



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 957

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GOVERNMENT NOTICE

No. 198 Promulgation of Electoral Amendment Act, 1994 (Act 23 of 1994), of the
Parliament

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 198

1994

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. 23 of 1994: Electoral Amendment Act, 1994.

EXPLANATORY NOTE:

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- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.
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ACT

To amend the Electoral Act, 1992, so as to insert, replace or delete certain definitions; to remove all provisions relating to polling districts; to repeal the requirement that provisional voters' registers be published in the *Gazette* and to provide that such registers shall be made available for public inspection and be furnished to certain political parties; to make provision for a system of continuous registration of voters; to repeal the provisions prohibiting the Director of Elections from amending the voters' register during time of elections; to revise the provisions relating to the determination of the polling day; to provide that certain persons shall not be eligible for appointment as election agents or counting agents; to require that a declaration of secrecy be made by candidates at an election; to provide for the submission of photos of candidates and of heads of political parties at nomination for purposes of inclusion in ballot papers; to further regulate the establishment of polling stations; to assign to the Chairperson of the Commission the functions previously entrusted to the Chief Justice at presidential elections; to alter the procedure prescribed in relation to the use of voters' registers at polling stations; to restrict the system of voting by means of authorization votes to certain elections only; to make provision for a system of voting by means of tendered votes; to further regulate the manner in which public notices shall be given; to make further provision concerning the days which shall be ignored in determining the day for the commencement or conclusion or the doing of anything which is required by the Act to commence or conclude or to be done on a particular date; and to provide for matters incidental thereto.

(Signed by the President on 20 October 1994)

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

Amendment of section 1
of Act 24 of 1992.

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

(a) by the deletion of the definition of "Chief Justice";

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

" 'continuous registration' means the process of registration of voters in accordance with section 28A;";

(c) by the insertion of the following definition after the definition of "election application":

" 'Local Authorities Act, 1992' means the Local Authorities Act, 1992 (Act 23 of 1992);";

(d) by the substitution for the definition of "national voters' register" of the following definition:

" 'national voters' register' means the national voters' register referred to in section 26(1)(a)(i) for a constituency [or a polling district, as the case may be];";

(e) by the deletion of the definition of "polling district";

(f) by the substitution for the definition of "presiding officer" of the following definition:

" 'presiding officer' means a presiding officer appointed under subsection (1)(c) of section 51 [for a polling district or ward, or under subsection (2) of that section, for a polling station as the case may be];";

(g) by the substitution for the definition of "provisional national voters' register" of the following definition:

“‘provisional national voters’ register’ means the provisional national voters’ register referred to in section 21(a)(i) for a constituency [**or polling district, as the case may be**];”;

- (h) by the insertion of the following definition after the definition of “regional council”:

“‘Regional Councils Act, 1992’ means the Regional Councils Act, 1992 (Act 22 of 1992);”;

- (i) by the substitution for the definition of “registration officer” of the following definition:

“‘registration officer’ means a registration officer appointed under section 14(1)(b) [**for a polling district or ward, as the case may be**];”;

- (j) by the substitution for the definition of “returning officer” of the following definition:

“‘returning officer’ means a returning officer appointed under section 51(1)(a) [**for a constituency, local authority area or ward, as the case may be**];” and

- (k) by the insertion of the following definitions after the definition of “supervisor of registration”:

“‘tendered vote’ means a vote referred to in section 80(3);

“‘tendered vote envelope’ means an envelope referred to in paragraph (c) of section 82(9).”

Repeal of section 12 of Act 24 of 1992.

2. Section 12 of the principal Act is hereby repealed.

Amendment of section 13 of Act 24 of 1992.

3. Section 13 of the principal Act is hereby amended -

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

“(1) Subject to subsection (2), every person who, by virtue of the provisions of Article 17(2) of the Namibian Constitution, is entitled to vote, shall be entitled to be registered as a voter -

(a) in the case of an election of the President or of members of the National Assembly or of any member of a regional council, in the constituency in which he or she is resident;

(b) in the case of an election of a member of a local authority council, in the local authority area, or where such area is divided into wards, in the particular ward of the local authority area in which he or she is resident, but subject to Article 111(3) of the Namibian Constitution.”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of the provisions of subsection (1), a person shall be regarded as being resident in **[the] a constituency [polling district]** or ward **[in question]** if his or her home or the place where he or she normally lives and to which he or she returns regularly after any period of temporary absence is within such constituency **[polling district]** or ward.”.

Amendment of section 14
of Act 24 of 1992.

4. Section 14 of the principal Act is hereby amended -

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

“(1) The Commission shall, for the purposes of the registration of voters, appoint -

(a) a person as supervisor of registration -

(i) in the case of registration for elections referred to in paragraph (a) of section 13(1), for each constituency;

(ii) in the case of registration for elections referred to in paragraph (b) of that section, for each local authority area,

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who shall, subject to the direction and control of the Director, exercise and perform the powers, duties and functions conferred upon or assigned to him or her by this Act;

(b) one or more registration officers -

(i) in the case of registration for elections referred to in paragraph (a)(i) of this subsection, for each constituency;

(ii) in the case of registration for elections referred to in paragraph (a)(ii) of this subsection, for each local authority area or, where such area is divided into wards, for each ward in that area,

who shall, subject to the direction and control of the supervisor of registration appointed for the constituency or local authority area in question, whichever is applicable, perform the duties and functions assigned to him or her by this Act:

Provided that a person may hold more than one appointment under this subsection."

Amendment of section 16
of Act 24 of 1992.

5. Section 16 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) to any registration officer appointed for the constituency in question [**or, where a constituency is divided into polling districts, for the polling district in question**];".

Amendment of section 18
of Act 24 of 1992.

6. Section 18 of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (a) of subsection (2) of the following subparagraph:

"(i) in the case of an application to the registration officer referred to in paragraph (a) of section 16(1), the constituency [**or polling district, as the case may be**] for which he or she has been appointed;".

Amendment of section 20
of Act 24 of 1992.

7. Section 20 of the principal Act is hereby amended -

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

“(c) if the applicant has complied with the provisions of paragraph (b), signing that form in the space provided for that purpose and recording the date of registration and the constituency [and, where a constituency is divided into polling districts, the polling district in question] or the local authority area and, where such area is divided into wards, the ward in question, as the case may be, in which such applicant is entitled or qualified in terms of the provisions of this Act to be so registered; and”;

(b) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) in the prescribed form compile from the records referred to in subsection (3), received from the registration officer or officers for a constituency, local authority area or, where applicable, ward, as the case may be, a voters' list containing the names, residential addresses and registration numbers of all persons registered in respect of the constituency, local authority area or ward concerned;”.

Amendment of section 21
of Act 24 of 1992.

8. Section 21 of the principal Act is hereby amended -

(a) by the substitution for paragraph (b) of the following paragraph:

“(b) publish a notice in the Gazette specifying the places at, and time during, which copies of such provisional register shall be available for inspection by the public and the period within which objections may be made in respect of the names of voters appearing on any such register;”;

(b) by the addition of the following paragraph:

“(c) furnish, free of charge -

- (i) to every political party registered in terms of section 39, a copy of such provisional national voters' register and provisional local authority voters' register;
- (ii) to every association or organization registered in terms of section 42 for the purpose of participating in any election for members of a local authority council, that part of such provisional local authority voters' register which relates to the local authority area in question.”.

Amendment of section 26
of Act 24 of 1992.

9. Section 26 of the principal Act is hereby amended -

(a) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

“If any appeal or objection has not been disposed of at the time of the certification referred to in subsection (1)(b) of this section, the Director shall [subject to the provisions of section 35(b)] -”;

(b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) cause to be transmitted to every supervisor of registration -

- (i) for a constituency, a copy of the relevant part of the national voters' register applicable to that constituency;
- (ii) for a local authority area, a copy of the relevant part of the local authority voters' register applicable to that local authority area.”; and

- (c) by the substitution for subsection (4) of the following subsection:

“(4) Upon the date of publication by the Commission of a notice referred to in paragraph (a) of subsection (3), every voters’ list and every provisional voters’ register shall cease to be of any force and effect, and thereupon the relevant voters’ register shall be the voters’ register for the respective constituencies or local authority areas or, where such **[constituencies or]** areas have been divided as contemplated in paragraph (b) of that subsection, for the respective **[polling districts or]** wards **[as the case may be]**.”.

Amendment of section 28 of Act 24 of 1992.

- 10.** Section 28 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of subsection (1), persons who are entitled and qualified to be registered as voters in respect of any new local authority area established **[by or under any other law]** after the last general registration of voters in respect of which a relevant voters’ register was prepared as referred to in that subsection, shall be deemed to be persons who, for the purposes of the inclusion in that voters’ register, have not or could not so have registered in that last general registration as contemplated in that subsection.”.

Insertion of section 28A in Act 24 of 1992.

- 11.** The following section is hereby inserted in the principal Act after section 28:

“Continuous registration of voters.

28A. (1) For the purposes of the inclusion in any voters’ register of persons who are qualified for registration as voters but are not so registered, any such person may make application for his or her registration, if not during any subsequent general registration or supplementary registration, at any other time, except during a period of suspension contemplated in subsection (4).

(2) The provisions of sections 16, 17, 18, 19, 20 (but subject to subsection (3) of this section), 21 (except paragraph (b) thereof), 22, 23 and 24 shall

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apply in relation to applications referred to in subsection (1) as they apply to applications for registration made during a general registration of voters.

(3) In the application of section 20(4), as applied by subsection (2), a voters' list as contemplated in that section shall, subject to subsection (6)(a), be compiled by the supervisor of registration for each month and be forwarded to the Director not later than the fifteenth day of the following month.

(4) The continuous registration of voters shall be suspended during any election in terms of section 49(1) or any by-election in terms of section 49(2), from the date that the proclamation under section 50(1) in relation to such election or by-election is published in the *Gazette*, up to and including the second day after the close of the poll at such election or by-election, whichever is applicable, and shall be so suspended -

(a) in the case of an election in terms of section 49(1), for the whole of Namibia; and

(b) in the case of a by-election in terms of section 49(2), for every constituency or local authority area or, where applicable, ward in respect of which the by-election is held.

(5) Subject to subsection (6)(b), the Director shall keep every provisional voters' register prepared in accordance with section 21 from the monthly voters' lists contemplated in subsection (3) of this section, available for inspection by the public at his or her office and, if the Commission so determines, at such other place or places as shall be specified by the Director by notice in the *Gazette*, during the first

seven working days of the second month following on the month in respect of which such provisional voters' register was prepared.

(6) Where a suspension of the continuous registration occurs by virtue of the provisions of subsection (4) -

(a) every supervisor of registration concerned shall, notwithstanding the provisions of subsection (3), immediately upon the commencement of that period of suspension compile and forward to the Director the voters' list for the portion of the month preceding the date of such commencement and, unless it has already been forwarded to the Director, also the voters' list for the preceding month as required by subsection (3);

(b) the Director shall keep every provisional voters' register prepared in accordance with section 21 from the voters' lists referred to in paragraph (a), available for inspection by the public at his or her office and, where applicable, at such place or places as may have been specified in a notice referred to in subsection (5), for a period of 7 days commencing on the first working day following on the expiry of the period of 14 days from the date on which such suspension of the continuous registration commenced.

(7) The period of 7 days during which a provisional voters' register is available for inspection in accordance with subsection (5) or (6)(b), shall for

the purposes of section 22(1) be the period within which an objection may be lodged under that section.”.

Substitution of section 29 of Act 24 of 1992.

12. The following section is hereby substituted for section 29 of the principal Act:

“Notification of change in place of residence in respect of local authority area.

29. When there has been a change in the place of residence or home, with reference to which a voter has been registered in any given [constituency] local authority area [polling district or ward, as the case may be], and as a result thereof he or she is not entitled to the continuance of his or her registration in that [constituency] local authority area [polling district or ward, as the case may be], such voter shall, for the purposes of section 32(1)(b)(i), as soon as is practicable after such a change notify the Director in respect thereof.”.

Amendment of section 30 of Act 24 of 1992.

13. Section 30 of the principal Act is hereby amended -

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

“(1) Any voter who, because of a change in the place of his or her residence or home, becomes entitled or qualified for registration in any other constituency or in any other ward within the same local authority area, may, subject to subsection (1A), apply to the registration officer concerned, in the form determined by the Director, for his or her registration in such other constituency or ward, and shall, when such an application is made by him or her, surrender to that registration officer the registration card previously issued to him or her under section 20(1).”; and

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

“(1A) No application for registration in terms of subsection (1) shall be made during a period contemplated in section 28A(4).”.

Amendment of section 32
of Act 24 of 1992.

14. Section 32 of the principal Act is hereby amended -

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

“(i) whose inclusion in the relevant voters’ register has subsequently been accepted by virtue of any supplementary registration [**at any time after the general registration in respect of which that register was prepared**] or in accordance with the process of continuous registration;”;

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

“(b) removing the name and particulars of any deceased voter or any person -

(i) who since his or her name was included in the register in question [**has died or**] has ceased to be entitled to registration as a voter in [**that constituency**] the particular local authority area [polling district or ward, as the case may be] under which his or her name appears in the local authority voters’ register; [or]

(ii) whose name was erroneously or contrary to the provisions of this Act included in the register in question; or

(iii) whose name was in terms of paragraph (a)(iii) added under another constituency of ward in the register in question;” and

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

“(c) transferring the name and particulars of any person whose name was erroneously or contrary to the provisions of this Act included in the register in question, under any particular constituency, local authority

area [polling district] or ward, to the appropriate constituency, local authority area [polling district] or ward, as the case may be;"; and

- (d) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) arranging the local authority voters' register into appropriate parts according to wards upon the division of local authority areas into wards by virtue of the provisions of paragraph (a) of section 5(1) of the Local Authorities Act, 1992."

Repeal of section 35 of Act 24 of 1992.

15. Section 35 of the principal Act is hereby repealed.

Substitution of section 37 of Act 24 of 1992.

16. The following section is hereby substituted for section 37 of the principal Act:

"Adjustment of voters' registration on alteration of constituencies or wards.

37. (1) If by reason of any new determination or division of constituencies [polling districts] or wards in terms of this Act or any other law any portion of a constituency [polling district] or ward as existing before the determination or division, is allocated to another constituency [polling district] or ward, respectively, the Director shall prepare from the current voters' register in question which was prepared on the basis of the last previous determination or division, as amended from time to time in terms of the provisions of this Act, a voters' register of the altered constituencies [polling districts] or wards, as the case may be.

(2) The relevant voters' register prepared under subsection (1) shall come into operation on the date on which the alteration of the constituencies [polling districts] or wards, as the case may be, comes into operation at the next general election in respect of which the current voters' register in question was prepared.

(3) The voters' register prepared on the basis of the last previous determination or division referred to in subsection (1), shall be retained and shall be the relevant voters' register to be used at any by-election in question until the alteration of the constituencies [**polling districts**] or wards, as the case may be, comes into operation at the next general election in question."

Amendment of section 50
of Act 24 of 1992.

17. Section 50 of the principal Act is hereby amended -

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

"(b) Subject to the provisions of subsection (5), any day determined by him or her upon which a poll shall be taken at such election [**and stating the hours at which, subject to the provisions of section 77, the poll will commence and will close**]; and"; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) Any day determined under subsection (1)(b) shall be a day not less than **[20] 30** days and not more than **[30] 40** days after the nomination day."

Amendment of section 51
of Act 24 of 1992.

18. Section 51 of the principal Act is hereby amended -

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

"(a) in the case of any election -

(i) for the President or members of the National Assembly, for every constituency and for a polling station outside Namibia referred to in section 73(2A);

(ii) for any member of a regional council, for a constituency;

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(iii) for any member of a local authority council, for a local authority area or, where such area is divided into wards, for a ward,

a returning officer who shall, subject to the direction and supervision of the Director, have such powers, duties and functions as may be conferred or imposed on him or her by this Act;”;

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

“(c) a presiding officer for each polling station who shall be in control thereof;”;

(c) by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that the same person may be appointed returning officer for a constituency and a local authority area or ward referred to in paragraph (a) or for more than one polling station referred to in that paragraph.”;

(d) by the deletion of subsection (2); and

(e) by the addition of the following subsection:

“(7) Every returning officer, presiding officer or polling officer shall, by virtue of his or her appointment under subsection (1), be competent to take an oath or affirmation from any other person for the purposes of this Act.”.

Amendment of section 52
of Act 24 of 1992.

19. Section 52 of the principal Act is hereby amended -

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

“(1) A political party or, in the case where the nomination of an independent candidate is permitted in terms of the provisions of this Act, such candidate, may appoint, subject to subsection (8), such number of persons as may be

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prescribed, as election agents for a polling station at an election in question and shall furnish, not later than [~~seven~~] 15 days after the nomination day for that election, or such later day as the Director in a particular case may allow, the returning officer concerned in writing of the name and address of such election agent and the polling station to which such election agent is appointed.”;

- (b) by the substitution for subsection (5) of the following subsection:

“(5) A political party or such candidate shall be entitled to be represented at any place where the determination of the result of the poll for an election occurs, as hereinafter provided, by such number of persons as may be prescribed, appointed, subject to subsection (8), by such political party or candidate not later than seven days before the election in question, as counting agents.”;

- (c) by the substitution for subsection (6) of the following subsection:

“(6) A political party or such candidate shall not later than three days before the election in question furnish the returning officer concerned and, in the case of the determination of the poll in accordance with section 87A, the Director, in writing of the names and addresses of such counting agents who shall give public notice thereof in accordance with the provisions of subsection (2).”; and

- (d) by the addition of the following subsection:

“(8) No person shall be appointed or act as an election agent or counting agent if he or she -

(a) is a candidate for the election in question; or

(b) is not a Namibian citizen.”.

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Substitution of section 53
of act 24 of 1992.

20. The following section is hereby substituted for section 53 of the principal Act:

"Declaration
of secrecy.

53. (1) Every returning officer, presiding officer, polling officer or counting officer and every agent appointed under section 52 shall, before assuming his or her duties or performing any function or attending at any polling station or the place where the result of an election is determined as hereinafter provided, make, in a form determined by the Director, a declaration of secrecy under oath or affirmation.

(2) Every candidate for any election shall make the declaration of secrecy contemplated in subsection (1) before attending a place where the result of such election is determined."

Amendment of section 55
of Act 24 of 1992.

21. Section 55 of the principal Act is hereby amended -

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

"(1) Upon the nomination day and at the place ~~[and time]~~ determined in respect of the election in question, the ~~[Chief Justice]~~ Chairperson of the Commission shall in accordance with section 56 hold a public sitting for the submission of nominations of candidates for that election: Provided that a nomination may be submitted to the ~~[Chief Justice]~~ Chairperson of the Commission at any time after the publication of the appropriate proclamation in terms of section 50(1)(a) and before the close of the sitting [under section 56].";

(b) by the addition of the following subparagraph to paragraph (a) of subsection (2);

"(iii) is accompanied by a photo of the candidate in such form and of such colours as may be acceptable to the Chairperson of the Commission, but subject to any requirements laid down by the Commission;"

- (c) by the substitution for subparagraph (ii) of paragraph (d) of subsection (2) of the following subparagraph:

“(ii) there is submitted to the [Chief Justice] Chairperson of the Commission a list, not later than four o’ clock in the afternoon of the second day before the nomination day, containing the names, registration numbers and residential addresses of, and signed by, the persons supporting the nomination of such candidate referred to in paragraph (c)(ii) of section 54, and none of whom has already signed in support of any other candidate in respect of the election in question.”;

- (d) by the substitution for subsection (4) of the following subsection:

“(4) At any time before the close of the sitting determined for the submission of nominations under section 56 -

(a) the nomination of a candidate may be withdrawn by the political party which submitted that nomination; or

(b) the consent to nomination may be withdrawn by a candidate concerned,

by submitting to the [Chief Justice] Chairperson of the Commission any instrument in writing containing such withdrawal, and thereupon such nomination shall lapse.”; and

- (e) by the addition of the following subsection:

“(5) If the office of the Chairperson of the Commission is vacant or the Chairperson is for any reason unable to perform the functions assigned to him or her by the preceding provisions of this section or section 56, 57 or 88, the members or remaining members of the Commission, as the case may be, shall elect from among their number any other member to act in the place of the Chairperson of the Commission, and who shall, while so acting, be competent to perform any of those functions.”

Substitution of section 56
of Act 24 of 1992.

22. The following section is hereby substituted for section 56:

"Duration of
session on
nomination
day.

56. A sitting for the submission of the nomination of candidates referred to in section 55(1), shall be from 09h00 until 11h00: Provided that if at such last-mentioned hour any person present is then ready to submit the nomination of a candidate or a person has so submitted the nomination but it has not been completed, the [Chief Justice] Chairperson of the Commission shall continue the sitting for such period as will enable such candidate to be duly nominated."

Amendment of section 57
of Act 24 of 1992.

23. Section 57 of the principal Act is hereby amended -

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

"(1) If the Chairperson of the Commission is satisfied that the provisions of section 55 have been complied with in respect of a nomination, he or she shall declare, as soon as is practicable after the close of the sitting, the candidate concerned to be duly nominated for the election of the President, and shall thereupon notify the candidate concerned by any instrument in writing of such declaration.";

(b) by the deletion of subsection (2);

(c) by the substitution for subsection (3) of the following subsection:

"(3) As soon as is practicable after the close of the sitting in terms of section 56, the Commission shall by notice in the *Gazette* make known -

(a) the full names, registration number and residential address of each duly nominated candidate and the political party

by whom he or she was nominated or the indication "independent" if a candidate has been so nominated;

(b) any polling day of the election in question;

(c) the location of every polling station in a constituency."; and

(d) by the substitution for subsection (4) of the following subsection:

"(4) When the Chairperson of the Commission rejects a nomination of a candidate submitted in terms of section 55, he or she shall forthwith by any instrument in writing, notify the candidate of his or her rejection as a candidate and the grounds upon which the rejection has been made, and shall afford the political party or the persons by whom the nomination in question were submitted an opportunity, at any time before the close of the sitting, to rectify the nomination or to nominate any other qualified person as candidate for that election."

Amendment of section 59
of Act 24 of 1992.

24. Section 59 of the principal Act is hereby amended by the addition of the following paragraph to subsection (4):

"(c) a photo of the head of the political party in question, in such form and of such colours as may be acceptable to the Commission."

Amendment of section 62
of Act 24 of 1992.

25. Section 62 of the principal Act is hereby amended by the addition of the following subparagraph to paragraph (a) of subsection (2):

"(iii) is accompanied by a photo of the candidate, in such form and of such colours as may be acceptable to the returning officer, but subject to any requirements laid down by the Commission; and"

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ELECTORAL AMENDMENT ACT, 1994Amendment of section 64
of Act 24 of 1992.**26. Section 64 of the principal Act is hereby amended -**

(a) by the deletion of subparagraph (iv) of paragraph (b) of subsection (5); and

(b) by the substitution for subparagraph (v) of paragraph (b) of subsection (5) of the following subparagraph:

“(v) the location of every polling station in a constituency.”.

Amendment of section 68
of Act 24 of 1992.**27. Section 68 of the principal Act is hereby amended by the addition of the following subparagraph to paragraph (a) of subsection (2):**

“(iii) is accompanied by a photo of the candidate, in such form and of such colours as may be acceptable to the returning officer, but subject to any requirements laid down by the Commission; and”.

Amendment of section 70
of Act 24 of 1992.**28. Section 70 of the principal Act is hereby amended -**

(a) by the deletion of subparagraph (iv) of paragraph (b) of subsection (5); and

(b) by the substitution for subparagraph (v) of paragraph (b) of subsection (5) of the following sub-paragraph:

“(v) the location of every polling station in a ward.”.

Amendment of section 73
of Act 24 of 1992.**29. Section 73 of the principal Act is hereby amended -**

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

“(1) The Commission shall for the purpose of facilitating the taking of a poll in any election, establish one or more polling stations at convenient places for each constituency or local authority area, or, where applicable, each ward of a local authority area.”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) The allocation of [**a polling station**] polling stations shall be determined with due observance of -

(a) the distribution of [**the inhabitants of**] voters in Namibia;

(b) the availability of suitable places for the establishing of polling stations;

(c) access routes leading to such places;

(d) traffic density at or in the vicinity of such places;

(e) distances to be travelled to such places;

(f) parking facilities;

(g) the geography and topography of the area;
and

(h) any other relevant factor.”;

- (c) by the insertion of the following subsection after subsection (2):

“(2A) In order to enable voters outside Namibia to record their votes by way of tendered votes at an election for the President or members of the National Assembly, the Commission may establish polling stations outside Namibia at any Namibian diplomatic mission or at such other convenient places as may be determined by the Commission after consultation with the Minister of Foreign Affairs.”; and

- (d) by the substitution for subsection (7) of the following subsection:

“(7) Additional polling stations may be established at any time after the commencement of the poll in any election and [**any election agent**] every political party concerned and, where ap-

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plicable, every independent candidate shall be notified thereof as soon as is practicable.”.

Amendment of section 74
of Act 24 of 1992.

30. Section 74 of the principal Act is hereby amended -

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

“(1) For the purposes of any election the Director shall provide every returning officer with -

(a) polling booths, ballot boxes, ballot papers, instruments for stamping ballot papers with the official mark, seals and any other requisites as may be considered necessary; and

(b) a list of unrecovered registration cards of persons whose names -

(i) were included in the provisional voters' register but not in the subsequent voters' register;

(ii) were removed from the voters' register in terms of subparagraph (i) or (ii) of paragraph (b) of subsection (1) of section 32,

and a returning officer shall do such acts and make such arrangements to facilitate the taking of the poll as may be deemed advisable for effectually conducting the election.”; and

(b) by the deletion of subsection (2).

Substitution of section 75
of Act 24 of 1992.

31. The following section is hereby substituted for section 75 of the principal Act:

“Polling
booths.

75. (1) The polling booths in or at a polling station shall be arranged in such a way as to permit voters to record their votes in secrecy and shall be so positioned that a person can neither enter nor leave it without being observed.

(2) The presiding officer and a polling officer shall take care that, except in accordance with the provisions of this Act, no other person enters the polling booth while a voter is in it for the purpose of recording his or her vote.

(3) For the purposes of this Act, the expression "polling booth" includes any place or surface in or at a polling station that is screened off in such a way that voters may record their votes in secrecy."

Substitution of section 77
of Act 24 of 1992.

32. The following section is hereby substituted for section 77 of the principal Act:

"Commence-
ment and clo-
sing of poll at
polling stations.

77. (1) Subject to subsections (2)
and (3), the poll for any election shall -

(a) at polling stations in Namibia, commence at 07h00 and shall close at 21h00 on any polling day; and

(b) at polling stations outside Namibia, on the polling day referred to in the proviso to section 80(3), commence and close at the times as the Commission may determine in respect of each such polling station.

(2) The Commission may by notice published in the *Gazette* at any time before the commencement of the poll, alter the polling hours mentioned in paragraph (a) of subsection (1) in relation to any polling station in Namibia in respect of any polling day of an election.

(3) Notwithstanding the provisions of subsection (1), the presiding officer shall permit every voter who at the time of the closing of the poll is inside the room or other enclosure of the polling station to record his or her vote."

Amendment of section 78
of Act 24 of 1992.

33. Section 78 of the principal Act is hereby amended -

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

“(b) the returning officer concerned;”;

- (b) by the deletion of paragraph (c) of subsection (1);
and

- (c) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) any election agent [or counting agent] entitled to attend at the polling station;”.

Amendment of section 80
of Act 24 of 1992.

34. Section 80 of the principal Act is hereby amended -

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

“(1) Subject to the provisions of this section, no person shall record his or her vote at any place other than at a polling station established, as the case may be, for the constituency, local authority area or where applicable, the ward in respect of which he or she is registered.”;

- (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) Where, at an election for a member of a regional council or a local authority council, any voter who is employed as a returning officer, presiding officer, polling officer, counting officer or police officer at such election and, by reason of such employment, will be unable to attend on any polling day at a polling station at which he or she is in accordance with subsection (1) required to record his or her vote, the returning officer for the constituency, local authority area or, where applicable, the ward in respect of which such voter is registered, shall -

(i) at the request of any such voter made at any time during the period mentioned in paragraph (b); and

(ii) upon production and surrender by him or her to the returning officer of a written authorization issued by the Director stating that the voter concerned is by reason of such employment permitted to record his or her vote in terms of this subsection,

allow such voter to record his or her vote, subject to paragraphs (c) and (d), in accordance with the provisions of section 82."; and

(c) by the addition of the following subsection:

"(3) Where, at an election for the President or members of the National Assembly, any voter is by reason of absence unable to attend on any polling day at a polling station at which he or she is in accordance with subsection (1) required to record his or her vote, the presiding officer of any other polling station, whether in or outside Namibia, shall, at the request of such voter, permit such voter to record his or her vote by way of a tendered vote at that polling station during the polling hours applicable to that polling station by virtue of the provisions of section 77: Provided that where at such an election the poll has been determined to take place over more than one day, a voter shall, at a polling station outside Namibia, be entitled to so record his or her vote only on the first day of the polling days so determined."

Amendment of section 81
of Act 24 of 1992.

35. Section 81 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Every ballot paper shall be in the form as prescribed and shall contain -

(a) in the case of an election on party lists -

(i) the names, in alphabetical order, of the political parties taking part in the election;

- (ii) the abbreviated name, if any, of each such political party;
 - (iii) the distinctive symbol, if any, of each such political party; and
 - (iv) the photo of the head of each such political party submitted in accordance with section 59(4); or
- (b) in the case of an election otherwise than on party lists -
- (i) the surnames, in alphabetical order, of all the duly nominated candidates at that election and such other names or initials of such candidates as the Commission may determine;
 - (ii) the name and, if any, the abbreviated name and distinctive symbol of the political party by whom each such candidate was nominated or, if a candidate was not nominated by a political party, the word “independent”; and
 - (iii) a photo of each candidate; and
- (c) such other particulars as may be prescribed.”.

Amendment of section 82
of Act 24 of 1992.

36. Section 82 of the principal Act is hereby amended -

- (a) by the substitution for subsection (2) of the following subsection:

“(2) The presiding officer or a polling officer designated by him or her for that purpose, shall on polling day in the polling station stamp on the back of every ballot paper in a ballot paper book the official mark before such ballot paper book is handed to a polling officer for the issue of ballot papers to voters at the election in question.”;

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- (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) produces to the presiding officer or a polling officer in proof of his or her identity -

(i) any document referred to in section 16(4)(a)(i) or (ii); or

(ii) if he or she is unable to produce any such document, an affidavit in the prescribed form made before the presiding officer or a polling officer by any other voter who has identified himself or herself to the presiding officer or polling officer in accordance with subparagraph (i), and in which proof of the identity of the first-mentioned voter is furnished.”;

- (c) by the substitution for subparagraph (ii) of paragraph (a) of subsection (4) of the following subparagraph:

“(ii) the registration card -

(aa) is a registration card officially issued in terms of the provisions of Part III; and

(bb) has not been signed, imprinted, marked or endorsed in accordance with the provisions of subsection (5)(d) [(6)] or (7) of this section, as the case may be;”;

- (d) by the substitution for paragraph (c) of subsection (4) of the following paragraph:

“(c) by reference to the list of unrecovered registration cards referred to in section 74(1)(b), whether the name of the voter, registration number or other particulars which appear on the registration card produced by the voter appear on that list.”;

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- (e) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

“(c) If upon such examination, a finger or fingers of the voter display the identification mark, the presiding officer shall give to every election agent [or counting agent] who is present an opportunity to observe such identification mark, and shall not permit the voter to vote.”;

- (f) by the substitution for subsection (6) of the following subsection:

“(6) If, in accordance with the provisions of subsection (4)(c), the presiding officer or polling officer establishes that the name, registration number and other particulars which appear on the registration card produced by a voter appear on the list referred to in that subsection, the presiding officer or polling officer shall not permit such voter to vote by virtue of that registration card, and shall seize such card.”;

- (g) by the substitution for the words following upon subparagraph (iii) of paragraph (a) of subsection (7) of the following words:

“and the presiding officer or polling officer shall return the registration card to the person concerned.”;

- (h) by the substitution for subsection (9) of the following subsection:

“(9) When the voter has complied with the provisions of subsection (7), the presiding officer or a polling officer shall -

- (a) enter the registration number of the voter in the ballot paper book on the counterfoil of a ballot paper which bears on the back thereof the official mark;

- (b) detach such ballot paper from its counterfoil and deliver it to the voter; and

- (c) if the voter has requested to record his or her vote by way of a tendered vote, deliver to such voter, together with the ballot paper, a tendered vote envelope on which the presiding officer or polling officer has endorsed the name of the constituency in respect of which the voter is registered."; and
- (i) by the substitution for subsection (10) of the following subsection:

"(10) Upon receiving the ballot paper, the voter shall -

- (a) enter a polling booth provided at the polling station;
- (b) secretly record his or her vote on the ballot paper by marking -
 - (i) in the case of an election on party lists, the ballot paper with a cross in the space opposite the name of the political party for which he or she desires to vote; or
 - (ii) in the case of an election otherwise than on party lists, the ballot paper with a cross in the space opposite the name of the candidate for whom he or she desires to vote;
- (c) while still in the polling booth, fold the ballot paper in such a way that the official mark is visible and the names of the political parties or candidates, as the case may be, and the mark signifying his or her vote are not visible;
- (d) leave the polling booth and display the ballot paper to the presiding officer or a polling officer in such a way that the official mark can be seen and, in the case of a voter voting by way of a tendered

vote, in the presence of the presiding officer or a polling officer, place the ballot paper in the tendered vote envelope and seal it; and

(e) in the presence of the presiding officer or a polling officer, drop, as the case may be -

(i) the ballot paper in the ballot box for ordinary votes;

(ii) the tendered vote envelope in the ballot box for tendered vote envelopes.”.

Insertion of section 82A
in Act 24 of 1992.

37. The following section is hereby inserted in the principal Act after section 82:

“Voting process
at elections for
President and
members of
National
Assembly held
simultaneously.

82A. (1) Where an election for the President and an election for members of the National Assembly have under section 50(1)(b) been determined to take place on the same polling day, the voting process at polling stations shall be conducted jointly for both such elections, and, notwithstanding anything to the contrary contained in this Act -

(a) any political party which has nominated a candidate for the election of the President as well as candidates for the election of members of the National Assembly, shall be entitled to appoint as election agents for a polling station only such number of persons as is prescribed in respect of any one of such elections; and

(b) any voter who attends at a polling station for the purpose of recording his or her vote shall, if he or she desires to record a vote in respect of both such elections, record such votes on the occasion of such attendance, and no voter shall, after

such attendance, be allowed to record any vote at any polling station on any subsequent occasion, irrespective whether he or she has, on the occasion of his or her previous attendance at a polling station, exercised a vote in respect of only one of such elections.

(2) Where the voting process is conducted jointly for both elections as contemplated in subsection (1), voters attending at polling stations for the purpose of recording their votes, shall -

- (a) be required to subject themselves to identification with the identification mark contemplated in section 82(5); and
- (b) in the application of section 82(7)(a), notwithstanding anything to the contrary contained in that section, sign their registration cards or place an imprint or make a mark thereon, as contemplated in that section,

as they would have been required to do had the voting process been conducted in respect of only one of such elections, irrespective as to whether any such voter desires to record a vote in respect of both such elections.”.

Amendment of section 84
of Act 24 of 1992.

38. Section 84 of the principal Act is hereby amended -

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

“(b) such assistance or instructions are to direct a voter to a polling [**compartment**] booth for the purposes of recording his or her vote or

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to inform a voter in respect of the procedure which he or she may follow on entering the polling [**compartment**] booth, but without such presiding officer or polling officer interfering with the secrecy of his or her vote or with the exercising of his or her franchise;” and

- (b) by the substitution for subsection (3) of the following subsection:

“(3) Except as provided in this section, no person shall converse or in any other manner interfere with a voter at any time after he or she has been handed a ballot paper until he or she leaves the polling [**compartment**] booth.”.

Amendment of section 85
of Act 24 of 1992.

39. Section 85 of the principal Act is hereby amended -

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

“(1) Every presiding officer shall immediately after the close of the poll and in the presence of such of the persons entitled in terms of section 78(1) to attend at the polling station, as may be in attendance -

- (a) close and seal in the prescribed manner every ballot box entrusted to him or her;
- (b) make up into separate packets, so sealed -
 - (i) all unused ballot papers;
 - (ii) all spoilt ballot papers;
 - (iii) the counterfoils of used and spoilt ballot papers;
 - (iv) all registration cards seized in terms of section 82(6);
 - (v) the stamp for the official mark used at the polling station; and

(vi) any such other equipment or documents as may be prescribed,

and shall deliver or cause to be delivered to the returning officer concerned such sealed ballot boxes and packets.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) The sealed ballot [**box**] boxes and packets referred to in subsection (1) shall be accompanied by a return in which the presiding officer accounts for the number of ballot papers entrusted to him or her under the heads of ballot papers in the ballot [**box**] boxes and unused and spoilt ballot papers.”.

Amendment of section 87
of Act 24 of 1992.

40. Section 87 of the principal Act is hereby amended -

(a) by the substitution for subsection (2) of the following subsection:

“(2) The returning officer shall -

(a) open all the ballot boxes relating to a particular polling station received from the presiding officer in terms of section 85 and remove therefrom the ordinary ballot papers and the tendered vote envelopes and verify the correctness of the return furnished by the presiding officer concerned in terms of subsection (3) of that section;

(b) after such verification -

(i) prepare a report on the result of such verification; and

(ii) at the request of any counting agent or candidate, allow such counting agent or candidate to make a copy of that report;

- (c) replace all tendered vote envelopes in a ballot box, seal it in the prescribed manner and cause it to be delivered, together with the report referred to in paragraph (b), to the Director immediately;
- (d) open the packet referred to in section 80(2)(d) and remove from the authorization envelopes contained therein the folded ballot papers and place such folded ballot papers with the other ordinary ballot papers; and
- (e) after ascertaining that each ordinary ballot paper bears the official mark on the back thereof, count the votes recorded on such ballot papers -
 - (i) in the case of an election on party lists, for each political party; or
 - (ii) in the case of an election otherwise than on party lists, for each candidate.”; and

(b) by the deletion of subsection (6).

Insertion of section 87A in Act 24 of 1992.

41. The following section is hereby inserted in the principal Act after section 87:

“Verification of tendered vote accounts by Director and counting of ballot papers.

87A. (1) At the time and place notified under section 86 for the counting of tendered votes the Director shall -

- (a) examine the seals of all ballot boxes received by him or her by virtue of the provisions of section 87(2)(c) and afford any counting agents or, at an election for the President, also any candidates who are present an opportunity to do the same;
- (b) open such ballot boxes and verify the correctness of the report of each returning officer in relation to the tendered vote envelopes contained therein;

- (c) sort such tendered vote envelopes according to the constituencies indicated on such envelopes; and
- (d) open such tendered vote envelopes and remove therefrom the ballot papers and, in accordance with the provisions of section 87(2)(e), (3) and (4) count the votes recorded thereon.”

Amendment of section 88
of Act 24 of 1992.

42. Section 88 of the principal Act is hereby amended -

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

“(1) At an election for the President -

- (a) a returning officer shall, when the counting of ordinary votes in accordance with section 87 has been completed; and
- (b) the Director shall, when the counting of tendered votes in accordance with section 87A has been completed,

and whether or not the return referred to in section 85(3) or the report referred to in section 87(2)(b) was found to be correct, announce in the prescribed manner the result of such count and inform the Chairperson of the Commission of such result.”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) When the Chairperson of the Commission has received all the results in accordance with subsection (1), and he or she has established the number of votes recorded for each candidate or, where only one candidate was nominated for election as President, for such candidate, he or she shall determine in accordance with Article 28(2)(b) of the Namibian Constitution the candidate to be declared duly elected as President.”;

- (c) by the substitution for subsection (3) of the following subsection:

“(3) Upon determining the result of the election in accordance with subsection (2), the Chairperson of the Commission shall in the prescribed manner announce the result, by -

- (a) making known the total number of votes counted in the election and, in respect of each candidate or, where only one candidate was nominated for election as President, the number of votes recorded for him or her; and

- (b) declaring -

- (i) the candidate determined in accordance with subsection (2) duly elected as President with effect from such date as shall be determined in accordance with the relevant provisions of the Namibian Constitution; or

- (ii) if no candidate has received the requisite number of votes referred to in Article 28(2)(b) of the Namibian Constitution, that no candidate has been duly elected as President.”; and

- (d) by the substitution for subsection (4) of the following subsection:

“(4) The [**Chief Justice**] Chairperson of the Commission shall as soon as is practicable after the provisions of subsection (3) of this section have been complied with, cause a written statement of the announcement made by him or her in terms of the provisions of that subsection, to be transmitted to the Commission.”.

— Amendment of section 89
of Act 24 of 1992.

43. Section 89 of the principal Act is hereby amended -

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

“(1) At an election for members of the National Assembly -

(a) a returning officer shall, when the counting of ordinary votes in accordance with section 87 has been completed, and whether or not the return referred to in section 85(3) was found to be correct, announce in the prescribed manner the result of such count and inform the Director of such result; and

(b) the Director shall, when the counting of tendered votes in accordance with section 87A has been completed, and whether or not the report referred to in section 87(2)(b) was found to be correct, announce in the prescribed manner the result of such count.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The Director shall in accordance with the results received by him or her from returning officers in terms of subsection (1)(a) and the results determined by him or her in terms of subsection (1)(b), determine in the manner provided in Schedule 4 to the Namibian Constitution the number of candidates of each political party to be declared duly elected as members of the National Assembly.”;

(c) by the substitution for subsection (3) of the following subsection:

“(3) Upon determining the result of the election in accordance with subsection (2), the Director shall in the prescribed manner announce the result, by -

(a) making known the total number of votes counted and the appropriate quota determined in accordance with the provisions of paragraph (1) of Schedule 4 to the Namibian Constitution and, in respect of each political party, the number of votes recorded for it and the number

of seats in the National Assembly, if any, determined in its case in accordance with the provisions of paragraph (2) of that Schedule to which that political party shall be entitled; and

(b) declaring -

(i) the candidates on the list of candidates of each political party in which case a number of seats has been determined, as aforesaid, but subject to the provisions of paragraph (4) of that Schedule; and

(ii) if the number of seats determined, as aforesaid, is more than the candidates available on the said list, a person who qualifies in terms of the provisions of section 59 to be a member of the National Assembly and has been nominated in writing in the prescribed manner for that purpose by the said political party and has in writing consented to his or her nomination,

to be duly elected as members of the National Assembly with effect from such date as shall be determined in accordance with the relevant provisions of the Namibian Constitution.”.

Amendment of section 93
of Act 24 of 1992.

44. Section 93 of the principal Act is hereby amended by the deletion of subsection (5).

Amendment of section
102 of Act 24 of 1992.

45. Section 102 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) without due authority destroys, takes, opens, uses or otherwise interferes with any ballot box, [voting compartment] polling booth, instrument, form, document or other equipment used or intended for use at any polling station; or”.

Amendment of section
121 of Act 24 of 1992.

46. Section 121 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Director shall keep in respect of each constituency or local authority area or, where such [constituency or] area has been divided into [polling districts or] wards, [as the case may be] each [polling district or] ward, a list of names, registration numbers and residential addresses of all persons who in terms of this Act have become incapable of being registered or of remaining registered as voters or of voting at the election in question.”.

Amendment of section
125 of Act 24 of 1992.

47. Section 125 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A public notice required to be given in terms of this Act shall, except where it is expressly directed to be published in the *Gazette*, be sufficiently given if it is published in one newspaper circulating in the constituency or local authority area to which the notice refers or if it is displayed in any place open to the public in that constituency or area which the Director may deem fit or, if the Commission so determines, at the offices of the Director.”.

Substitution of section
126 of Act 24 of 1992.

48. The following section is hereby substituted for section 126 of the principal Act:

“Saturdays,
Sundays and
public holidays.

126. Whenever under this Act anything is required to be commenced, concluded or done on a particular date, and that date happens to fall upon a Saturday, Sunday or a public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1991 (Act 26 of 1991), such thing shall be commenced, concluded or done on the first day following such Saturday, Sunday or public holiday, which is not a Saturday, Sunday or public holiday, as the case may be: Provided that the provisions of this section shall not apply to any polling day which falls on a Saturday, Sunday or such a public holiday.”.

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Amendment of section
130 of Act 24 of 1992.

49. Section 130 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Different regulations may be made under subsection (1) in respect of different regions, constituencies, local authority areas [**polling districts**] or wards, or different elections under this Act or different political parties, as the circumstances may require.”.

Short title and com-
mencement.

50. (1) This Act shall be called the Electoral Amendment Act, 1994.

(2) The amendments effected by section 11 shall come into operation on 1 January 1995.
