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National Assembly Elections (Amendment) Act, 2001 102

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ACT NO. 1

National Assembly Elections (Amendment) Act, 2001

AN Act to amend the National Assembly Elections Order 1992¹ to give effect to the decisions of the Interim Political Authority; to give additional powers to the Electoral Commission in respect of prescribing procedures for the resolution of complaints, and to provide for related purposes.

Enacted by the Parliament of Lesotho.

Short title and commencement

1. (1) This Act may be cited as the National Assembly Elections (Amendment) Act, 2001 and shall come into operation on such date as the Minister responsible for Law and Constitutional Affairs may, by notice published in the Gazette, appoint.
- (2) The principal law is amended in section 1 by deleting subsection (1) and substituting the following subsection -
“(1) This Act may be cited as the National Assembly Elections Act, 1992.”.

General amendments

2. The National Assembly Electoral Order, 1992 (referred to as “the principal law”) is amended by replacing, wherever they appear, all references to -
 - (a) “this Order” with the reference to “this Act”; and
 - (b) “absent electors” with the references to “advance electors”.

Interpretation

3. The principal law is amended in section 2 -
 - (a) by deleting the definitions of “agent” and “candidates agent” and substituting them with the following definition -
“**agent**” means an agent appointed for a candidate or a political party under section 57;
 - (b) by deleting the definition of “political party” and substituting the following definition-
“**“political party”** means a political party registered under section 35, which is an organisation registered under the Societies Act 1966, and one of whose purpose is to secure participation in the election of members of the National Assembly;”
 - (c) by inserting the following definitions in their appropriate alphabetical order-

“**election timetable**” means the election timetable for an election published by the Commission in terms of section 48;

“**electoral area**” means the electoral area determined by the Commission under section 4(f);

“**final list**” means the list of electors prepared for each constituency under section 22 and includes a copy of that list;

“**legitimate interest**” means an interest of a person registered to vote at an election under this Act;”

“**provisional list**” means the list of electors prepared from a provisional version of the general register of electors under section 21A(1)(a) and includes a copy of that list;”

Other powers, duties and functions of Commission

4. The principal law is amended in section 4 -

(a) by deleting paragraph (a) and substituting it with the following-

★ “(a) to establish and maintain liaison and cooperation with political parties and other interested civic groups and in consultation with such groups, to establish and enforce a code of conduct to be subscribed to by such groups participating in the elections to the National Assembly;” and

(b) by inserting the following paragraphs after paragraph (k)-

“(ka) to prescribe the manner in which the identity of a person who applies to be registered as an elector is to be proved in the registration of electors;”

(kb) to prescribe the manner in which complaints concerning irregularities in respect of the electoral process are to be processed in terms of section 7; and

(kc) to appoint persons to conciliate complaints concerning irregularities in the electoral process submitted in terms of section 7.”

5. The principal law is amended by inserting after section 6 the following new section -

“Party representatives

6A (1) A political party shall have the right to nominate not more than two representatives (in this Act referred to as “party representatives”) in respect of each electoral area.

(2) Subject to subsection (3), a party representative shall represent the political party nominating him and shall have the following rights in the electoral area in respect of which he has been nominated-

(a) the full and free right of access to the offices of the

Commission in the electoral area and to all its relevant records at all reasonable times;

- (b) the right to check, verify and obtain any relevant information regarding the work of the Commission; and
- (c) the right to information showing whether or not any officials of the Commission are taking adequate measures to comply with the provisions of the law in any forthcoming elections and the area electoral officer shall be bound to furnish such information as soon as practicable.

(3) An area electoral officer may appoint an official of the Commission to accompany and observe a party representative at all times.

(4) The provisions of section 6(4), (6) and (7) shall apply to a party representative during the performance of his work, with the changes required by context, to the provisions of this section.”.

Power of the Commission to resolve complaints

6. The Principal law is amended by deleting section 7 and substituting it with the following-

“7. (1) Any person with legitimate interest may submit to the Director of Elections a complaint in the prescribed form concerning any irregularity in any aspect of the electoral process.

(2) The Director of Elections shall attempt to resolve the complaint within the prescribed period.

(3) If the complaint remains unresolved, the Director shall refer it to a conciliator appointed in terms of section 4 who shall investigate the complaint and attempt to resolve it.

(4) If the conciliator is not able to resolve it within the prescribed period, the conciliator shall complete a report in the prescribed form and submit it to the Commission with recommendations.

(5) The Commission shall consider the report and make a decision within the prescribed period.

(6) Any person with legitimate interest who is not satisfied with the Commission’s decision may appeal against that decision to the High Court in accordance with section 100.

(7) Nothing in this section prevents a person from seeking urgent relief in the High Court.”.

Director of Elections and other staff of Commission

7. The principal law is amended in section 9D -

- (a) by deleting the phrase “public officer” in subsection (1) and substituting the word “person”;

- (b) by deleting subsection (5) and substituting it with the following subsection-

“(5) The Commission may appoint such staff as may be necessary for the discharge of its functions on terms and conditions as may be determined by the Commission in consultation with the Public Service Commission and the Minister of Finance which shall be specified in the instrument of appointment.”;

- (c) by inserting the following new subsections after subsection (5)-

“(6) The Minister responsible for the Public Service shall, when so requested by the Commission, make available to the Commission any public officer of any authority of the Government for the purpose of the discharge of its functions; and the appointment, exercise of disciplinary control or removal of any public officer from the Commission in relation to the performance of his electoral functions shall be vested in the Commission.

(7) The Director of Elections may delegate the functions conferred upon him under subsection (3) to a member of staff or a seconded officer or seconded employee unless the Act or the Commission specifically forbids him to delegate that function.”.

Appointment of area electoral officers

8. The principal law is amended in section 9E by deleting paragraph (2)(a) and substituting it with the following paragraph-

“(a) to perform such functions of the Director of Elections in relation to the electoral area concerned as the Director of Elections may specify;”.

Applications for registration

9. The principal law is amended in section 14 by deleting subsection (6) and substituting it with the following-

“(6) If an applicant under subsection (4) satisfies the requirements of sections 15 and 16, the Director of Elections shall, subject to subsection (7), register the applicant as an elector and include that person's name on the provisional and final lists of electors.”.

How applications for registration are to be dealt with

10. The principal law is amended in section 16 by deleting subsection (6) and substituting the following -

“(6) If an elector's registration card is lost, destroyed, defaced or damaged, the elector may apply on the prescribed form

to the registration officer or any other duly authorised officer for a duplicate copy of the card.”.

11. (1) The heading to section 21A of the principal law is deleted and the following substituted-

“Director of Elections to publish provisional list of electors”.

- (2) The Principal law is amended in section 21A -

(a) by inserting in subsection (1)(a) after the words “general register” the following words “which shall be produced in the form of a provisional list of electors;

(b) by deleting the word “version” wherever it appears in subsections (1) and (2) and substituting the words “list of electors”;

(c) by deleting in subsection (3) the words “provisional version for the general register or part of that register” and substituting them with the following-

“the provisional list of electors or part of that list”;

(d) by deleting subsection (4) and substituting the following subsection-

“(4) The provisional list of electors shall be displayed in all constituencies and such other places as the Director of Elections considers appropriate.”;and

(e) by inserting a new subsection (5) after subsection (4) as follows -

“(5) The Director of Elections shall provide a provisional list of electors or part of that list in respect of an electoral area prepared in terms of the above subsections, without charge -

(a) to the authorised representative of each political party; and

(b) to each area electoral officer.”.

12. (1) The heading to section 22 of the principal law is deleted and the following substituted-

“Director of Elections to prepare final electoral list for each constituency”.

- (2) The principal law is amended in section 22-

(a) by inserting in the opening words in subsection (1) after the word “practicable”, the words “publish the provisional list”; and

(b) by deleting the word “an” in subsection (1)(a) and (b) before the word “electoral” and substituting the words “a final”;

(c) by deleting the word “an” in subsection (1)(b) after the word

“after” and substituting the word “a final”.

Particulars to be shown in electoral lists and lists of additions and removals

13. The principal law is amended in section 23 by deleting the word “An” at the beginning of subsections (1) and (2) and substituting the words “A final”.

Arrangements for the printing of electoral lists

14. The principal law is amended in section 24 by deleting the word “an” wherever it appears and substituting the words “a final”.

Right to object to the registration of a person as an elector

15. The principal law is amended-

- (a) by inserting at the end of the heading before section 33 the following words -

“and claim for the inclusion of an omitted elector’s name”;

- (b) in section 33 by inserting three new subsections (1A), (1B) and (1C) after subsection (1) as follows -

“(1A) Any person whose name does not appear on the provisional list of electors but who claims to be a registered elector, shall make an application to the Director of Elections to have his name included in the final list.

(1B) The application shall be made in the prescribed form.

(1C) The Director of Elections shall, if satisfied that an applicant’s name is omitted from the provisional list, through error, include the applicant’s name in the final list, or if he is satisfied that the omission is correct he may decline to do so and he shall, without delay and in writing, inform the applicant of his decision;

- (c) by inserting in subsection (2B)(b) the words “or inclusion of an elector’s name omitted from the provisional list” after the word “registration”;
- (d) by inserting in subsection (3)(b) the words “or by hand delivered” after the word “registered”; and
- (e) by deleting in subsection (5) “14” and substituting “7”.

Right of person to require a case to be stated if dissatisfied with a determination under section 33

16. The principal law is amended in section 34-

- (a) by inserting in the closing words of subparagraph (1) after the word “shall” the following, “within 7 days of receipt

of notification of determination,"; and

(b) by inserting after subsection (3) the following new subsection

(3A) - (3A) The Magistrate shall reach a decision within 7 days of the determination being submitted to him under subsection (1)."

Political parties to register

17. The principal law is amended in section 35 by inserting the following two new subsections after subsection (4) -

"(5) The registration of political parties under this section shall be suspended for the period-

(a) commencing 7 days after the beginning of the election period for an election under this Act; and

(b) ending at the end of the election period.

(6) If an application for the registration of a political party has been made in accordance with this section and the Commission has not made a decision to register or to refuse to register the applicant before the date contemplated in subsection (5)(a), the Commission shall, within 7 days of the date contemplated, make the decision."

Appeals

18. The principal law is amended in section 38 by deleting subsection (1) and substituting the following -

"(1) A political party which is aggrieved by a decision of the Commission not to register it or cancel its registration may, within 3 days after the party has been notified of the decision, appeal to the High Court against the decision and the decision of the High Court shall be made within 3 days after the lodging of the appeal."

Amendment to Schedule 2

19. The principal law is amended in Schedule 2 -

(a) by deleting item 4 and substituting the following item-

"4. Any person, who before the commencement date of this Act, was registered as an elector or who had applied to be registered as an elector under the Act, shall apply again to be registered in terms of Part 2.";

(b) by deleting item 5.

NOTE

1. Order No. 10 of 1992