the morning and close at seven o'clock in the evening, unless the Supervisor of Elections otherwise orders.

Polling hours

(2) Different hours for the taking of the poll may be ordered by the Supervisor of Elections in respect of different constituencies or different polling stations, and in such case the returning officer shall amend any notice issued in terms of subsection (1) accordingly.

(3) Notwithstanding the provisions of subsections (1) and (2), a presiding officer may, where voters are waiting to vote, extend the closing time for a period not exceeding two hours.

9. (1) In the absence of the presiding officer from any polling station, a polling officer nominated by the returning officer shall act as presiding officer.

Control of polling stations

(2) A polling officer may be authorized by the presiding officer to do any act which the presiding officer is required or authorized to do at a polling station, except that he may not order the

searching of any voter, the arrest of any person or the exclusion or removal of any person from the polling station.

Arrangement of
polling stations

10. (1) On polling day at every polling station there shall be—
- (a) outside the polling station in a conspicuous place, a notice setting out the name of the polling station;
 - (b) both within and outside the polling station notices, setting out the question posed by the referendum;
 - (c) one or more polling booths in which voters may handle their ballot envelopes and counters in secrecy, each containing notices of the kind referred to in paragraph (b), a table and a discard box;
 - (d) one or more ballot boxes placed in front of the presiding officer; and
 - (e) a copy of the election roll for the constituency, a sufficient number of ballot envelopes, counters and other things necessary for the poll to be properly and expeditiously carried out.
- (2) Every presiding officer shall be in possession of a seal supplied by the Supervisor of Elections.

Ballot boxes
and discard
boxes

11. (1) Every ballot box shall be provided with a lock or other device for securing it when closed, and shall be so constructed that ballot envelopes can be put therein when it is closed but cannot be removed therefrom once it has been sealed in terms of subsection (2).

(2) Immediately before the commencement of the voting the presiding officer at each polling station shall show each ballot box empty to such persons as may lawfully be present so that they may see that it is empty, and shall, before placing it in position, close and place his seal upon it in such manner as to prevent it from being opened without breaking the seal and shall keep it so closed and sealed.

(3) Every discard box shall be so constructed that counters can be put therein but cannot be removed or seen unless the box or any fastening thereof is destroyed.

Method of
voting

12. The voting at a referendum shall be conducted in the following manner—

- (a) every voter desiring to record his vote shall present himself at the polling station in respect of which he is registered to vote, and shall produce his voter's registration card to the presiding officer;
- (b) the presiding officer, after satisfying himself—
 - (i) that the name of such voter appears on his copy of the

- election roll for that constituency and in the section thereof relating to that polling station,
- (ii) that such voter has not already voted at that election, and
 - (iii) that such voter has not become disqualified from voting,
- shall deliver to him a ballot envelope and such number of counters as are required for the poll;
- (c) immediately before the presiding officer delivers a ballot envelope and counters to any person—
 - (i) the number and name of the voter, as stated in the election roll, shall be called out,
 - (ii) a mark shall be made on the copy of the election roll against the number of such voter to show that he has been issued with a ballot envelope and counters, and
 - (iii) the voter's registration card shall be marked by the presiding officer with the date and his initials;
 - (d) subject to the provisions of paragraph (g), a voter, on receiving a ballot envelope and counters, shall go immediately into a polling booth and shall there secretly record his vote by putting into the ballot envelope the counter having the voting mark indicating his choice;
 - (e) he shall then seal the ballot envelope and put the unused counters into the discard box, and return to the presiding officer and having held up the ballot envelope so that the presiding officer can identify it, drop the ballot envelope into the ballot box placed in front of the presiding officer;
 - (f) every voter shall vote without undue delay and shall leave the polling station as soon as he has voted;
 - (g) on the application in person of any voter who is incapacitated by blindness or other physical cause from voting, the presiding officer shall, in the presence of the person with whose assistance the blind person came to cast his vote, secretly record the voter's vote by putting into the ballot envelope the counter having the voting mark expressive of the manner in which the voter wishes to vote, and he shall then seal the ballot envelope and put the unused counters into the discard box and drop the ballot envelope into the ballot box.

13. Except as provided in this Act, the presiding officer or polling officers shall not give any assistance or explanation to a voter beyond—

- (a) directing him to a polling booth where he may vote;
- (b) informing him of the nature of the notice posted inside the polling booth; and

Assistance to
voters by
election officers

- (c) informing him of the procedure he should follow after entering the polling booth.

Interference
with voters

14. Except as provided in this Act, no person shall approach, interfere with, speak to or assist a voter from the time he has received his ballot envelope and counters to the time he has completed voting.

Voters objected
to

15. (1) If a voter makes, before the presiding officer, a written declaration on oath in Form B set out in the Schedule that he verily believes and undertakes to prove that a person applying for or in possession of a ballot envelope and counters—

- (a) is in fact not the voter whose name he assumes to vote;
(b) that such person has voted before in the same referendum;
or
(c) that such person is disqualified from voting in such referendum,

the presiding officer shall, unless that person makes a written declaration on oath in Form C set out in the Schedule before the presiding officer that the statements in the first-mentioned declaration (which shall be read to him) are false, prohibit the issue of a ballot envelope and counters to that person or, if a ballot envelope and counters have already been issued to him but he has not yet entered the polling booth, impound and cancel the ballot envelope and counters and endorse on the envelope the reason for the cancellation and make an appropriate endorsement on the marked copy of the election roll.

(2) If that person has already voted, or thereafter votes, the presiding officer shall cause the words "protested against under section 15" to be placed against the name of the person on the marked copy of the election roll.

(3) A ballot envelope so impounded and cancelled shall be treated as a spoilt ballot envelope.

(4) The presiding officer is authorized and required to administer the oath referred to in subsection (1).

(5) A person who makes any false statements in a declaration referred to in subsection (1) shall be guilty of an offence unless he proves that he did not know that the statement was false, and shall, on conviction, be liable to the penalties prescribed by law for perjury.

Spoilt ballot
envelopes

16. A voter who has accidentally dealt with his ballot envelopes in such manner that it may not properly be used as a ballot envelope may, on delivering such ballot envelope to the presiding officer and after satisfying the presiding officer that it had been spoilt by accident, obtain another ballot envelope in place thereof and the spoilt ballot envelope shall be immediately cancelled and

the presiding officer shall make an appropriate endorsement on the marked copy on the election roll.

17. Any voter who has accidentally dealt with his counters in such a manner that he is unable to vote as he wishes shall be entitled to obtain a further set of counters, on demand, and shall not be required to disclose directly or indirectly what counters were accidentally dealt with.

Additional
counters

18. A vote may not be recorded by a voter except by his attending in person at the polling station and recording his vote in accordance with this Act.

Personal
attendance

19. Subject to the provisions of section 20 no person shall be permitted to vote at any polling station other than one in respect of which he is registered.

Where to vote

20. (1) So far as practicable, polling officers and police officers on duty at polling stations shall be assigned to polling stations in respect of which they are registered.

Voting by
election officers
and police
officers

(2) Polling officers and police officers on duty at polling stations in respect of which they are registered shall so inform the presiding officer, who shall himself supervise the formalities necessary for the casting of their votes.

(3) If a presiding officer is on duty at a polling station in respect of which he is registered a polling officer shall supervise the formalities necessary for the casting of such presiding officer's vote.

(4) Where election officers and police officers entitled to vote are unable to or likely to be unable to vote on the date of the poll by reason of not having been assigned to the polling stations in respect of which they are registered, the Supervisor of elections shall, for the purpose of enabling such officers to vote—

(a) fix such times, places and days, not earlier than 15 days before the date fixed under section 5 for the taking of any poll;

(b) appoint presiding and returning officers for each place fixed by him under paragraph (a); and

(c) at least two days prior to the day fixed under paragraph (a), inform all political parties with registered symbols of the times, places and days upon which a poll will be taken.

(5) Subject to the provisions of subsections (6) and (7), the provisions of Part VII of the Electoral Act relating to the conduct of polls shall, with such modifications as may be considered necessary by the Supervisor of Elections, apply to any poll conducted under subsection (4).

(6) The presiding officer of each polling station as soon as practicable after the closing of the poll, shall—

(a) place all the ballot envelopes containing the votes of each constituency in a separate packet and seal it with his seal; and

(b) transmit all the documents relating to the referendum in safe custody to the returning officer of the constituency in respect of which the votes were cast.

(7) The returning officer of each constituency to whom documents relating to the referendum have been transmitted in accordance with the provisions of subsection (6) shall retain such documents unopened in safe custody until after the close of the poll on the date fixed under section 5 and the documents shall be dealt with in accordance with the provisions of section 28.

Tendered ballot envelopes

21. (1) If a person representing himself to be a voter named in the election roll and being in possession of a voter's registration card in such name applies for a ballot envelope after another person has voted in such name, the applicant shall, after making a declaration on oath in Form D set out in the Schedule be entitled to receive a ballot envelope and counters in the same manner as any other voters, except that such ballot envelopes (hereinafter referred to as a "tendered envelope") shall be crossed in the manner of a registered letter.

(2) The name of such voter, his number in the election roll and the number of the tendered ballot envelope issued to him shall be entered on a list to be called the tendered votes list, which shall be admissible in any legal proceedings arising out of the referendum.

Control of polling station

22. The presiding officer shall regulate the admission of voters to the polling station and shall exclude all other persons except any other person who has lawful reason to be admitted, and shall keep order and ensure compliance with this Act at the polling station.

Removal of persons misconducting themselves

23. If any person misconducts himself at a polling station or fails to obey any lawful order of the presiding officer he may, by order of the presiding officer (but not of any other polling officer), be removed from the polling station by a police officer or any other person authorized by the presiding officer, and a person so removed shall not, without the permission of the presiding officer, again enter the polling station during the day of the election:

Provided that the powers conferred by this section shall not be exercised so as to prevent any person who is otherwise entitled to vote at a polling station from voting

24. (1) If the proceedings at any polling station are interrupted or obstructed by riot or open violence, the presiding officer shall adjourn the proceedings until later in the day or until the following day after taking such precautions as are necessary to safeguard the ballot boxes and envelopes and other referendum requisites, and shall forthwith notify the returning officer, who shall in turn notify the Supervisor of Elections.

Adjournment of poll in case of riot

(2) If the poll is adjourned at any polling station the hours of polling on the day to which it is adjourned shall be the same as for the original day, and references in this Act to the closing of the poll shall be construed accordingly.

25. When the hour appointed for the closing of the poll has been reached, the presiding officer shall declare that no more persons shall be admitted to the polling stations, and thereafter only the persons already inside the polling station, or any area set aside for waiting voters, shall be permitted to vote.

Closing of poll

26. (1) The presiding officer of each polling station as soon as practicable after the closing of the poll, shall, make up into separate packets, sealed with his seal—

Procedure on closing poll

- (a) the unused ballot envelopes, the spoilt ballot envelopes and the ballot envelopes cancelled in terms of subsection (2);
- (b) the marked copy of the election roll together with any documents received from the returning officer under section 20; and
- (c) the tendered votes list.

(2) Any ballot envelopes which are left in the polling booth shall be cancelled by the presiding officer.

(3) Any counters which are left in the polling booth shall be put into the discard box by the presiding officer.

(4) Every unopened ballot box shall be secured by the presiding officer and sealed with his seal in such manner that it cannot be opened and nothing can be inserted therein without the seals being broken.

(5) The presiding officer shall despatch each such packet and ballot box in safe custody to the returning officer, together with a statement by the presiding officer (hereinafter referred to as the "ballot envelope account") showing—

- (a) the number of ballot envelopes entrusted to him;
- (b) the number of ballot envelopes issued;
- (c) the number of ballot envelopes contained in the packet referred to in paragraph (a) of subsection (1).

(6) The presiding officer shall despatch the unopened discard box in safe custody to the returning officer for onward transmission to the Supervisor of Elections who shall retain all such boxes in

his possession unopened until the result of the referendum has been ascertained and then dispose of them as he sees fit.

Counting of
votes

27. (1) The returning officer shall make arrangements for counting the votes, at a place to be determined by him, as soon as practicable, after the closing of the poll, and shall, as far as practicable proceed continuously to comply with the provisions of sections 28 and 29 until the counting is completed allowing only reasonable time for refreshment.

(2) Except with the consent of the returning officer, no person other than the returning officer, and the assistant returning officers, may be present at the counting of the votes.

Verification of
ballot envelopes
accounts

28. (1) When all the ballot boxes have been received by the returning officer, he shall proceed to verify the ballot envelope accounts of each polling station in the constituency by opening the sealed packet containing unused, spoilt and cancelled ballot envelopes in it and comparing the number of ballot envelopes in it and the total number of ballot envelopes found in the ballot boxes for that polling station.

(2) The returning officer shall prepare a statement as to the result of the verification.

(3) After examination the returning officer shall return the unused, spoilt and cancelled ballot envelopes to the packet from which they were taken and shall reseal such packets with his seal.

(4) When the procedures set out in subsections (1), (2) and (3) have been completed in respect of each polling station in the constituency the returning officer shall mix together all the ballot envelopes found in the ballot boxes for the constituency and shall then count the votes in the manner set out in section 29.

Method of
counting

29. (1) After verifying the ballot envelope accounts in the manner set out in section 28 the returning officer shall then open each ballot envelope and put the envelope into a separate pile or receptacle according to the mark on the counter.

(2) The returning officer shall not open the tendered ballot envelopes but shall put them all together into a separate pile or receptacle.

(3) The returning officer shall reject and endorse the word "rejected" on any ballot envelope on which anything except the serial number is written or marked by which the voter can be identified, or in which there is no counter or more than one counter:

Provided that the returning officer shall not reject any ballot envelope containing two or more counters of the same mark but

shall treat such counters as if they were one counter of that mark.

(5) In this section, "returning officer" includes any assistant returning officer authorized by the returning officer to perform the duties of a returning officer under this section.

30. The returning officer shall prepare a statement showing the number of ballot envelopes rejected.

Rejected ballot envelopes

31. The decision of the returning officer on any question arising in respect of any ballot envelope shall be final, and shall not be questioned in any legal proceedings except on a petition to have the referendum declared null and void.

Returning officer's decision final

32. (1) At the conclusion of the counting of the votes the returning officer shall seal up in separate packets the counted ballot envelopes, the rejected ballot envelopes and the tendered ballot envelopes.

Method of dealing with papers

(2) The returning officer shall at no time open the sealed packet containing the marked copy of the election roll or the sealed packet containing the tendered votes list.

33. After counting the votes and having ascertained the result of the poll the Supervisor of Elections shall—

Certificate and declaration of result

- (a) certify by endorsement on the writ the result of the poll;
- (b) return the writ so endorsed to the President.

34. (1) The Supervisor of Elections shall notify the Clerk to the National Assembly of the return of the writ and shall cause the result of the referendum to be published in the Gazette.

Publication of result

(2) The Supervisor of Elections shall, on the completion of any referendum, submit a report on the exercise of his functions under this Act to the Minister for the time being responsible for matters relating to the holding of a referendum and that Minister shall, not later than seven days after the National Assembly next meets after he received the report, lay it before the Assembly.

35. (1) The returning officer shall deliver all documents (including counters) relating to the conduct of the referendum to the Registrar of the High Court, who shall ensure their safe custody.

Documents to be delivered to High Court

(2) The Registrar of the High Court shall retain for six months all such documents (including counters) relating to a referendum forwarded to him in accordance with this section and then, unless otherwise ordered by the court, or unless he is aware that legal proceedings are pending in respect of such referendum, shall cause them to be destroyed.

- Corrupt and illegal practices** 36. The provisions of sections 89 to 93, 100 to 102, 106 to 109 and sections 111 and 112 of the Electoral Act shall *mutatis mutandis* apply to a referendum.
- Who may present a petition** 37. A petition complaining of an undue return of the writ of referendum by reason of any corrupt or illegal practice, irregularity or by reason of any other cause whatsoever, may be presented to the High Court by any person entitled to vote at that referendum.
- Presentation of petition** 38. A petition referred to in section 37 shall be signed by the petitioners and shall be presented within 30 days after the day on which the result of the referendum was published in the Gazette.
- Registrar to give notice to the Attorney-General** 39. The Registrar of the High Court shall, upon receipt of a petition, give notice in writing of the presentation of the petition to the Attorney-General.
- Trial of petition** 40. The provisions of section 119 of the Electoral Act shall *mutatis mutandis* apply to the trial of a petition of undue return of a writ of referendum.
- Form of petition** 41. A petition of undue return of a writ of referendum shall be in such form and shall state such matters as may be prescribed by rules of court made in that behalf.
- Offences** 42. The provisions of Part XI of the Electoral Act shall *mutatis mutandis* apply to a referendum and any reference to a candidate therein shall be read and understood to be a reference to the manner in which a voter voted or is about to vote, as the case may be.

SCHEDULE

FORM A

REFERENDUM ACT WRIT OF REFERENDUM BY

HIS EXCELLENCY THE PRESIDENT OF BOTSWANA

To the Supervisor of Elections

WHEREAS by section 5(1) of the Referendum Act it is provided that when any matter is required under any law to be submitted to a vote of the electors qualified to vote at an election of the elected Members of the National Assembly, the President shall issue a writ under the

Public Seal of Botswana, addressed to the Supervisor of Elections for the taking of a poll and setting out the matter on which the poll is to be taken;

AND WHEREAS the matter herein set out has arisen for submission to the said electors;

NOW THEREFORE I, the President of the Republic of Botswana do hereby direct that you the said Supervisor of Elections shall take a poll on the day of, 19....., on the following matter

and that you do endorse this writ with the result of the poll and return it to me.

GIVEN under my hand and the Public Seal of Botswana this day of, 19.....



President

(Reverse side of Form)

The matter submitted to the electors under the Referendum Act on the day of 19..... has been *by them (*endorse "approved" or "rejected" as the case may be.)

FORM B REFERENDUM ACT (section 15) OBJECTION TO VOTER

I, being a registered voter in the constituency do hereby declare and undertake to prove that the person applying for/in possession of a ballot ^{PAPER} ~~envelope and counters~~ in the name of who is registered on the existing election roll for the polling station under number

- *(a) is not the person he purports to be
*(b) has voted before at this referendum
*(c) is disqualified from voting at this referendum by reason of the fact that