



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 270 1998

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 30 of 1998: Electoral Amendment Act, 1998.

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Electoral Act, 1992, by the amendment of the definition of "Director" and the addition of the definitions of "Directorate of Elections" and "staff member"; to provide for the establishment and constitution of a Selection Committee; to make other provisions relating to the establishment of the Directorate of Elections and relating to the constitution of the Commission; to provide for the compilation of different voters' lists and for the transmission to political parties of the voters' lists, the voters' register, the numbers allocated to ballot boxes and the serial numbers of ballot papers; to authorise the Director to delegate certain of his or her powers; to compel the presiding officer to, under certain conditions, close and seal the aperture in a ballot box; to empower the court to order the opening of sealed packets containing certain ballot papers and the production and inspection of certain documents for the purpose of an election application; to substitute certain words and expressions; and to provide for matters incidental thereto.

(Signed by the President on 23 October 1998)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 1 of Act No. 24 of 1992, as amended by section 1 of Act No. 23 of 1994 and by section 3 of Act No. 3 of 1997

1. Section 1 of the Electoral Act, 1992 (hereafter referred to as the principal Act), is amended -

(a) by the substitution for the definition of "Director" of the following definition :

"Director" means the Director of Elections appointed in terms of section 11(2);

- (b) by the insertion of the following definition after the definition of "Director":

" 'Directorate of Elections' means the Directorate of Elections established by section 11(1);"; and

- (c) by the insertion of the following definition after the definition of "returning officer":

" 'staff member' means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);".

Substitution of section 3 of Act No. 24 of 1992

2. The following section is substituted for section 3 of the principal Act :

"3. There is hereby established a commission to be known as the Electoral Commission, which Commission shall be an agency as contemplated in section 3(1)(c) of the Public Service Act, 1995 (Act No. 13 of 1995), and which shall report to Parliament."

Substitution of section 5 Act No. 24 of 1992

3. The following section is substituted for section 5 of the principal Act :

"Constitution of the Commission and establishment of the Selection Committee

5. (1) The Commission shall, subject to the further provisions of this section, consist of five members appointed by the President by notice in the *Gazette*.

(2) The Director shall, in such form as he or she may determine, by notice in the *Gazette* and in not less than two daily newspapers circulating throughout Namibia, invite any person to in writing apply for appointment as a member of the Commission, and shall in such notice stipulate -

- (a) the form of an application for such appointment;
- (b) the place where or the person to whom an application for such appointment shall be submitted;

- (c) the closing date for the submission of an application for such appointment; and
- (d) such other particulars or documents, as the Director may determine, which shall accompany an application for such appointment.

(3) The Director shall convene a meeting of the Selection Committee to be held on or at such date, time and venue as the Director may determine, which meeting shall be held not later than 21 days after the closing date for the submission of applications determined under paragraph (c) of subsection (2).

(4) At the meeting convened in terms of subsection (3), the Selection Committee shall -

- (a) scrutinise the applications referred to in that subsection; and
- (b) from the applications referred to in paragraph (a), but subject to the further provisions of this section, select not less than ten and not more than 20 applicants to be interviewed by the Selection Committee at the meeting to be convened in terms of subsection (9).

(5) The Standing Committee on Privileges of Parliament shall determine the qualifications and other criteria which a person shall comply with in order to qualify for selection by the Selection Committee in terms of subsection (4)(b).

(6) No person, excluding a person who complies with the qualifications and other criteria referred to in subsection (5), shall be selected by the Selection Committee in terms of subsection (4)(b).

(7) If less than ten applications referred to in subsection (3) are received by the Selection Committee, the Director shall:

- (a) *mutatis mutandis* in accordance with subsection (2), invite any person to apply in writing for appointment as a member of the Commission; and
- (b) *mutatis mutandis* in accordance with subsection (3), convene a meeting of the Selection Committee.

(8) Subsection (4) shall *mutatis mutandis* apply to a meeting convened in terms of subsection (7)(b).

(9) The Director shall by notice in the *Gazette* convene a meeting of the Selection Committee, which meeting shall take place not less than 60 days and not more than 90 days after the closing date for the submission of applications determined under subsection (2)(c), for the purpose of selecting suitable candidates from amongst the applicants selected in terms of subsection (4)(b) to be interviewed by the Selection Committee for appointment as members of the Commission.

(10) The notice published in terms of subsection (9) shall contain the names and dates of birth of the applicants referred to in subsection (4)(b) to be interviewed by the Selection Committee.

(11) The meeting of the Selection Committee convened in terms of subsection (9) shall be held on or at such date, time and venue as the Director may determine and specify in the notice convening such meeting.

(12) There is hereby established a Selection Committee which shall consist of -

- (a) one staff member of the Supreme Court or of the High Court of Namibia, nominated by the Chief Justice of the Supreme Court referred to in Article 79 of the Namibian Constitution, which staff member shall be the chairperson of the Selection Committee;
- (b) one legal practitioner admitted and authorised to practice under the Legal Practitioners Act, 1995 (Act No. 15 of 1995), and nominated by the Law Society of Namibia, which legal practitioner shall be the deputy chairperson of the Selection Committee; and
- (c) one person from the staff of the Ombudsman referred to in section 7(1) of the Ombudsman Act, 1990 (Act No. 7 of 1990), and nominated by the Ombudsman referred to in Article 89 of the Namibian Constitution,

appointed for a period of one year by notice in the *Gazette* by the Secretary of the National Assembly appointed or designated, as the case may be, in terms of Article 52(1) of the Namibian Constitution.

(13) An alternate member of the Selection Committee shall, *mutatis mutandis* in terms of subsection (12), be appointed in respect of every member of the Selection Committee appointed in terms of that subsection.

(14) An alternate member of the Selection Committee

appointed in terms of subsection (13) shall, subject to subsection (25), in the absence of the member of the Selection Committee in respect of whom he or she was appointed as an alternate member, perform the functions of the member so absent.

(15) The Director shall -

(a) not be a member of the Selection Committee;

(b) at the meetings of the Selection Committee -

(i) act as the secretary of the Selection Committee;
and

(ii) not have a vote.

(16) The three members of the Selection Committee shall, subject to subsection (25), for the purposes of any meeting thereof constitute a quorum and the procedures to be followed at such meeting shall be determined by the chairperson.

(17) The meeting of the Selection Committee convened in terms of subsection (9) shall be open to the public.

(18) The Selection Committee shall at the meeting convened in terms of subsection (9) interview the applicants referred to in subsection (10), and shall in so doing act in accordance with the principles of transparency and openness, and shall make its recommendations in terms of subsection (21) with due regard to -

(a) an applicant's suitability, qualifications and experience;

(b) the qualifications and criteria determined in terms of subsection (5); and

(c) the objections, if any, lodged in terms of subsection (19).

(19) Any registered voter may, at any time before the commencement of the meeting of the Selection Committee convened in terms of subsection (9), in writing lodge with the secretary of the Selection Committee an objection against the appointment of any person as a member of the Commission and shall, if so directed by the Selection Committee in writing, appear before the Selection Committee, where such registered voter shall, in the manner determined by the chairperson of the Selection Committee, be subject to questioning by the members of the Selection Committee and by the person against whose appointment he or she objected.

(20) Any applicant referred to in subsection (4)(b) who fails to attend the meeting convened in terms of subsection (9), or who at such meeting fails to truthfully reply to any reasonable question put to him or her by the Selection Committee or by any other person entitled to examine such person at such meeting, shall be disqualified from being recommended in terms of subsection (21) as an applicant suitable for appointment as a member of the Commission.

(21) The Selection Committee shall, within a period of ten days after the commencement of the meeting convened in terms of subsection (9), in writing recommend to the President not less than eight suitable applicants to be considered for appointment under subsection (1) as members of the Commission.

(22) If the Director, for any reason, fails to comply with subsection (2) or (3) or (9), as the case may be, or if the Selection Committee, for any reason, fails to comply with subsection (21), or if, for any reason, any of the meetings convened in terms of subsection (3) or (9), as the case may be, does not take place or is not finalised, the President may, on the recommendation of the Standing Committee on Privileges of Parliament, in terms of subsection (1) appoint the members of the Commission.

(23) The Directorate of Elections may, out of moneys appropriated by Parliament for such purpose -

- (a) remunerate or reimburse members of the Selection Committee and of the Directorate of Elections, and persons referred to in section 11(12) or (13), in respect of duties performed or expenses incurred by such members or persons, as the case may be; or
- (b) pay any other expenses incurred by the Directorate of Elections in respect of any duty performed under this Act and approved by the Commission.

(24) Any person who wilfully interrupts the proceedings at any meeting of the Selection Committee, or who wilfully disturbs or obstructs the Selection Committee or any member thereof in the performance of any of its or his or her functions, as the case may be, shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(25) For the purpose of this section, unless the context otherwise indicates -

- (a) 'Selection Committee' means the Selection Committee established and constituted by subsection (12);
- (b) in the absence of the chairperson of the Selection Committee, the deputy chairperson shall perform the functions of the chairperson; and
- (c) a reference to a member of the Selection Committee includes a reference to the alternate member appointed in terms of subsection (13) in respect of such member.

Amendment of section 9 of Act No. 24 of 1992

4. The following subsection is inserted after subsection (3) of section 9 of the principal Act :

"(3A) The Director shall -

- (a) not be a member of the Commission;
- (b) at any meeting of the Commission -
 - (i) act as the secretary of the Commission; and
 - (ii) not have a vote.

Substitution of section 11 of Act No. 24 of 1992

5. The following section is substituted for section 11 of the principal Act :

"Establishment of Directorate of Elections and appointment of Director

11. (1) There is hereby established a Directorate of Elections as a division of the Commission.

(2) The President shall, on the recommendation of the Commission made in terms of the further provisions of this section, and subject to the Public Service Act, 1995 (Act No. 13 of 1995), by Proclamation appoint as the Director of Elections a fit and proper person who complies with the qualifications and criteria referred to in section 5(5), which Director shall -

- (a) be the executive officer of the Commission; and

- (b) be designated as the Permanent Secretary of the Commission as provided for in Schedule 3 to that Act.
- (3) The Secretary of the National Assembly shall -
- (a) by notice in the *Gazette*, *mutatis mutandis* in accordance with section 5(2), invite any person to apply for appointment as the Director; and
- (b) *mutatis mutandis* in accordance with section 5(3), convene a meeting of the Commission to take place on or at such date, time and venue as the Secretary of the National Assembly determines.
- (4) At the meeting convened in terms of subsection (3)(b), the Commission shall -
- (a) scrutinise the applications received by the Commission in reply to the invitation contemplated in subsection (3)(a); and
- (b) from the applications referred to in paragraph (a), subject to the further provisions of this section, select five applicants to be interviewed by the Commission at the meeting convened in terms of subsection (6).
- (5) Subsections (5) and (6) of section 5 shall *mutatis mutandis* apply to the applicants referred to in subsection (4).
- (6) The Secretary of the National Assembly shall by notice in the *Gazette* convene a meeting of the Commission, which meeting shall take place not less than 30 days and not more than 60 days after the closing date for the receipt of applications specified in the notice published in terms of subsection (3)(a), for the purpose of selecting suitable candidates from among the applicants referred to in subsection (4)(b) to be interviewed by the Commission for appointment as the Director as contemplated in subsection (2).
- (7) The notice referred to in subsection (6) shall contain the names and dates of birth of the five applicants referred to in subsection (4)(b).
- (8) The Secretary of the National Assembly shall act

as the secretary at the meeting of the Commission convened in terms of subsection (3)(b) or (6), as the case may be.

(9) Subsections (17), (18), (19) and (20) of section 5 shall *mutatis mutandis* apply to a meeting of the Commission convened in terms of subsection (6).

(10) The Commission shall within a period of five days after the commencement of the meeting convened in terms of subsection (6), in writing recommend to the President not less than two suitable candidates to be considered for appointment as the Director in terms of subsection (2).

(11) If the Secretary of the National Assembly, for any reason, fails to comply with subsection (3)(a) or (b), or with subsection (6), as the case may be, or if the Commission, for any reason, fails to comply with subsection (10), or if any of the meetings convened in terms of subsection (3)(b) or (6), does not take place or is not finalised, the President may, on the recommendation of the Standing Committee on Privileges of Parliament, in terms of subsection (2) appoint any suitable person as the Director.

(12) The Director shall in the performance of his or her functions under this Act be assisted by staff members of the Public Service appointed to the Directorate of Elections under the Public Service Act, 1995 (Act No. 13 of 1995).

(13) The Directorate of Elections may, for the purpose of the functions of the Directorate of Elections, obtain the services of any person other than a staff member referred to in subsection (12), on such conditions as may be determined by agreement with such person.

(14) For the purposes of this section, 'Secretary of the National Assembly' means the Secretary of the National Assembly appointed or designated, as the case may be, in terms of Article 52(1) of the Namibian Constitution.

(15) The Directorate of Elections shall report to the Commission."

Amendment of section 20 of Act No. 24 of 1992, as amended by section 7 of Act No. 23 of 1994

6. Section 20 of the principal Act is amended by the addition of the following proviso to subsection (4)(a):

"Provided that the supervisor of registration shall, in the prescribed form, compile a separate voters' list in respect of the voters who have complied with subsection (3) of section 16 in the manner provided for in subparagraph (iii) of paragraph (a) of subsection (4) of that section."

Amendment of section 21 of Act No. 24 of 1992, as amended by section 8 of Act No. 23 of 1994

7. Section 21 of the principal Act is amended by the addition of the following paragraph:

"(d) furnish every political party registered in terms of section 39 with copies of the voters' lists."

Amendment of section 25 of Act No. 24 of 1992

8. Section 25 of the principal Act is amended by the addition of the following subsection:

"(4) The Director may, at his or her discretion, in writing delegate his or her power to issue duplicate registration cards under subsection (1) to any staff member in the Directorate of Elections, but shall not be divested of any power so delegated."

Amendment of section 26 of Act No. 24 of 1992, as amended by section 9 of Act No. 23 of 1994

9. Section 26 of the principal Act is amended by the addition of the following subsection :

"(5) The Director shall, upon the publication of the notice contemplated in subsection (3)(a), provide every political party registered in terms of section 39 with a copy of the voters' register referred to in that subsection."

Amendment of section 62 of Act No. 24 of 1992, as amended by section 25 of Act No. 23 of 1994

10. The following paragraph is substituted for paragraph (c) of section 62(2) of the principal Act :

"(c) such nomination is accompanied by a receipt that an amount of [R1000] N\$ 100 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and"

Amendment of section 68 of Act No. 24 of 1992, as amended by section 27 of Act No. 23 of 1994

11. The following paragraph is substituted for paragraph (c) of section 68(2) of the principal Act :

- "(c) such nomination is accompanied by a receipt that an amount of [R1000] N\$ 100 has been deposited with the State Revenue Fund, by or on behalf of such political party or candidate; and".

Amendment of section 74 of Act No. 24 of 1992, as amended by section 9 of Act No. 23 of 1994

12. Section 74 of the principal Act is amended -

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph :

- "(a) polling booths, ballot boxes, ballot papers, instruments for stamping ballot papers with the official mark, a sealed envelope containing an imprint of the official mark, seals and any other requisites as may be considered necessary; and";
and

(b) by the insertion of the following subsection after subsection (1) :

"(2) For the purposes of any election, the director shall provide every political party taking part in such election with -

- (a) a list containing the numbers allotted to the ballot boxes; and
(b) a list containing the serial numbers of the ballot papers,

to be used at each polling station."

Amendment of section 76 of Act No. 24 of 1992

13. Section 76 of the principal Act is amended -

(a) by the insertion after subsection (1) of the following subsection: