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**ELECTORAL AMENDMENT BILL, 2011**

**MEMORANDUM**

This Bill will amend the Electoral Act [*Chapter 2:13*], principally to make the following changes to it:

- (a) to incorporate the provisions of the Zimbabwe Electoral Commission Act [*Chapter 2:12*] into the Electoral Act and to repeal the former Act;
- (b) to base the voting process at polling-station level, with voters obliged to vote at their nearest polling stations rather than at any polling station within their constituencies;
- (c) to ensure that electronic copies of voters rolls are available in analysable form;
- (d) to restrict postal voting to voters who are outside the country on Government business;
- (e) to allow electoral officers and members of the Police Force and Defence Forces who have to be away from their constituencies on duty during an election, to cast their votes in advance of the election at special polling stations established for the purpose;
- (f) to introduce greater transparency in the counting and collation of votes at all levels;
- (g) to establish new mechanisms to prevent politically-motivated violence and intimidation during elections;
- (h) to extend the jurisdiction of the Electoral Court;
- (i) to ensure that the results of presidential elections are announced speedily;

and in addition to correct anomalies and discrepancies in the Electoral Act.

In more detail, the individual provisions of the Bill are as follows:

*Clause 1*

This clause sets out the Bill's short title and provides for its dates of commencement. Most of the Bill will come into operation when it is published as an Act, but clause 40 (which deals with the preparation of polling-station voters rolls) will only come into operation when all such rolls have been completed.

*Clause 2*

A Preamble has been inserted reciting the provisions of 28 (4), 34(3), 38(2), 100B(1) and 100C of the Constitution that deal with electoral matters; the Preamble obviates the need to repeat the functions of

ZEC in the body of Electoral Act because these are quoted in the extract of section 100C of the Constitution that is quoted in the Preamble.

*Clause 3*

This clause provides a number of new definitions for terms used in the amended Act, including in particular “district”, “district centre”, and “district special voting officer” (to accommodate the new system of district level special voting for members of the uniformed services), and “provincial centre”, “provincial elections officer”, “runoff presidential election” and “ward elections officer”.

*Clause 4*

This clause will incorporate many of the provisions of the Zimbabwe Electoral Commission Act into the Electoral Act. The Commission is established under the Constitution, but the new Part II inserted by this clause will give the Commission the additional functions it currently has under the Zimbabwe Electoral Act, and will make substantially the same provision as under that Act for its membership, staff and procedures.

*Clause 5*

The effect of this clause is that the Commission will have to keep all voters rolls in both electronic and printed form, and that it will have to keep a consolidated national roll at its head office.

*Clause 6*

This clause will oblige the Commission to provide members of the public with electronic copies of any voters roll, if they so request, and to ensure that any electronic copy so provided is capable of being searched and analysed. The clause will also oblige the Commission to provide every candidate in an election with a free copy of the voters roll to be used in the election. A new subclause (8) is inserted which specifically requires the Chief Elections Officer to supply sufficient copies of the ward voters roll to every polling station (previously, this requirement had only been implicit). The penalty for anyone tampering with or commercially exploiting any voters rolls provided to them by ZEC is increased from a fine of level 6 and imprisonment for one year to a fine of level 10 and imprisonment for 5 years;

*Clause 7*

The effect of this clause is to allow people who seek registration on a voters roll to prove that they are resident in the constituency concerned by documents prescribed by the Commission or by any other acceptable means.

*Clauses 8 and 12*

Section 26A of the Electoral Act states that when a general election is called, the voters roll is closed to further registration of voters 24 hours before nomination day in the election; section 39(3) of the Act, on the other hand, provides that for by-elections the voters roll is deemed to have been closed on the date that the vacancy arose which gave rise to the by-election. These clauses will remove the discrepancy by providing that in all cases the rolls will be closed 24 hours before nomination day.

*Clause 9*

The new section 36A inserted into the Electoral Act by this clause will allow the President, on the advice of the Zimbabwe Electoral Commission, to call for a completely new registration of voters, either in all wards and constituencies or in particular wards and constituencies. ZEC may, by notice in the *Gazette*, extend the new registration beyond the day proclaimed by the President if this becomes necessary; it is also made clear that the system of continuous registration of voters will operate uninterrupted during any new registration of voters; in addition, voters on the old voters roll will be speedily transferred to the new voters roll by simply presenting themselves to the appropriate constituency registrar and producing proof of identity. This clause also inserts an additional new

section 36B, stipulating an expedited procedure for the removal of dead, absent or disqualified voters from the voters roll.

*Clause 10*

The effect of the new section 37B which this clause will insert in the Electoral Act is to require the President to give the Zimbabwe Electoral Commission adequate time to complete the delimitation of constituencies and wards before calling a general election.

The new section 37C will require the Commission to designate centres from which parliamentary, presidential and local authority elections can be conducted at constituency and ward level, namely, the National Command Centre (from which the Commission will organise elections), the provincial command centre, the senatorial constituency centre, the constituency centre and, for the purposes of special voting, the district centre; it is further provided that, when transmitting the election results through all the centres, the returns embodying the results must reflect separately the results obtained in each polling station, ward and constituency.

*Clause 11*

Under section 38 of the Electoral Act the President specifies the dates of the various processes in an election, and the section requires polling day in all elections to be between 28 and 50 days after nomination day. This clause will alter that period so that polling day may be between 42 and 63 days after nomination day. The clause will also require the President to specify the date on which a run-off poll must be held in a presidential election if none of the candidates succeed in getting more than 50 per cent of the votes cast in the first round.

*Clause 12*

This clause has been dealt with in conjunction with clause 8.

*Clause 13*

This clause will insert two new Parts in the Electoral Act.

The new Part IXA, which is based on an equivalent Part in the Zimbabwe Electoral Commission Act, deals with voter education. As at present, the Commission will be responsible for both providing voter education and supervising the provision of such education by other persons and bodies. Also as at present, foreign organisations will be prohibited from providing voter education but will be allowed to provide funding to the Commission for its provision. The Commission will be obliged to begin its programme of voter education not later than a week after the calling of any election. In addition, in accordance with the new section 40B(1), ZEC must monitor voter education provided by persons other than itself. Under the new section 40C(1)(d)(iii), trusts providing voter education must be predominantly Zimbabwean in character. The new section 40C(3)(c) penalises persons who, with intent to circumvent the restrictions on the provision of voter education specified in the law, provide voter education under the guise of providing it as part of a course in law or civics or any other subject for students at an educational institution

The new Part IXB, which deals with the accreditation of election observers, is based on Part II of the current Electoral Act. The Minister, the Commission and all officials involved in the electoral process will be enjoined to ensure that accredited observers are enabled to exercise their functions (section 40G(2); this is a new provision. As at present, there will be an Observers Accreditation Committee to consider applications for accreditation, but the final decision on all such applications will rest with the Commission; furthermore, the Ministers of Justice and Foreign Affairs will no longer have a veto over the accreditation of observers.

*Clause 14*

The effect of this clause is to tighten the requirement in section 46 of the Electoral Act that candidates who want to stand for election on behalf of a political party must satisfy the nomination court that the party wants them to represent it. Before being nominated as a party candidate, a person will have to be vouched for by an officer whom the party has told the Commission is responsible for selecting candidates. This clause also imposes an additional requirement for candidates wishing to be nominated, namely that the candidate must submit, as part of his or her nomination papers, two copies of the electoral conduct for political parties and candidates signed by the candidate or his or her chief election agent.

*Clauses 15 and 28*

These clauses repeal and replace those provisions of the Electoral Act that provided for the misnamed “deposits on nomination”. The sum demanded from candidates on nomination are more properly called “nomination fees”.

*Clause 16*

The amendment effected by this clause to section 52 of the Electoral Act will make it clear that where elections are held concurrently separate ballot boxes must be provided in every polling station for the votes cast in each of the elections.

*Clause 16*

The new section 52A which this clause will insert in the Electoral Act will require the Zimbabwe Electoral Commission to disclose details about ballot papers printed for each election.

*Clause 16*

The effect of the amendments made by this clause to section 55 of the Electoral Act is, firstly, that candidates will be allowed to have one election agent in each polling station and another agent outside ready to relieve the first one when necessary; and, secondly, to exclude police officers from polling stations unless they are called in to maintain order. See, however, clause 27 below.

*Clause 19*

The new section 59 inserted into the Electoral Act by this clause will allow illiterate and physically handicapped voters to be assisted by persons of their choice rather than by electoral officials. However, the presiding officer of a polling station and two other electoral officers can assist such voters who do not have relatives or other persons of their choice to assist them; in addition, the presiding officer must keep a register in which any assister must record his or her name, identification particulars and the name of the voter he or she assisted to vote

*Clause 20*

The effect of this clause is to require presiding officers at polling stations to give candidates copies of the polling-station returns on which are recorded details of the votes cast for each candidate and the number of spoilt ballot papers.

*Clause 21*

Section 65 of the Electoral Act deals with the verification and collation of polling station returns at constituency level. This clause will require constituency election officers to complete constituency returns as soon as they have verified and collated the returns from polling stations, and forward their returns for transmission (in the manner specified in section 37C(4), that is, through the appropriate constituency and provincial centres) to the National Command Centre. They will also have to provide candidates and polling agents with copies of their returns, and post copies of them outside their constituency centres. The constituency return must, in addition to separately recording the results of the counting of the postal and ordinary ballots, separately record the results of the counting of the special voting ballots.

*Clause 22*

Under the new section 65A which this clause will insert in the Electoral Act, electoral officers at all levels will be obliged to give copies of their returns to candidates and political parties that request them.

*Clause 23*

The new section 66A which this clause will insert in the Electoral Act will prohibit political parties from pre-empting the official announcement of the results of an election. Persons who purport to announce the results of an election before they are officially announced by an electoral officer will be subject to criminal prosecution.

*Clause 24*

This clause will extend the ways in which constituency elections officers convey the results of elections to the Commission.

*Clause 25*

The effect of this clause is, firstly, to oblige the Commission to notify all parties that contested an election before ordering a recount of the votes cast in the election, either on its own initiative or at the request of one of the parties. In the second place, the clause will require any recount to be completed within a week, though the Electoral Court will be allowed to extend that period.

*Clause 26*

The new Part XIV which this clause will insert in the Electoral Act will restrict postal voting to people who are outside Zimbabwe on Government business, as well as their spouses if they too are out of the country. The procedure for obtaining postal ballots and for voting by post will be simplified. In particular, a new section 71 has been added, the effect of which is that persons in the Government or Diplomatic service who wish to apply for a postal ballot may be authorised by electronic mail to do so by their head of Ministry, station, Embassy or consular mission; certain safeguards are provided to ensure the authenticity of e-mail communications to this effect.

The new Part XIVA will allow electoral officers and members of the Police and Defence Forces who are away from their constituencies on electoral duty to vote in advance of an election at special polling stations set up at district centres (and, in some cases, district sub-centres) for the purpose by the Commission. Voting at these special polling stations will be conducted over two days (to minimise disruption to security duties) and subject to the same scrutiny by electoral officials, election agents and observers as voting at ordinary polling stations on polling days. The casting of an ordinary ballot by a person who has been authorised to cast a special ballot is made an offence under the new section 81H ("Offences in relation to special votes").

*Clause 27*

The effect of this clause, as with clause 17, is that every candidate in an election will be allowed to have one election agent in each polling station and another agent outside ready to relieve the first whenever necessary. However, ZEC is empowered to limit the number of election agents in or about a polling station where more than one election is being held concurrently; this may become necessary where four concurrent elections are being held and many candidates are standing at the same time in any ward and constituency; where ZEC exercises this power, each political party will be allowed to appoint two election agents per polling station, one of whom will be allowed within the polling station and the other will be allowed in the immediate vicinity thereof.

*Clause 29*

This clause will repeal and replaces section 110 ("Determination and declaration of result of election to office of President") with the object of gathering into a single section all the special provisions

presently contained in section 112 and the Second Schedule for the determination and declaration of the results of a presidential election or presidential runoff election; accordingly, section 112 and the Second Schedule will be repealed; the new section 110 is also altered so as to be consistent with section 38 of the Act as amended by clause 11 of the Bill; in other words, if a Presidential runoff election must be held, it will be held on a the date fixed by the President's election proclamation in terms of section 38(1)(a)(iii) (being a date not less than 28 and not more than 42 days after the polling day or last polling day, as the case may be, of the main election); however, ZEC may obtain a deferred date for the runoff if it can justify the delay by application to the Electoral Court.

*Clause 31*

Section 125(3) of the Electoral Act requires people who seek nomination for election as councillors in local authority elections to provide clearance certificates from the police and the local authority concerned. This clause will repeal that requirement.

*Clause 32*

This clause will clarify the way in which provisions of the Act relating to parliamentary elections apply to local authority elections.

*Clause 33*

The new Part XVIIIIB ("Measures Against Politically-Motivated Violence") which this clause will insert in the Electoral Act will require candidates and officers of political parties contesting an election to take steps to control politically-motivated violence and intimidation and to undertake to abide by the code of conduct set out in the Fourth Schedule to the Act. For the purpose of every general election and by-election, the Commissioner-General of Police is obliged, in consultation with the Zimbabwe Human Rights Commission, to appoint a senior police officer for each provincial centre who will be the special police liaison officer responsible for the expeditious investigation of cases of politically-motivated violence or intimidation within that province which come to the attention of the police, a multiparty liaison committee, the Commission or the Zimbabwe Human Rights Commission during the election period. To assist each special police liaison officer, the Zimbabwe Human Rights Commission will set up in each province Special Investigation Committees during general elections (and may do so during by-elections) to investigate cases of violence and intimidation during the election periods. If the Zimbabwe Human Rights Commission is satisfied, after an investigation by its committee, that an incident of violence or intimidation did take place, it will be able to warn the persons responsible, or refer the case to a special prosecutor designated for the purpose by the Attorney-General, for prosecution before a special magistrate designated by the Judicial Service Commission. A magistrates court which convicts a candidate of politically-motivated violence or intimidation will have power to prohibit the candidate from campaigning in the election, though the candidate's name will remain on the ballot paper, while the High Court will have power to prohibit such a candidate from voting or standing for election for up to five years.

*Clause 34*

This clause will insert a new Part XXIB into the Electoral Act. The Part deals with media coverage of elections and is based on an equivalent Part in the Zimbabwe Electoral Commission Act. The object of the Part is to ensure that news media, particularly the public news media, give fair coverage to all parties contesting an election. For this purpose ZEC may request the assistance of the Zimbabwe Media Commission and the Broadcasting Authority of Zimbabwe in monitoring the conduct of the media during elections.

*Clause 35*

This clause will give the Electoral Court all the powers of the High Court in relation to electoral matters such as appeals, applications, petitions and reviews under the Electoral Act. At present the court's jurisdiction is much more limited.

*Clause 36*

The effect of this clause is that at least two High Court judges must be appointed to the Electoral Court.

*Clause 37*

The new section 191 which this clause will insert in the Electoral Act will oblige the Commission to ensure that all political parties and accredited observers are provided with copies of electoral legislation, and that such legislation is widely available to the public. In both cases ZEC is empowered to charge a prescribed fee for this service. The new section is based on a provision in the Zimbabwe Electoral Commission Act.

*Clause 38*

This clause seeks to amend section 192 of the principal Act ("Regulatory powers of Commission") to empower ZEC specifically to fix and amend general conditions of service for its staff (including the Chief Elections Officer), as it was able to do so under the repealed ZEC Act.

*Clause 40*

This clause will substitute a revised code of conduct for political parties and candidates.

*Clause 41*

This clause will insert a new Schedule in the Electoral Act, dealing with the powers of the Zimbabwe Electoral Commission, the conditions of service of its members, its procedures and its finances. The Schedule is based on equivalent provisions in the Zimbabwe Electoral Commission Act.

*Clause 42*

This clause seeks to insert a new section 22A in the principal Act to provide for the establishment of permanent polling stations and for the preparation of voters rolls based on polling stations rather than constituencies or wards. The provisions of the clause will not come into operation immediately, but only when the Commission has prepared all the polling-station voters rolls. At that time ZEC will publish a notice in the *Gazette* commencing section 22A. This clause includes consequential amendments to the Act that will come into effect immediately upon the publication of such a notice.

*Clause 43*

This clause amends the Long Title to the Electoral Act so as to reflect the incorporation of the ZEC Act.

*Clause 44*

This clause will repeal the Zimbabwe Electoral Commission Act [Chapter 2:12], while preserving the validity of everything previously done or prescribed under that Act. All statutory instruments made under the repealed Zimbabwe Electoral Commission Act that were in force immediately before the commencement of this Act are saved by this clause.

**BILL**

To amend the Electoral Act [*Chapter 2:13*] (No. 22 of 2004); to repeal the Zimbabwe Electoral Commission Act [*Chapter 2:12*] (No. 25 of 2004); and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

**PART I**

**PRELIMINARY**

**1 Short title and dates of commencement**

(1) This Act may be cited as the Electoral Amendment Act, 2011.

(2) Subsection 42(1) shall come into operation on the date fixed by the Commission in terms of subsection (2) of that section.

(3) The remainder of this Act shall come into operation on the date of its publication in the *Gazette*.

**2 Substitution of enacting formula by preamble in Cap. 2:13**

The enacting formula of the Electoral Act [*Chapter 2:13*] (No. 25 of 2004) (hereinafter called “the principal Act”) is repealed and substituted by the following preamble—

“WHEREAS section 28 (4), 34(3), 38(2), 100B(1) and 100C of the Constitution provide as follows:

*“28(4) The procedure for ... the election of the President shall be as prescribed in the Electoral Law.”*

.....

*“34(3) The procedure for ... the election of Senators and the filling of vacancies among elected Senators shall be as prescribed in the Electoral Law.”*

.....

*“38(2) The procedure for ... the election of members of the House of Assembly and the filling of vacancies shall be as prescribed in the Electoral Law.”*

.....

*100B.(1) There is a Zimbabwe Electoral Commission consisting of—*

- (a) a chairperson appointed by the President after consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders; and
- (b) eight other members appointed by the President from a list of not fewer than twelve nominees submitted by the Committee on Standing Rules and Orders.

(2) The chairperson of the Zimbabwean Electoral Commission must be a judge or former judge of the Supreme Court or the High Court, or a person qualified for appointment as such a judge.

(3) At least four members of the Zimbabwean Electoral Commission, apart from the chairperson, must be women.

(4) Persons appointed to the Zimbabwean Electoral Commission must be chosen for their integrity and their experience and competence in the conduct of affairs in the public or private sector.

(5) Members of the Zimbabwean Electoral Commission must be appointed for a term of six years, and their appointment may be renewed for one further term only.

.....

100C. (1) The Zimbabwe Electoral Commission has the following functions—

- (a) to prepare for, conduct and supervise—
  - (i) elections to the office of President and to Parliament; and
  - (ii) elections to the governing bodies of local authorities; and
  - (iii) referendums;and to ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law;
- (b) to supervise the registration of voters by the authority charged with that responsibility under the Electoral Law; and
- (c) to compile voters' rolls and registers; and
- (d) to ensure the proper custody and maintenance of voters' rolls and registers; and
- (e) to design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres; and
- (f) to determine, subject to section 100J, limits of boundaries of local authority wards, House of Assembly constituencies and Senatorial constituencies; and
- (g) to conduct voter education; and
- (h) to accredit observers of elections and referendums in accordance with an Act of Parliament; and

- (i) *to give instructions to persons in the employment of the State or of a local authority for the purpose of ensuring the efficient, proper, free and fair conduct of any election or referendum; and*
- (j) *to exercise any other functions that may be conferred or imposed on the Commission by the Electoral Law or any other law..”*

AND WHEREAS it is desirable to gather into a single Electoral Law all matters concerning electoral issues;

NOW THEREFORE, be it enacted by the President and Parliament of Zimbabwe as follows:—“

### **3 Amendment of section 4 of Cap. 2:13**

Section 4 (“Interpretation”) (1) of the principal Act is amended—

- (a) by the repeal of the definitions of “chief”, “Chief Elections Officer”, “Commission”, “Commissioner”, “constituency”, “constituency centre”, “constituency elections officer”, “constituency return”, “election petition” and “ward or council centre” and the substitution of—

“chief”, “headman” and “village head” have the meanings given thereto in the Traditional Leaders Act [*Chapter 29:1*] (No. 25 of 1998);

“Chief Elections Officer” means the Commission’s Chief Elections Officer appointed in terms of section 9, or any officer of the Commission acting on his or her behalf;

“Commission” means the Zimbabwe Electoral Commission appointed in terms of section 100B(1) of the Constitution;

“Commissioner” means a member of the Commission, including the chairperson of the Commission;

“constituency” means one of the House of Assembly constituencies or senatorial constituencies, as the case may be, into which Zimbabwe is divided in terms of section 100J of the Constitution;

“constituency centre” means—

- (a) a constituency centre established for a senatorial or House of Assembly constituency in terms of section 37C(1)(d) or (e); or

- (b) a constituency centre established for an election to the office of President in terms of section 37B(1)(c);

as the case may be;

“constituency elections officer”, in relation to—

- (a) an election of a member of Parliament, means a person employed or appointed as a constituency elections officer in terms of section 9(5) or 10(3)(b) for a senatorial or a House of Assembly constituency, as the case may be;

(b) an election to the office of President, means a person employed or appointed as a presidential constituency elections officer in terms of section 9(5) or 10(3)(c);

“ward centre” means a ward centre established for a council election in terms of section 37C(1)(f).”;

(b) in the definition of “constituency return” by the deletion of “in terms of the Second Schedule” and the substitution of “in terms of section 110”;

(c) in the definition of “election expenses” by the deletion of “but does not include the sum deposited with the candidate’s nomination paper in terms of subsection (1) of section *forty-seven* or subsection (1) of section *one hundred and five*” and the substitution of “but does not include the nomination fee”;

(d) by the insertion of the following definitions—

“district” means a district as defined in the Rural District Councils (Districts) Notice, 1992, published in Statutory Instrument 67 of 1992, or any other enactment that may be substituted for the same;

“district centre” means a district centre established in terms of section 37C(1)(f) for the purposes of special voting, and includes a district sub-centre referred to in the proviso to section 81A(1)(b);

“district special voting officer” means a person employed or appointed as such in terms of section 9() or 10(3)(e), and includes a district sub-centre special voting officer;

“multiparty liaison committee” has the meaning assigned to that term by section 160A;

“National Command Centre” means the National Command Centre established in terms of section 37C(1)(a);

“nomination fee” means the sum deposited with the candidate’s nomination paper in terms of section 47 or section 105;

“ordinary polling station” is a phrase that is used in contrast to a special polling station, and refers to a polling station established in terms of section 51(1);

“provincial centre” means a provincial centre established in terms of section 37C(1)(b);

“provincial elections officer” means a person employed or appointed as such in terms of section 9(7) or 10(3)(a);

“runoff presidential election” means a second presidential election held in the circumstances specified in section 110(3)(f)(iii);

“special ballot paper” means a ballot paper for use in special voting;

“special polling station” means a polling station established for the purpose of special voting in terms of Part XIVA, and includes a special district sub-centre polling station referred to in the proviso to section 81A(1)(b);

“special vote” means a vote cast in terms of Part XIVA, and “special voting” shall be construed accordingly;

“ward elections officer” means a person employed or appointed as such in terms of section 9(7) or 10(3)(c);

“Zimbabwe Human Rights Commission” means the Commission established in terms of section 100R of the Constitution.”;

- (d) in the definition of “election period” by the deletion from paragraph (a) of “in terms of paragraph 3(1) of the Second Schedule” and the substitution of “in terms of section 110(3)(h)”
- (e) in the definition of “observer” by the deletion of “section 6” and the substitution of “Part IXB”.

#### **4 New Part substituted for Parts II and III of Cap. 2:13**

Parts II and III of the principal Act are repealed and the following Part is substituted—

#### **“PART II**

#### **ZIMBABWE ELECTORAL COMMISSION**

#### **5 Additional functions and powers of Commission**

- (1) In addition to the functions set out in section 100C of the Constitution, the Commission shall be responsible for—
  - (a) undertaking and promoting research into electoral matters; and
  - (b) developing expertise and the use of technology in regard to electoral processes in Government at all levels; and
  - (c) promoting co-operation between the Government, political parties and civil society in regard to elections; and
  - (d) keeping the public informed about—
    - (i) the times and places where persons can register as voters and the progress of the voter registration exercise; and
    - (ii) the delimitation of wards, constituencies and other electoral boundaries; and
    - (iii) the location and boundaries of polling stations and when they are open; and
    - (iv) voters rolls and the times and places at which they are open for inspection; and
    - (v) political parties and candidates contesting every election; and
    - (vi) voting; and

(vii) generally, all matters relating to the Commission's work and the electoral process;

and

(e) making recommendations to Parliament on appropriate ways to provide public financing for political parties.

(2) Subject to this Act, for the better exercise of its functions the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in Part I of the Sixth Schedule, either absolutely or conditionally and either solely or jointly with others.

## **6 Commissioners: qualifications for and terms and conditions of office**

(1) Part II of the Sixth Schedule applies to the qualifications, the terms and conditions of office and, subject to this section, the vacation of office of Commissioners.

(2) If the President considers that the question of the removal from office of a Commissioner, on a ground specified in section 100G of the Constitution, ought to be investigated, the President shall appoint a tribunal to inquire into the matter.

(3) A tribunal appointed under subsection (2) shall consist of not less than three members selected by the President from the following—

- (a) persons who have held office as a judge of the Supreme Court or the High Court;
- (b) persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil or criminal matters in a country in which the common law is Roman-Dutch or English, and English is an official language;
- (c) legal practitioners of not less than seven years' standing;

one of whom shall be designated by the President as chairperson.

(4) It shall be the duty of the association which is constituted under an Act of Parliament and which represents legal practitioners practising in Zimbabwe to nominate a panel containing the names of at least five duly qualified legal practitioners for the purposes of subsection (3)(c) when so required by the President.

(5) A tribunal appointed under subsection (2) shall inquire into the matter with all due dispatch, and report to the President with a recommendation whether or not the Commissioner concerned should be removed from office on a ground specified in section 100G of the Constitution.

(6) The Commissions of Inquiry Act [*Chapter 10:07*] applies, with any necessary changes, in relation to a tribunal appointed under subsection (2), as it applies to commissioners appointed under that Act.

(7) If the question of removing a Commissioner from office has been referred to a tribunal under subsection (2), the Commissioner shall be suspended from performing the functions of his or her office until the President, on the recommendation of the tribunal, revokes the suspension or the Commissioner is removed from office in accordance with subsection (8).

(8) A tribunal appointed under subsection (2) shall make a report of its findings to the President and advise whether a Commissioner should be removed from office on a ground specified in section 100G of the Constitution, and if the tribunal advises the President that the Commissioner should be removed the President shall, with the approval of—

- (a) the Judicial Service Commission and the Committee on Standing Rules, in the case where the Commissioner to be removed is the chairperson of the Commission; or
- (b) the Committee on Standing Rules, in the case where the Commissioner to be removed is not the chairperson of the Commission'

remove the Commissioner from office.

(9) The Minister shall lay a copy of a tribunal's report and advice before Parliament within a reasonable time after its report and advice have been delivered to the President.

## **7 Procedure of Commission**

Part III of the Sixth Schedule applies to the procedure to be followed by the Commission at its meetings.

## **8 Decentralisation of Commission**

The Commission shall endeavour to establish such provincial and district offices as will enable it to exercise its functions more effectively throughout Zimbabwe.

## **9 Chief Elections Officer and other employees of Commission**

(1) For the better exercise of its functions the Commission shall appoint a chief executive who shall be called the Chief Elections Officer.

(2) Subject to the general control of the Commission, the Chief Elections Officer shall—

- (a) manage the affairs and property of the Commission;
- (b) supervise and control the activities of the other employees of the Commission in the course of their employment;
- (c) be the accounting officer of the Commission in terms of the Public Finance Management Act [*Chapter 22:19*] (No. 11 of 2009);
- (d) perform any of the functions of the Commission that the Commission may entrust or assign to him or her:

Provided that the Commission shall not assign to the Chief Elections Officer any duty that has been assigned to the Chairperson of the Commission.

(3) Any assignment of functions in terms of subsection (2)(d) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Commission may determine, and may be revoked by the Commission at any time.

(4) The Commission shall terminate the appointment of the Chief Elections Officer if—

(a) he or she would be required in terms of paragraph 3(b) or (c) of the Sixth Schedule to vacate his or her office had that paragraph and paragraph 2(1)(a), (b) and (c) of the First Schedule, and subparagraph (2) of that paragraph, applied to him or her; or

(b) he or she breaches any condition of service prescribed in terms of section 191(2)(a1) for the breach of which his or her appointment may be terminated.

(5) The Commission shall not terminate the services of the Chief Elections Officer on a ground other than one referred to in subsection (4) without the approval of the Minister.

(6) The Chief Elections Officer shall have the right to attend meetings of the Commission and, except in the case of any discussion relating to the terms and conditions of his or her appointment, to take part in the proceedings of the Commission as if he or she were a Commissioner, but shall not have a vote on any question before the Commission.

(7) The Commission shall employ such persons in addition to the Chief Elections Officer as it considers expedient for the better exercise of the functions of the Commission.

(8) The Commission shall, with the approval of the Minister responsible for finance, fix the terms and conditions of service of the employees of the Commission.

(9) The remuneration and other benefits payable to the Chief Elections Officer and other employees and agents of the Commission shall be paid from the funds of the Commission.

#### **10 Staff of Commission during elections**

(1) At the request of the Commission, the chairpersons of the Public Service Commission and the Health Services Board established by the Health Services Act [*Chapter 15:16*] (No. 20 of 2004) and the responsible authority of any statutory body or council shall second to the Commission such persons in the employment of the State, the statutory body or the local authority, as the case may be, as are necessary to hold such offices and perform such functions as the Commission may direct during an election.

(2) For the period of an election, every person seconded to the Commission under subsection (1) shall be under its direction and control in every respect as if he or she were an employee of the Commission.

(3) For the purposes of—

(a) an election to the office of President or election of members of Parliament, the Commission may appoint one of the persons seconded in terms of subsection (1) to be the provincial elections officer for each province for the purpose of the election;

(b) an election of one or more members of Parliament, the Commission may appoint one of the persons seconded in terms of subsection (1) to be the constituency elections officer for each senatorial and House of Assembly constituency in which the election is to take place:

Provided that the Commission may appoint the same person to be a constituency elections officer for a senatorial constituency and for a House of Assembly constituency which falls within the senatorial constituency;

- (c) an election to the office of President, the Commission may appoint one of the persons seconded in terms of subsection (1) to be the presidential constituency elections officer for each House of Assembly constituency for the purpose of the election:

Provided that the Commission may appoint the same person to be a constituency elections officer for a senatorial constituency and for a House of Assembly constituency which falls within the senatorial constituency;

- (d) an election of one or more councillors, the Commission may appoint one of the persons seconded in terms of subsection (1) to be the ward elections officer for each ward in which the election is to take place;
- (e) special voting, the Commission may appoint one of the persons seconded in terms of subsection (1) to be the district special voting officer for each district in which the special voting is to take place:

Provided that the Commission may designate a constituency elections officer stationed at a district centre to be the district special voting officer for the district in question.

#### **11 Provisions to ensure independence, impartiality and professionalism of Commissioners and staff and agents of Commission**

- (1) In this section—

“political office” means the office of—

- (a) the President; or
- (b) a Minister or Deputy Minister who is an elected member of Parliament; or
- (c) a member of Parliament; or
- (d) a member of the governing body of a local authority;
- (e) any executive appointment or elected office, whether remunerated or not; or
- (f) a Minister or Deputy Minister who is not an elected member of Parliament; or
- (g) any paid office;

in the service of a political party or of an organisation or movement which publicly supports or opposes the policies, candidates or cause of any political party.

- (2) Commissioners and the Commission’s employees and agents shall—

- (a) exercise their functions in a manner that—
- (i) promotes conditions conducive to free, fair and democratic elections and referendums; and

(ii) ensures that the secrecy and integrity of voting at elections and referendums is respected;

and

(b) not interfere, directly or indirectly, with the exercise by a voter of his or her rights under this Act; and

(c) maintain strict impartiality in the exercise of their functions; and

(d) not do anything, whether in the exercise of their functions or otherwise and whether by way of action, speech, attitude or manner, that may—

(i) give rise to a reasonable apprehension that they are exercising their functions with partiality or bias; or

(ii) place in jeopardy their independence or the perception of their independence; or

(iii) compromise the Commission's credibility, impartiality, independence or integrity;

and

(e) assist accredited observers to exercise their functions under this Act; and

(f) safeguard all ballot boxes, ballot papers and other electoral documentation and materials entrusted to the custody of the Commission in terms of this Act; and

(g) not—

(i) divulge, except in the exercise of his or her functions or with the Commission's prior approval; or

(ii) make private use of or profit from;

any confidential information gained through being a Commissioner or an employee or agent of the Commission.

(3) Without derogation from section 100E of the Constitution or subsection (2)(c) and (d) of this section, no Commissioner and no full-time employee of the Commission shall—

(a) hold, or seek appointment, election or nomination to, any political office; or

(b) except in the exercise of his or her functions as a Commissioner or as an employee of the Commission, perform any work for a political party or candidate in connection with an election or referendum;

(c) knowingly wear any badge or article of clothing that is or is reasonably likely to be associated with a political party or candidate contesting any election or supporting or opposing any question put to a referendum.

(4) Subsection (3) applies to part-time employees of the Commission during any period that they are employed or engaged by the Commission.

## **12 Funds and finances of Commission**

- (1) The funds of the Commission shall consist of—
- (a) moneys appropriated to the Commission by Act of Parliament; and
  - (b) fees, charges and other income accruing to the Commission from things done by it in terms of this Act; and
  - (c) the proceeds of any monetary penalties imposed by the Commission under this Act; and
  - (d) nomination fees paid by candidates under this Act; and
  - (e) donations or grants from any local or foreign source whatsoever, which have been approved by the Minister and the Minister responsible for finance; and
  - (f) such other moneys as may vest in or accrue to the Commission, whether in the course of its operations or otherwise, and whether under this Act or any other enactment.

(2) Moneys not immediately required by the Commission may be invested in such manner as the Commission in consultation with the Minister may approve.

(3) The estimated revenue and expenditure of the Commission shall be itemised clearly and separately in any estimates of revenue and expenditure laid before Parliament pursuant to Chapter XI of the Constitution.

(4) Subject to this section, Part IV of the Sixth Schedule applies in relation to the Commission's finances.

## **13 Reports of Commission on elections, referendums and other matters**

(1) As soon as possible after the result of any election or referendum has been announced, and in any event no later than six months thereafter, the Commission shall submit a report on the conduct of the election or referendum to—

- (a) the President, the President of the Senate, the Speaker of the House of Assembly and the Minister; and
- (b) each of the political parties that contested the election or referendum.

(2) As soon as possible after the end of each financial year the Commission shall submit to the President, President of the Senate, the Speaker of the House of Assembly and the Minister a report on its activities during that financial year.

(3) The Commission—

- (a) shall submit to the President, the President of the Senate, the Speaker of the House of Assembly and the Minister such other reports on any matter related to its activities as the President, the President of the Senate, the Speaker of the House of Assembly and the Minister may require; and

- (b) may submit to the President, the President of the Senate, the Speaker of the House of Assembly and the Minister such other reports on any matter related to its activities as the Commission considers advisable.

(4) The Speaker of the House of Assembly shall cause every report received in terms of subsection (1), (2) or (3) to be laid before Parliament on one of the twenty-four days on which the Senate and the House of Assembly next sit, whichever House meets first after the Speaker of the House of Assembly has received the report.

(5) The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament a report submitted to him or her by the Commission in terms of subsection (3)(a).

#### **14 Legal proceedings against Commission**

(1) Subject to subsection (1), the State Liabilities Act [*Chapter 8:14*] applies, with any necessary changes, to legal proceedings against the Commission as if the Chairperson of the Commission were a Minister.

(2) Despite sections 6, 7 and 8 of the State Liabilities Act [*Chapter 8:14*], no notice of intention to institute proceedings as required by those provisions shall be required when instituting proceedings against the Commission.”.

#### **5 Amendment of section 20 of Cap. 2:13**

Section 20 (“Voters rolls to be kept by Commission”) is amended—

(a) in subsection (1) by the insertion after “maintain” of “in printed and electronic form”;

(b) in subsection (3) by the insertion of the following proviso—

“Provided that every roll shall be kept in both printed and electronic form.”;

(c) in subsection (4) by the insertion after paragraph (b) of the following paragraph—

“and

(c) keep at least one copy of a consolidated national voters roll at its head office.”.

(d) by the insertion after subsection (4) of the following subsection—

“(5) In the event of any discrepancy between an electronic copy of a voters roll and a printed copy of a voters roll, the latter shall be deemed to be the authentic record of the voters roll.”.

#### **6 Amendment of section 21 of Cap. 2:13**

Section 21 (“Inspection of voters rolls and provision of copies”) of the principal Act is amended by the repeal of subsections (3) and (4) and the substitution of the following subsections—

“(3) The Commission shall within a reasonable period of time provide any person who requests it, and who pays the prescribed fee, with a copy of any voters roll, either in printed or in electronic form as the person may request.

(4) Within a reasonable period of time after the calling of an election, the Commission shall provide, on payment of the prescribed fee, to every political party that intends to contest the election, and to any observer who requests it, one copy of every voters roll to be used in the election, either in printed or in electronic form as the party or observer may request.

(5) Fees prescribed for the purposes of subsection (3) or (4) shall not exceed the reasonable cost of providing the voters roll concerned.

(6) Within a reasonable period of time after nomination day in an election, the Commission shall provide, free of charge, to every nominated candidate, one copy of the constituency voters roll to be used in the election for which the candidate has been nominated, which roll shall be in printed and electronic form.

(7) Where a voters roll is provided in electronic form in terms of subsection (3), (4) or (6), its format shall be such as allows its contents to be searched and analysed:

Provided that—

(i) the roll may be formatted so as to prevent its being altered or otherwise tampered with;

(ii) the Commission may impose reasonable conditions on the provision of the roll to prevent it from being used for commercial or other purposes unconnected with an election.

(8) For the purposes of any election the Chief Elections Officer shall, through the appropriate constituency elections officer, supply sufficient copies of the ward voters roll to every polling station.

(9) Any person who, having been provided with a voters roll in terms of this section—

(a) alters the voters roll, that is to say, excises any name from, adds any name to or otherwise alters the voters roll with intent to misrepresent to any person that the altered voters roll is the authentic voters roll for any election; or

(b) makes use of the voters roll for commercial or other purposes unconnected with an election;

shall be guilty of an offence and liable to a fine not exceeding level **ten** or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.”.

## **7 Amendment of section 23 of Cap. 2:13**

Section 23 (“Residence qualifications of voters”) of the principal Act is amended by the insertion after subsection (4) of the following subsection—

“(5) For the purposes of subsection (4), the Commission may prescribe documents that shall constitute proof of identity and additionally, or alternatively, proof of residence:

Provided that the prescribing of such documents shall not preclude a person from proving his or her identity or residence by other means.”.

## **8 Amendment of section 26A of Cap. 2:13**

Section 26A (“Closure of voters rolls 24 hours before nomination day”) of the principal Act is amended—

- (a) by the deletion of “general”;
- (b) by the insertion after “38” of “or a notice referred to in section 39, as the case may be,”.

**9 New section inserted in Cap. 2:13**

Part VII (“Miscellaneous Provisions Relating to Registration of Voters”) of the principal Act is amended by the insertion after section 36 of the following sections—

**“36A New registration of voters**

(1) Subject to subsection (2) (concerning the non-interruption of continuous registration and the extension of the period of new registration) and subsection (3) (concerning the automatic transfer of voters on a pre-existing voters roll to the new voters roll), the President, on the advice of the Commission, may at any time, by proclamation in the *Gazette*, order that there shall be a new registration of voters—

- (a) in all wards and constituencies; or
- (b) in such wards or constituencies as are specified in the proclamation;

and in the proclamation the President shall fix—

- (c) the day upon which the new registration shall begin; and
- (d) the latest day upon which claims and applications for registration shall be received, which day shall be at least six months after the day fixed in terms of paragraph (c).

(2) Where a proclamation is published in terms of subsection (1) —

- (a) section 17A (“Continuous registration”) shall continue to apply and operate alongside the new registration of voters; and
- (b) the day fixed in the proclamation as the latest day upon which claims and applications for registration shall be received may be postponed by the Commission by notice in the *Gazette* to a day not later than one hundred and eighty-one days from the first-mentioned day.

(3) Any person who, immediately before the publication of a proclamation in terms of subsection (1), is registered as a voter on a voters roll to which the proclamation applies shall be entitled to be registered on the new voters roll for the ward or constituency concerned without completing a claim form but merely producing proof of identity to the constituency registrar for the ward or constituency in which he or she was so registered.

(4) Where, during the period between the dates fixed in terms of subsection (1)(c) and (d), a person is residing outside his or her constituency in the circumstances described in section 33(3)(a) to (e), the person may, in a written application in terms of subsection (3), describe as his or her residential address for the purposes of registration on the new voters roll the place where he or she was last residing in the constituency concerned, and that person shall be entitled, subject to this Act, to be registered on the new voters roll for that constituency.

(5) A person who, immediately before the publication of a proclamation in terms of subsection (1), was registered with the approval of the Registrar-General in a constituency in which he or she was not resident may, in a written application in terms of subsection (3), provide the address which he or she provided in terms of section 24(2) or section 25(2), as the case may be, and that person shall be entitled, subject to this Act, to be registered on the new voters roll for the constituency in which the address is situated.

**36B Proof required for removal from voters roll on death or absence**

If a constituency registrar acting in terms of section 27 or 33, or a voter who lodges an objection in terms of section 28, seeks to remove a voter from the voters roll on the ground that the voter—

- (a) is dead; or
- (b) has been absent from his or her constituency for a period of twelve months or longer and is not a voter who was registered with the approval of the Registrar-General of Voters in a constituency in which he or she was not resident; or
- (c) has left Zimbabwe with the intention of residing permanently outside Zimbabwe;

and the constituency registrar or objecting voter produces to a designated magistrate or a judge in chambers, as the case may be, any of the following—

- (d) a death certificate or authenticated copy thereof relating to the voter sought to be removed; or
- (e) a sworn statement by the mother, father, brother, sister, son, daughter or other direct descendant of the voter sought to be removed that the voter is dead, or absent for the reason mentioned in paragraph (b) or (c); or
- (f) a sworn statement by the councillor, Chief, headman or village head of the area or village where the voter sought to be removed last resided, that the voter is dead;

then it shall be presumed, in the absence of any other reliable evidence, that the ground thus put forward is established.”.

**10 New sections inserted in Cap. 2:13**

Part VIII A (“Delimitation of Constituencies and Electoral Boundaries”) of the principal Act is amended by the insertion after section 37A of the following sections—

**“37B Commencement of delimitation of wards and constituencies**

Before the President, in terms of section 100J(1) of the Constitution, notifies the Commission of a date on which the Commission is to determine the limits of wards and constituencies, the President shall—

- (a) consult the Commission; and
- (b) fix the date so as to allow the Commission adequate time to determine the limits of the wards and constituencies and prepare its final report in terms of section 100J of the Constitution before the calling of the next general election.

**37C Electoral centres**

- (1) The Commission shall designate a place—
  - (a) to be the National Command Centre from which all elections conducted in terms of this Act are controlled nationally; and
  - (b) within each province to be the provincial command centre for the purposes of a Presidential election or election of members of Parliament; and
  - (c) within each House of Assembly constituency to be the presidential constituency centre for the purpose of a Presidential election; and
  - (d) within each senatorial constituency to be the senatorial constituency centre for the purposes of an election of Senators; and
  - (e) within each House of Assembly constituency to be the constituency centre for the purposes of an election of members of the House of Assembly; and
  - (f) within each district to be the district centre for the purposes of special voting; and
  - (g) within each ward to be the ward centre for the purposes of local authority elections.

(2) The Commission may designate the same place to be a senatorial constituency centre, constituency centre, a district centre, a ward centre and additionally, or alternatively, a presidential constituency centre.

(3) The Commission may designate its head office or any other place to be the National Command Centre.

(4) The Commission shall ensure that the results of the presidential, senatorial, House of Assembly and local authority elections are collated, compiled and transmitted in the following manner—

- (a) with respect to local authority elections, polling-station returns gathered from every polling station within a ward shall be transmitted to the appropriate ward centre in a return (“ward return”) distinctly indicating the results obtained in each polling station relating to those elections;
- (b) with respect to—
  - (i) presidential elections, polling-station returns gathered from every polling station within a constituency shall be transmitted to the appropriate presidential constituency centre for collation at that centre, the results of which collation shall be embodied in a return (“presidential constituency return”) distinctly indicating the results obtained in each polling station relating to those elections; and
  - (ii) senatorial elections, polling-station returns gathered from every polling station within a senatorial constituency shall be transmitted to the appropriate senatorial constituency centre for collation at that centre, the results of which collation shall be embodied in a return (“senatorial constituency return”) distinctly indicating the results obtained in each polling station relating to those elections; and

(ii) House of Assembly elections, polling-station returns gathered from every polling station within a House of Assembly constituency shall be transmitted to the appropriate House of Assembly constituency for collation at that centre, the results of which collation shall be embodied in a return ("House of Assembly constituency return") distinctly indicating the results obtained in each polling station relating to those elections;

and

(c) after collation of the results of —

(i) the presidential election at each presidential constituency centre, presidential constituency returns gathered from every presidential constituency centre shall be transmitted to the provincial command centre for collation at that centre, the results of which collation shall be embodied in a return ("provincial return for the presidential election") distinctly indicating the results obtained in each polling station and constituency relating to those elections; and

(ii) the senatorial election at each senatorial constituency centre, senatorial constituency returns gathered from every senatorial constituency centre shall be transmitted to the provincial command centre, where the result of the senatorial election in the province in question will be embodied in a return ("provincial return for the senatorial elections") distinctly indicating the results obtained in each polling station and constituency relating to those elections; and

(iii) the House of Assembly election at each House of Assembly constituency centre, House of Assembly constituency returns gathered from every House of Assembly constituency centre shall be transmitted to the provincial command centre, where the result of the House of Assembly election in the province in question will be embodied in a return ("provincial return for the House of Assembly elections") distinctly indicating the results obtained in each polling station and constituency relating to those elections;

and

(d) after—

(i) the collation of the results of the presidential election at each provincial command centre, provincial returns for the presidential election gathered from every provincial command centre shall be transmitted to the National Command Centre for collation at that centre to obtain the results of the presidential election; and

(ii) compilation of the provincial return for the senatorial elections at each provincial command centre, the provincial returns for the senatorial elections shall be gathered from every provincial command centre and transmitted to the National Command Centre;

(iii) compilation of the provincial return for the House of Assembly elections at each provincial command centre, the provincial returns for the

House of Assembly elections shall be gathered from every provincial command centre and transmitted to the National Command Centre.

**11 Amendment of section 38 of Cap. 2:13**

Section 38 (“General, presidential and local authority elections”)(1)(a) of the principal Act is amended by the insertion after subparagraph (ii) of the following subparagraph—

“and

- (iii) a day or days, not less than twenty-eight and not more than forty-two days after the polling day or last polling day, as the case may be, fixed in terms of subparagraph (ii), on which a runoff Presidential election shall be taken if such an election becomes necessary in terms of section 110(3)(f)(iii);”.

**12 Amendment of section 39 of Cap. 2:13**

Section 39 (“Vacancies and by-elections”) of the principal Act is amended by the repeal of subsection (3).

**13 New Parts inserted in Cap. 2:13**

The principal Act is amended by the insertion after Part IX of the following Parts—

“PART IXA

VOTER Education

**40A Interpretation in Part IXA**

In this Part—

“foreign contribution or donation” means a contribution or donation made by—

- (a) a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or
- (b) a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or
- (c) any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe;

“local contribution or donation” means a contribution or donation that is not a foreign contribution or donation;

“voter education” means any course or programme of instruction on electoral law and procedure aimed at voters generally and not offered as part of a course in law or civics or any other subject for students at an educational institution;

“voter education materials” means printed, aural, visual or audio-visual materials intended for use in voter education.

**40B Functions of Commission with respect to voter education**

- (1) The Commission shall have the following functions with respect to voter education—
  - (a) to provide adequate, accurate and unbiased voter education; and
  - (b) to ensure that voter education provided by other persons is adequate and not misleading or biased in favour of any political party; and
  - (c) to ensure compliance otherwise by persons referred to in paragraph (b) with the provisions of section 40C(1).
- (2) The Commission shall produce its own voter education materials for use in the provision of voter education.
- (3) The Commission may permit any person to assist it in providing voter education.

**40C Voter education by persons other than the Commission or political parties**

- (1) No person, other than—
  - (a) the Commission; or
  - (b) a person permitted to assist the Commission in terms of section 40B(3); or
  - (c) a political party;

shall provide voter education unless—

- (d) the person is—
  - (i) a citizen or permanent resident of Zimbabwe domiciled in Zimbabwe; or
  - (ii) an association, whether incorporated or unincorporated, consisting wholly or mainly of citizens or permanent residents of Zimbabwe domiciled in Zimbabwe; or
  - (iii) a lawfully constituted trust, the majority of whose trustees are of citizens or permanent residents of Zimbabwe domiciled in Zimbabwe;

and

- (e) where the person is an association or a trust, the person is—
  - (i) registered as a private voluntary organisation in terms of the Private Voluntary Organisations Act [*Chapter 17:05*]; or
  - (ii) registered in the Deeds Registry as a trust;

and is mandated by its constitution or trust deed, as the case may be, to provide voter education; and

- (f) the person employs individuals who are citizens or permanent residents of Zimbabwe to conduct any voter education; and
- (g) the person conducts voter education in accordance with a course or programme of instruction furnished or approved by the Commission; and

- (h) the voter education is, subject to section 40F (whereunder foreign contributions or donations may be channelled to the Commission for onward allocation), funded solely by local contributions or donations; and
  - (i) the voter education materials used by the person and the course or programme of instruction in accordance with which the voter education is conducted are adequate and not misleading or biased in favour of any political party; and
  - (j) no fee or charge is levied for the provision of voter education or voter education materials.
- (2) The Commission shall in writing require any person, other than a political party, providing or proposing to provide voter education, to—
- (a) furnish the Commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of instruction in accordance with which the voter education will be conducted; and
  - (b) furnish the Commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education; and
  - (c) disclose the manner and sources of funding of its proposed voter education activities; and
  - (d) satisfy the Commission that it is not otherwise disqualified in terms of subsection (1) from providing voter education.
- (3) Any person who—
- (a) contravenes subsection (1); or
  - (b) provides voter education after failing to comply with a requirement by the Commission in terms of subsection (2); or
  - (c) with intent to circumvent the restrictions on the provision of voter education specified in subsection (1), provides voter education under the guise of providing it as part of a course in law or civics or any other subject for students at an educational institution;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) Where a person is convicted in terms of subsection (3), the person shall not provide voter education in terms of this Act for a period of five years from the date of the conviction.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

#### **40D Provision of voter education by Commission**

(1) Not later than one week after the publication of a proclamation or notice in terms of section 38 or 39 fixing the dates of an election, the Commission shall begin a programme of voter education directed at the electorate in the election.

- (2) The Government shall give the Commission whatever assistance it may require in providing programmes referred to in subsection (1).
- (3) Subsection (1) shall not be construed—
- (a) as absolving the Commission from its obligation to provide general programmes of voter education at other times; and
  - (b) subject to section 40C (specifying what persons other than the Commission or political parties may provide voter education), as preventing anyone other than the Commission from providing programmes of voter education.

#### **40E Commission to monitor voter education by other persons**

- (1) The Commission shall monitor programmes of voter education provided by other persons in Zimbabwe.
- (2) If the Commission considers that any programme of voter education is—
- (a) false, in that the information provided by it is materially false or incorrect; or
  - (b) misleading, in that while the programme purports to be impartial it is materially and unfairly biased in favour of or against a political party or candidate contesting the election;

and that the programme is likely to prevent a substantial number of voters from making an informed political choice in an election, the Commission may by written notice direct every person responsible for providing and publishing the programme to cease providing or publishing it or to make such alterations to it as the Commission may specify to render it accurate and fair.

- (3) Before giving a direction under subsection (2), the Commission shall afford every person responsible for providing and publishing the programme concerned an adequate opportunity to make representations in the matter.
- (4) A person to whom a direction has been given under subsection (2) shall immediately take all necessary steps to comply with the direction.
- (5) Any person who contravenes subsection (4) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

#### **40F Foreign contributions or donations for the purposes of voter education**

No foreign contribution or donation for the purposes of voter education shall be made except to the Commission, which may allocate such contribution or donation to any person referred to in section 40B(3) or section 40C(1).

### **PART IXB**

#### **ELECTION OBSERVERS**

##### **40G Functions of accredited observers**

- (1) Persons who are accredited by the Commission in terms of this Part as observers of an election shall be entitled to do all or any of the following—

- (a) to observe the election process and, in particular, the conduct of polling at the election;
- (b) to be present at the counting or collating of votes cast at the election and the verification of polling-station returns by presiding officers in terms of sections 63, 64 and 65;
- (c) to bring any irregularity or apparent irregularity in the conduct of the poll or the counting or collating of votes to the attention of the Commission.

(2) The Minister, the Commission, and all electoral officers shall take all necessary steps to ensure that accredited observers are able to exercise their functions under subsection (1).

#### **40H Observers Accreditation Committee**

(1) The Commission shall establish a committee, to be called the Observers Accreditation Committee, consisting of—

- (a) the Chairperson of the Commission, who shall be the chairperson of the Committee; and
- (b) the Deputy Chairperson of the Commission; and
- (c) one member of the Commission designated by the Commission; and
- (d) one person nominated by the Office of the President and Cabinet; and
- (e) one person nominated by the Minister; and
- (f) one person nominated by the Minister responsible for foreign affairs; and
- (g) one person nominated by the Minister responsible for immigration.

(2) The functions of the Observers Accreditation Committee shall be, subject to this Part, to recommend to the Commission the accreditation of the following persons as observers—

- (a) individuals representing foreign countries or international organisations and foreign eminent persons who have applied to be accepted as observers; and
- (b) individuals representing local organisations and eminent persons from within Zimbabwe who have applied to be accepted as observers; and
- (c) individuals representing bodies that exercise functions similar to those of the Commission and that have been invited by the Commission to observe an election; and
- (d) individuals representing foreign countries or international organisations and foreign eminent persons who have been invited by the Minister responsible for foreign affairs to observe an election; and
- (e) individuals representing local organisations and eminent persons from within Zimbabwe who have been invited by the Minister to observe an election.

#### **40I Accreditation of observers**

(1) An application for accreditation as an observer shall be made to the Chief Elections Officer by—

- (a) the individual or eminent person who wishes to be accredited; or
- (b) the organisation that wishes its representatives to be accredited; or
- (c) the Minister or the Minister responsible for foreign affairs, in respect of individuals whom the Minister concerned has invited to observe an election;

as the case may be.

(2) An application for accreditation made by an organisation or a Minister shall state the names of the individuals whom the organisation or Minister wishes to have accredited.

(3) The Chief Elections Officer shall without delay forward to the Observers Accreditation Committee all applications for accreditation that he or she has received, as well as the names of any persons referred to in section 40H(2)(c) whom the Commission wants to have accredited, and the Observers Accreditation Committee shall forthwith consider the applications.

(4) If the Minister responsible for foreign affairs has lodged an objection to the accreditation of a foreign individual or eminent person, the Observers Accreditation Committee shall pay due regard to the objection when deciding whether or not to recommend the individual's or person's accreditation.

(5) After considering all applications for accreditation forwarded to it, the Observers Accreditation Committee shall submit its recommendations thereon to the Commission, and the recommendations of the Committee shall be deemed to have been adopted by the Commission if, forty-eight hours after the recommendations have been submitted to the Commission, the Commission, through the Chief Elections Officer, makes no indication in writing to the Committee that it rejects any of its recommendations.

(6) An individual who has been accredited shall not exercise any functions as an observer unless he or she has—

- (a) reported to the Observers Accreditation Committee at a time and place notified by the Committee; and
- (b) received a copy of, or been made aware of the contents of, the code of conduct set out in the First Schedule; and
- (c) paid such accreditation fee as may be prescribed.

(7) Upon satisfaction of the requirements of subsection (6) the Observers Accreditation Committee shall issue the observer concerned with an accreditation certificate specifying that he or she is accredited as an observer for the period of the election concerned.

(8) Every observer shall exhibit his or her accreditation certificate to any electoral officer who demands to see it.

#### **40J Limitation on number of observers**

Not more than the prescribed number of observers shall be permitted—

- (a) to enter or remain at any polling station;

- (b) to be present at the counting or collating of votes at a polling station or constituency centre.”.

**14 Amendment of section 46 of Cap. 2:13**

Section 46 (“Nomination of candidates”) of the principal Act is amended—

- (a) in subsection (1) by the repeal of paragraph (e) and the substitution of the following paragraphs—

- “(e) shall be accompanied by two copies of the electoral code of conduct for political parties and candidates prescribed in the Fourth Schedule, with the candidate’s name printed or legibly written at the bottom of each page thereof, and signed next to his or her name by the candidate or his or her chief election agent (which copies may be obtained on nomination day from the nomination officer, and one copy of which will be returned to the candidate or his or her chief election agent on due completion of the nomination); and

- (f) shall contain such particulars as may be prescribed.

- (b) in subsection (2) by the deletion of “a person purporting to be”;

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

- “(2a) For the purposes of subsection (2), each political party contesting the election concerned shall provide the Commission with the names of at least three office-bearers of the party, any one of whom will be authorised to provide the certification required by that subsection.”;

- (d) in subsection (10) by the repeal of paragraph (d) and the substitution of the following paragraphs—

- “(d) if the nomination paper is not accompanied by two copies of the electoral code of conduct referred to in and endorsed in the manner required by subsection (1)(e); or

- (e) if in his or her opinion the nomination paper is for any other reason not in order;”.

**15 New section substituted for section 47 of Cap. 2:13**

Section 47 of the principal Act are repealed and the following section is substituted—

**“47 Nomination fee**

At the same time as the nomination paper is lodged in terms of section 46 there shall be deposited with the nomination officer, by or on behalf of the person nominated, such nomination fee as may be prescribed, which shall form part of the funds of the Commission.”.

**16 Amendment of section 52 of Cap. 2:13**

Section 52 (“Provision of requisites and officers for purpose of poll”) of the principal Act is amended by the insertion after subsection (1) of the following subsection—

“(1a) Where two or more elections are to be held concurrently in a constituency, the constituency elections officer shall ensure that separate ballot boxes are provided for each such election.”.

17 New section inserted in Cap. 2:13

The principal Act is amended by the insertion after section 52 of the following section—

**“52A Publication of details re ballot papers**

The Commission shall without delay provide the following information to all political parties and candidates contesting an election, and to all observers—

- (a) where and by whom the ballot papers for the election have been or are being printed; and
- (b) the total number of ballot papers that have been printed for the election; and
- (c) the number of ballot papers that have been distributed to each polling station and special polling station.”.

**18 Amendment of section 55 of Cap. 2:13**

Section 55 (“Conduct of poll”) of the principal Act is amended—

- (a) in subsection (2)—
  - (i) by the deletion of “The presiding officer” and the substitution of “Subject to subsection (7), the presiding officer”;
  - (ii) in paragraph (b) by the repeal of subparagraphs (ii) and (iii) and the substitution of—
    - “(ii) the candidates; and
    - (iii) the number of election agents permitted in terms of subsection (2a); and”;
- (b) by the insertion after subsection (2) of the following subsection—

“(2a) Subject to section 95(5) (which empowers the Commission to prescribe that only one election agent representing each political party may be appointed during concurrent elections), each candidate in an election shall be entitled to have one election agent present in the polling station while polling is taking place, and another such agent outside the polling station to act as a substitute for the first-mentioned agent if for any reason the first-mentioned agent leaves the polling station.”;
- (c) in subsection (7) by the deletion of “available to provide assistance” and the substitution of “available in the immediate vicinity of each polling station to provide immediate assistance”;
- (d) by the insertion after subsection (7) of the following subsection—

“(7a) Police officers referred to in subsection (7)—

- (a) shall have the sole function of maintaining order and preventing contraventions of the law so that voters may freely cast their votes;
- (b) shall not interfere with the electoral processes at a polling station;
- (c) shall not enter a polling station except when called upon for assistance in terms of subsection (6) or to cast their votes in accordance with this Act;
- (d) when inside a polling station, shall exercise their duties under the direction and instruction of the presiding officer.”.

**19 New section substituted for sections 59 and 60 of Cap. 2:13**

Sections 59 and 60 of the principal Act are repealed and the following section is substituted—

**“59 Voting by illiterate or physically handicapped voters**

(1) Upon request by a voter who is illiterate or physically handicapped and cannot vote in the way set out in section 57, a presiding officer shall—

- (a) permit another person, selected by the voter, to assist the voter in exercising his or her vote; or
- (b) in the absence of a person selected by the voter, assist the voter in exercising his or her vote in presence of two other electoral officers or employees of the Commission.

(2) A person permitted to assist a voter in terms of subsection (1)(a)—

- (a) need not be a registered voter but shall not be a minor, electoral officer, accredited observer, chief election agent, election agent or a candidate in the election; and
- (b) shall identify himself or herself to the presiding officer by producing proof of identity, and shall complete and sign the register referred to in subsection (2); and
- (c) shall not be permitted to assist more than one voter in any election.

(3) For the purposes of subsection (2)(b), every presiding officer shall keep a special register in which shall be recorded the name of every person whom the presiding officer permits to assist a voter in terms of subsection (1)(a), relevant particulars of the proof of identity produced by that person, and the name of the voter assisted by that person.

(4) A presiding officer permitted to assist a voter in terms of subsection (1)(b), together with the other persons there mentioned, shall there and then mark the ballot paper in accordance with the voter’s wishes and place the ballot paper in the ballot box, and if the wishes of the voter as to the manner in which the vote is to be marked on the ballot paper are not sufficiently clear to enable the vote to be so marked, the presiding officer may cause such questions to be put to the voter as in his or her opinion, are necessary to clarify the voter’s intentions.

(5) No person other than—

- (a) the person selected by the voter in terms of subsection (1)(a) shall take part in assisting an illiterate or physically handicapped voter, and no person who is entitled to be in a polling station shall attempt to ascertain how the voter is voting:

Provided that, in the case of a voter who is visually impaired, the presiding officer shall observe the casting of the vote in order to ensure that the voter's intention is respected by the person assisting him or her;

or

- (b) the presiding officer selected by the voter in terms of subsection (1)(b) and the persons there mentioned shall assist an illiterate or physically handicapped voter.

(6) The presiding officer shall cause the name of every voter who has been assisted in terms of subsection (1)(a) or (b), and the reason why that voter has been assisted, to be entered on a list.”.

**20 Amendment of section 64 of Cap. 2:13**

Section 64 (“Procedure after counting at polling station”)(1) of the principal Act is amended by the insertion after paragraph (d) of the following paragraph—

- “(d1) provide each candidate or his or her polling agent with a copy of the completed polling-station return; and”.

**21 Amendment of section 65 of Cap. 2:13**

Section 65 (“Procedure on receipt of polling-station returns”) of the principal Act is amended—

- (a) in subsection (5)—
  - (i) by the deletion of “As soon as may be” and the substitution of “As soon as possible”;
  - (ii) by the insertion after paragraph (b) of the following paragraphs—

“and

- (c) record on a constituency return the results of the collation of polling-station returns, with distinct entries recording and the counting of the postal ballots and special votes; and
  - (d) provide each candidate and his or her polling agent with a copy of the completed constituency return; and
  - (e) affix a copy of the completed constituency return on the outside of the constituency centre so that it is visible to the public.”;
- (b) by the insertion after subsection (5) of the following subsection—

“(5a) Immediately after affixing a constituency return on the outside of the constituency centre, the constituency elections officer shall cause the completed constituency return, certified by himself or herself to be correct, to be transmitted through the appropriate provincial centre to the National Command Centre in the manner specified in section 37C(4).”.

**22 New section inserted in Cap. 2:13**

The principal Act is amended by the insertion after section 65 of the following section—

**“65A Provision of copies of polling-station returns and constituency returns**

(1) A presiding officer of a polling station shall forthwith provide every political party and candidate that contested the election with a copy of the polling-station return he or she transmitted to the constituency elections officer in terms of section 64(2).

(2) A constituency elections officer shall forthwith provide a copy of—

- (a) every polling-station return transmitted to him or her in terms of section 64(2); and
- (b) the constituency return which he or she transmitted to the National Command Centre in terms of section 65(5a);

to every political party and candidate that contested the election concerned.

(3) The Chief Elections Officer shall forthwith provide every political party and candidate that contested the election concerned with a copy of every constituency return transmitted to the National Command Centre in terms of section 65(5a).”.

**23 New section inserted in Cap. 2:13**

The principal Act is amended by the insertion after section 66 of the following section—

**“66A Purported publication of results prior to official announcement**

(1) No person other than an electoral officer, acting in accordance with this Act, may officially declare and announce the results of an election.

(2) No office-bearer or member of a political party shall purport to declare and announce the results of any election before it has been declared officially by an electoral officer.

(3) A person who—

- (a) not being an electoral officer acting in accordance with this Act, purports to announce the results of any election as the true or official results before they have been declared officially by an electoral officer; or
- (b) being an office-bearer or member of a political party, contravenes subsection (2);

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”.

**24 Amendment of section 67 of Cap. 2:13**

Section 67 (“Notification of result of election”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “transmit by telegram, telefacsimile or electronic mail in the prescribed form to the Chief Elections Officer,” and the substitution of “notify the Chief Elections Officer, by telegram, telefacsimile, electronic mail or such other means as may be prescribed, of”;
- (b) in subsection (2) by the deletion of “the transmission of the telegram, telefacsimile or electronic mail” and the substitution of “after he or she was notified of the information in terms of subsection (1)”.

**25 Amendment of section 67A of Cap. 2:13**

Section 67A (“Recounting of votes”) of the principal Act is amended—

- (a) by the repeal of subsection (3) and the substitution of—

“(3) On receipt of a request in terms of subsection (1), the Commission shall—

(a) immediately notify all the other political parties and candidates that contested the election of the nature of the request and of the date and time on which it was received by the Commission; and

(b) order a recount of votes in the polling stations concerned if the Commission considers there are reasonable grounds for believing that the alleged miscount of votes occurred and that, if it did occur, it would have affected the result of the election.”;

- (b) by the insertion after subsection (6) of the following subsection—

“(6a) The Commission shall ensure that any recount of votes in terms of this section is completed within five days after the polling day or the last polling day, as the case may be, in the election concerned:

Provided that the Electoral Court, on application, may for good cause extend the period.”.

**26 New Parts substituted for Part XIV of Cap. 2:13**

Part XIV (“Voting by Post”) of the principal Act is repealed and the following Parts are substituted—

“PART XIV

POSTAL VOTING

**71 Interpretation in Part XIV**

The reference in section 73(2)(b)(ii) to a “letter” includes a reference to a letter sent by way of electronic mail, under the following conditions—

- (a) the sender (that is, the person referred to in 73(2)(b)(ii)A or B) and recipient (that is, the applicant for a postal vote) must both use official electronic mail addresses; and
- (b) the electronic mail sent by sender must be authenticated by the electronic signature of the sender; and
- (c) the electronic mail must be embodied in a hard copy printed by the recipient, which copy shall be the “letter” referred to in 73(2)(b)(ii).

**72 Persons who may vote by post**

Where an election is to be held in a constituency, a person who is registered as a voter on the roll for that constituency shall be entitled to vote by post in terms of this Part if, on all polling days in the election, he or she will be outside Zimbabwe—

- (a) on duty in the service of the Government; or

(b) as the spouse of a person referred to in paragraph (a);

and so unable to vote at a polling station in the constituency.

### **73 Application for postal vote**

(1) A person who wishes to vote by post may apply to the Chief Elections Officer for a postal ballot paper.

(2) An application for a postal ballot paper shall be—

(a) in the prescribed form; and

(b) signed by the applicant and accompanied by—

(i) a certified copy of the voter's national registration certificate; and

(ii) a letter from—

A. the applicant's head of Ministry, head of department or head of station; or

B. the head of Zimbabwe's Embassy or diplomatic or consular mission in the foreign State where the applicant is employed;

stating the capacity in which the applicant is employed by the Government and where the applicant will be employed on polling day or polling days, as the case may be, in the election;

and

(c) sent to the Chief Elections Officer by means of a commercial courier service or by diplomatic courier, or delivered by hand to the Chief Elections Officer (in which event written proof of delivery shall be required) not later than noon on the fourteenth day after nomination day in the election.

(3) Where more than one election is to be held concurrently in any constituency, a single application form may be used by applicants who apply for postal ballot papers in all those elections.

(4) The Commission shall ensure that application forms for postal ballot papers are available at all Embassies and diplomatic or consular missions of Zimbabwe located in foreign countries.

(5) The Chief Elections Officer shall number in consecutive order of their receipt all applications for postal ballot papers received by him or her, and shall permit them to be inspected by members of the public, free of charge, until the declaration of the result of the poll, when they shall be dealt with in terms of section 70(3).

### **74 Issue of postal ballot papers**

(1) If the Commission is satisfied, in regard to an application received not later than noon on the fourteenth day after nomination day in the election, that the applicant is entitled to a postal vote, the Chief Elections Officer shall issue a postal ballot paper to the applicant by placing in an envelope addressed to the applicant—

(a) the postal ballot paper; and

- (b) a covering envelope addressed to Chief Elections Officer; and
- (c) a smaller envelope marked "Ballot Paper Envelope" on the back of which shall be written the name of the voter, his or her voter registration number and the constituency and ward in which he or she is registered.

(2) Where more than one election is to be held concurrently in a constituency, the Chief Elections Officer may enclose in a single envelope all the postal ballot papers for which the applicant has applied.

(3) The Chief Elections Officer shall then effectively close the envelope addressed to the applicant and deliver it to—

- (a) the nearest post office for registration and dispatch to the applicant by registered post; or
- (b) a commercial courier service for delivery to the applicant; or
- (c) the Ministry of Foreign Affairs for delivery to the applicant by diplomatic courier;

and the Chief Elections Officer shall keep the receipt for such registration or a receipt provided by the commercial courier service or Ministry of Foreign Affairs, as the case may be.

(4) The Chief Elections Officer shall keep a list of all postal ballot papers issued, which list shall contain the following details of every person to whom such a ballot paper has been issued—

- (a) the person's name and address; and
- (b) the person's voter registration number; and
- (c) the constituency and ward in which the person is registered;

and shall permit the list to be inspected by members of the public, free of charge, until the declaration of the result of the poll, when it shall be dealt with in terms of section 70(3).

(5) The Chief Elections Officer shall ensure that the voters roll supplied to each constituency centre in terms of section 76 for the purposes of the election has a line drawn through every voter in the constituency who has been issued with a postal ballot paper, and shall inscribe opposite that person's name the letters "P.V."

## **75 Voting by post**

- (1) A person to whom a postal ballot has been sent shall—
  - (a) signify the candidate for whom he or she wishes to vote by secretly placing on the ballot paper a cross in accordance with section 57(c)(ii); and
  - (b) then place the marked ballot paper in the envelope marked "Ballot Paper Envelope", effectively close that envelope and then place it in the covering envelope addressed to the Chief Elections Officer; and
  - (c) then dispatch the covering envelope by registered post or by a commercial courier service or diplomatic courier so that it is received by the Chief Elections Officer not later than noon on the fourteenth day before polling day or the first polling day, as the case may be, in the election.

(2) Where more than one election is being held concurrently in a constituency and the voter marks more than one ballot paper, he or she shall place each of the marked ballot papers in a separate envelope marked "Ballot Paper Envelope" and place those envelopes in a single covering envelope addressed to the Chief Elections Officer.

#### **76 Distribution of postal ballots by Chief Elections Officer and ward elections officers**

(1) Upon receipt of a covering envelope dispatched in terms of section 75, the Chief Elections Officer shall open it and dispatch the enclosed ballot paper envelope, unopened, to the constituency elections officer for the constituency indicated on the back of the envelope.

(2) Whenever the Chief Elections Officer sends a ward elections officer one or more ballot paper envelopes, he or she shall send an accompanying note indicating the number of envelopes that are sent.

- (3) The Chief Elections Officer shall keep a list of all covering envelopes received, showing—
- (a) the date on which they were received; and
  - (b) the names and voter registration numbers of the voters who sent them; and
  - (c) the constituencies to which the ballot paper envelopes were sent and the dates on which they were sent;

and shall permit the list to be inspected by members of the public, free of charge, until the declaration of the result of the poll, when it shall be dealt with in terms of section 70(3).

(4) The Chief Elections Officer shall ensure that each constituency elections officer receives the ballot paper envelopes sent to him or her at least seven days before the polling day or the first polling day, as the case may be, in the election concerned.

(5) Upon receipt of the ballot paper envelopes dispatched in terms of subsection (4), the constituency elections officer shall forthwith distribute each ballot paper envelope to the ward elections officer of the ward indicated on the back of the envelope, together with an accompanying note indicating the number of envelopes that are sent.

(6) The constituency elections officer shall ensure that the appropriate ward elections officer receives the ballot paper envelopes sent to him or her at least two days before the polling day or the first polling day, as the case may be, in the election concerned.

#### **77 Postal ballot boxes**

(1) Every ward elections officer who receives any ballot paper envelopes dispatched to him or her in terms of section 76(5) shall provide a postal ballot box at the polling station for the reception of the ballot paper envelopes.

(2) The ward elections officer shall give to each candidate or his or her chief election agent reasonable notice of the time, date and place at which he or she will seal the postal ballot box, which date shall be at least two days before the polling day or first polling day, as the case may be, in the election.

(3) At the time and place notified, the ward elections officer shall show the postal ballot box open and empty to such candidates and election agents and observers as are present and it shall then be sealed with the ward elections officer's seal and the seals of such candidates and agents

as wish to affix their seals and shall be marked "Postal Ballot Box", and the ward elections officer shall make adequate provision for the safe custody of the ballot box.

(4) The ward elections officer shall immediately place in the postal ballot box, unopened, all the ballot paper envelopes he or she receives from the constituency registrar in terms of section 76(5).

### **78 Opening of postal ballot boxes**

(1) After the close of the poll and before the time fixed for the counting of the votes, the ward elections officer shall, in the presence of such electoral officers, candidates, election agents and observers as are entitled to be present—

- (a) open the postal ballot box; and
- (b) count and record the number of envelopes in the postal ballot box; and
- (c) compare the number of envelopes in the postal ballot box with the number specified in the accompanying note or notes sent by the constituency registrar in terms of section 76(5) and, if there is any discrepancy between the numbers, inform the candidates, election agents and observers who are present.

(2) The ward elections officer shall then examine each ballot paper envelope and ensure that the name of the voter written on the back of the envelope is that of a voter registered on the voters roll of the constituency and ward, and that the voter's name has been marked in the manner specified in section 74(5) as that of a voter to whom a postal ballot paper has been issued.

(3) If the name of the voter written on the back of a ballot paper envelope—

- (a) appears on the voters roll of the ward and is noted as that of a voter to whom a postal ballot paper has been issued, the ward elections officer shall cause the envelope to be opened and the ballot paper therein to be placed in a separate package, to be counted along with the votes cast at polling stations in the election concerned;
- (b) does not appear on the voters roll of the ward or is not noted as that of a voter to whom a postal ballot paper has been issued, the ward elections officer shall endorse the envelope "vote rejected" and place the envelope, unopened, in a separate package.

(4) The ward elections officer shall show to the candidates and their agents present every ballot paper envelope which he or she proposes to reject in terms of subsection (3)(b) and, if a candidate or an agent objects to his or her decision, the ward elections officer shall add to the endorsement on the envelope the words "rejection objected to".

### **79 Safe-keeping of documents**

The ward elections officer shall, immediately after the declaration of the result of the poll, seal in separate packets or containers—

- (a) all the postal ballot papers cast in the election; and
- (b) unopened, all ballot paper envelopes which have been endorsed "vote rejected" in terms of section 76(3); and

- (c) unopened, all ballot paper envelopes which have been endorsed “vote rejected” but whose rejection has been objected to as provided in section 76(4).

#### **80 Offences in relation to postal votes**

(1) A person who attempts to induce any other person to obtain a postal ballot paper with the intention of influencing him or her by bribery or intimidation to record his or her vote in favour of a particular candidate shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment and, in addition to any such punishment, may, if he or she is convicted of that offence by the High Court, be declared by the High Court to be disqualified from voting at any election for a period not exceeding five years.

(2) Any person who—

- (a) makes or induces any other person to make a false statement in an application for a postal ballot paper; or
- (b) fails to deliver or post forthwith an envelope containing or purporting to contain a postal ballot paper entrusted to him or her by a voter for the purpose of delivering or posting it to the Chief Elections Officer;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### PART XIVA

#### SPECIAL VOTING

#### **81 Persons entitled to special vote**

A registered voter shall be entitled to cast a special vote in terms of this Part before the polling day or first polling day in an election if he or she will be unable to vote at a polling station in his or her constituency because he or she—

- (a) is or will be an electoral officer; or
- (b) is a member of a disciplined force who will be performing security duties during the election.

#### **81A Fixing of date, place and time of special voting**

(1) As soon as practicable after the calling of an election, the Commission shall fix for the purposes of special voting—

- (a) two polling days, the last polling day of which shall be at least sixteen days before the polling day or first polling day, as the case may be, in the election; and
- (b) the location of polling stations, which shall be located at a district centre:

Provided that if the Commission considers that the district in question is too large or that for any other reason special voters may be prejudiced by having only one special polling station within a district, the Commission may establish one or more additional polling stations within the district, to be called “special district sub-centre polling stations”;

and

(c) the hours during which special voting can take place.

(2) Where two or more elections are held concurrently, the Commission shall fix the same polling days, the same special polling stations and the same hours of polling for all the elections.

(3) The Commission shall give reasonable public notice of the days and hours fixed for special voting, and of the location of the special polling stations, to—

(a) the persons who are or will be entitled to cast special votes:

Provided that, in the case of members of disciplined forces, it shall be sufficient for the Commission to give notice to their commanding officers; and

(b) political parties and candidates contesting the election; and

(c) observers accredited for the election.

**81B Where special voters must vote; special voters not entitled to vote in any other way**

(1) An electoral officer or member of a disciplined force who is authorised to cast a special vote in terms of this Part must cast his or her vote at the special polling station for the district in which he or she is performing duties away from the constituency in which, or the polling station at which, he or she would ordinarily be required to vote:

Provided that if the special polling station at which the electoral officer or member of the disciplined force is required to vote is further away from the place where he or she is performing duties than another special polling station in a different district, the electoral officer or member of the disciplined force may vote at the last-mentioned special polling station.

(2) A voter who has been authorised to cast a special vote shall not be entitled to vote in any other manner than by casting a special vote in terms of this Part.

**81C Application for special vote**

(1) A person who wishes to cast a special vote in an election shall apply for authorisation to the Commission at least fourteen days before the first special polling day in the election.

(2) An application under subsection (1) shall—

(a) be in the prescribed form; and

(b) be signed by the applicant and accompanied by or a certified copy of his or her national registration card or voter registration certificate; and

(c) where the application is made by an electoral officer, be accompanied by a certificate from the Chief Elections Officer stating that the applicant will be carrying out duties as an election officer in the election concerned elsewhere than in the constituency in which the applicant is registered as a voter; and

(d) where the application is made by a member of a disciplined force, be accompanied by a certificate from his or her commanding officer stating that the applicant will be deployed to carry out security duties, whether or not in connection with the election,

elsewhere than in the constituency in which the applicant is registered as a voter;  
and

- (e) where the application is made by an observer, be accompanied by a certificate from the Chief Elections Officer that the applicant has been accredited as an observer and will be carrying out observation duties during the period of the election elsewhere than in the constituency in which the applicant is registered as a voter.

(3) The Chief Elections Officer shall number all applications for authorisation received by the Commission, noting on each of them the date on which it was received, and shall permit them to be inspected by members of the public, for the prescribed fee, if any, until the declaration of the result of the poll, when they shall be dealt with in terms of section 70(3).

#### **81D Issue or refusal of authorisation to cast special vote**

(1) If the Commission is satisfied that an applicant is entitled to cast a special vote in terms of this Part, the Chief Elections Officer shall—

- (a) notify the applicant accordingly and supply him or her with a written authorisation to cast a special vote; and
- (b) inform the applicant of the days on which he or she may cast a special vote and the place and times at which he or she may do so.

(2) The Chief Elections Officer shall keep a list of all authorisations issued in terms of subsection (1), which list shall contain the following details of every person to whom an authorisation has been issued—

- (a) the person's name and address; and
- (b) the person's voter registration number; and
- (c) the ward and constituency in which the person is registered;

and shall permit the list to be inspected by members of the public, for the prescribed fee, if any, until the declaration of the result of the poll, when it shall be dealt with in terms of section 70(3).

(3) The Chief Elections Officer shall ensure that the voters roll supplied to each ward centre for the purposes of the election has a line drawn through every voter in the ward who has been authorised to cast a special vote and shall inscribe opposite that person's name the letters "S.V."

(4) If the Commission is not satisfied that an applicant is entitled to cast a special vote in terms of this Part, the Chief Elections Officer shall immediately notify the applicant that authorisation has been refused and that the applicant must attend personally at a polling station to cast his or her vote.

#### **81E Procedure for special voting**

(1) The Commission shall ensure that on the first day fixed for special voting in terms of section 81A, special polling stations are established at the district centres in terms of that section and are ready for persons to cast their votes in accordance with this section.

(2) The Commission shall provide a ballot box at each special polling station, which box shall be clearly marked with the words "Special Voting Ballot Box".

(3) Special ballot papers shall be in the same form as ballot papers delivered to voters at polling stations on any polling day in the election concerned, except that special ballot papers shall be inscribed in the top right-hand corner with the letters "S.V".

(4) Not more than thirty minutes before the commencement of the poll at a special polling station, the district special voting officer shall—

- (a) satisfy himself or herself that the special ballot box to be used at the special polling station is empty; and
- (b) show the interior of the empty special voting ballot box to such of the candidates, election agents, observers and other persons entitled to attend at the special polling station as are present; and
- (c) immediately thereafter close and seal the ballot box in accordance with instructions issued by the Commission.

(5) After a special ballot box is closed and sealed in terms of subsection (4), its seal shall be broken —

- (a) at the start of polling on the first special voting day, and then resealed at the close of the poll; and
- (b) at the start of polling on the second special voting day, and then the ballot box shall be opened at the close of the poll;

in the presence of such of the candidates, election agents, observers and other persons entitled to attend at the special polling station as are present.

(6) The procedure for voting at special polling stations shall be the same as for voting at ordinary polling stations on the polling day or days in the election concerned, except that—

- (a) the voter, in addition to his or her proof of identity, shall be requested to produce his or her authorisation to cast a special vote; and
- (b) the voter shall be given an envelope clearly inscribed with the words "Special Ballot Papers" and the name of the constituency and ward in which he or she is registered, and shall be instructed that, after marking the ballot paper in accordance with section 57(c)(ii), he or she must place the ballot paper in the envelope and seal the envelope before depositing it in the special ballot box:

Provided that, where more than one election is being held concurrently in the constituency, the voter shall be instructed to place all his or her marked ballot papers in the same envelope; and

- (c) voters casting special ballots shall comply with the instructions given to them in terms of paragraph (b).

(7) Subject to this section, the provisions of Part XIII relating to the conduct of a poll shall apply, with any necessary changes, to special voting.

#### **81FOpening of special ballot boxes**

(1) Immediately after the time fixed for voting at a special polling station has ended, the district special voting officer shall, in the presence of such candidates, election agents, observers and electoral officers as are present—

- (a) open the special ballot box; and
- (b) count and record the number of envelopes in the special ballot box; and
- (c) compare the number of envelopes in the special ballot box with the number of persons who were authorised to cast a special vote in the constituency, as notified by the Chief Election Officer and, if there is any discrepancy between the numbers, inform the candidates, election agents and observers who are present.

(2) The district special voting officer shall then place in a package all the envelopes found in the special ballot box and shall seal the package and permit the candidates, their election agents and observers who are present to inscribe their signatures over the place where the package is sealed.

- (3) The district special voting officer shall then personally convey to the provincial centre—
- (a) the package that has been sealed in terms of subsection (2); and
  - (b) the record of the number of envelopes contained in the package;

whereupon the provincial elections officer shall take charge of them and be responsible for their safe custody and transmission to the Chief Elections Officer.

(4) Upon receipt of the package that has been sealed in terms of subsection (2), the Chief Elections Officer shall give to each candidate or his or her chief election agent reasonable notice of the time, date (which date shall be at least twelve days before the polling day or first polling day, as the case may be, in the election) and place at which he or she will—

- (a) open the package referred to in subsection (3); and
- (b) count and record the number of envelopes in the package; and
- (c) compare the number of envelopes in the package with the number recorded by the district special voting officer of the special polling station and, if there is any discrepancy between the numbers, inform the candidates, election agents and observers who are present.

(5) Immediately after completing the formalities required by subsection (4), the Chief Elections Officer shall forthwith distribute each envelope to the provincial elections officer within whose province are located the wards indicated on the back of the envelopes, together with an accompanying note indicating the number of envelopes that are sent.

(6) Upon receipt of the envelopes and note from the Chief Elections Officer, the provincial elections officer concerned shall forthwith (and in any event no later than forty-eight hours after receipt) distribute them to the district centres within whose area of jurisdiction are located the wards indicated on the backs of the envelopes, together with an accompanying note indicating the number of envelopes that are sent.

(7) Upon receipt of the envelopes and note from the provincial elections officer, the district elections officer concerned shall forthwith (and in any event no later than seventy-two hours after

receipt) distribute them to the ward elections officers of the wards indicated on the backs of the envelopes, together with an accompanying note indicating the number of envelopes that are sent.

(8) Every ward elections officer of a ward who receives any envelopes dispatched to him or her in terms of subsection (5) shall provide a special ballot box at the polling station for the reception of the envelopes.

(9) The ward elections officer of the ward shall give to each candidate or his or her chief election agent reasonable notice of the time, date and place at which he or she will seal the special ballot box, which date shall be at least two days before the polling day or first polling day, as the case may be, in the election.

(10) At the time and place notified, the ward elections officer of the ward shall show the special ballot box open and empty to such candidates and election agents and observers as are present and it shall then be sealed with the ward elections officer's seal and the seals of such candidates and agents as wish to affix their seals and shall be marked "Special Ballot Box", and the ward elections officer shall make adequate provision for the safe custody of the ballot box.

(11) The ward elections officer of the ward shall immediately place in the special ballot box, unopened, all the envelopes he or she receives from the district elections officer in terms of subsection (7).

(12) Immediately after the postal ballot box for the ward centre has been opened and its contents dealt with in terms of section 78, the ward elections officer shall, in the presence of such electoral officers, candidates, election agents and observers as are entitled to be present—

- (a) open the special ballot box; and
- (b) count and record the number of envelopes in the special ballot box; and
- (c) compare the number of envelopes in the special ballot box with the number recorded by the district elections officer in the accompanying note sent by him or her under subsection (7), and, if there is any discrepancy between the numbers, inform the candidates, election agents and observers who are present.

(13) The ward elections officer shall then examine each envelope from the special ballot box and ensure that the names of the constituency and ward written on the back of the envelope is that of his or her constituency and ward.

(14) If the names of the constituency and ward written on the back of an envelope—

- (a) are correct, the ward elections officer shall cause the envelope to be opened and the ballot paper therein to be placed in a separate package, to be counted along with the votes cast at the ordinary polling station in the election concerned;
- (b) is not correct, the ward elections officer shall endorse the envelope "vote rejected" and place the envelope, unopened, in a separate package.

(15) The ward elections officer shall show to the candidates and their agents present every ballot paper envelope which he or she proposes to reject in terms of subsection (14)(b) and, if a candidate or an agent objects to his or her decision, the ward elections officer shall add to the endorsement on the envelope the words "rejection objected to".

#### **81G Safe-keeping of documents related to special voting**

The ward elections officer shall, immediately after the declaration of the result of the poll, seal in separate packets or containers—

- (a) all the special ballot papers cast in the election; and
- (b) unopened, all envelopes which have been endorsed “vote rejected” in terms of section 81F(14)(b); and
- (c) unopened, all envelopes which have been endorsed “vote rejected” but whose rejection has been objected to as provided in section 81F(15).

#### **81H Offences in relation to special votes**

(1) Any person who, having been authorised to cast a special vote in terms of this Part, casts or attempts to cast a vote at an ordinary polling station, shall (whether or not he or she has cast a special vote at the same election) be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) A person who attempts to induce any other person to obtain a special ballot paper with the intention of influencing him or her by bribery or intimidation to record his or her vote in favour of a particular candidate shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment and, in addition to any such punishment, may, if he or she is convicted of that offence by the High Court, be declared by the High Court to be disqualified from voting at any election for a period not exceeding five years.

(3) Any person who makes or induces any other person to make a false statement in an application for a special ballot paper shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”.

#### **27 Amendment of section 95 of Cap. 2:13**

Section 95 (“Election agents”) of the principal Act is amended—

- (a) by the insertion after subsection (1) of the following subsection—

“(1a) Subject to subsection (5) (which provides for limiting the number of election agents in or about a polling station where more than one election is being held concurrently), of the election agents appointed in terms of subsection (1) by a candidate’s chief election agent—

- (a) one shall be entitled to be present in each polling station in the constituency in which the candidate is standing for election; and
- (b) one shall be entitled to be present in the immediate vicinity of each such polling station;

for the purposes of observing whether or not the electoral processes at the polling station concerned are conducted in accordance with this Act.”;

- (b) by the insertion after subsection (4) of the following subsections—

“(5) Where more than one election is to be held concurrently in any constituency, the Commission may prescribe that, in relation to candidates nominated by political parties, only two election agents representing each political party—

- (a) one of whom shall be entitled to be present in each polling station in the constituency in which the candidate is standing for election; and
- (b) the other shall be entitled to be present in the immediate vicinity of each such polling station;

and for that purpose any references to the chief election agent of the candidate making the appointments and notifications of elections agents referred to in subsection (1) shall be substituted by references to the political party of the candidates competing in the concurrent elections concerned.”.

**28 New section substituted for section 105 of Cap. 2:13**

Section 105 of the principal Act are repealed and the following section is substituted—

**“105 Nomination fee**

At the same time as the nomination paper is lodged by or on behalf of a candidate for election as President, there shall be deposited with the Chief Elections Officer, by or on behalf of the person nominated, such nomination fee as may be prescribed, which shall form part of the funds of the Commission.”.

**29 New section substituted for section 110 of Cap. 2:13**

Section 110 is repealed and the following is substituted—

**“110 Determination and declaration of result of election to office of President**

(1) Where only one candidate for President is validly nominated at the close of the day on which a nomination court sits in terms of section 38(1)(a), the Chief Elections Officer shall declare such candidate to be duly elected as President without the necessity of a poll.

(2) Where two or more candidates for President are validly nominated, a poll shall be taken in each constituency for the election of a President.

(3) Subject to this Part, Part XIII shall apply, with any changes that may be necessary, to an election to the office of President (any references to a constituency centre or a constituency elections officer being construed as references to a presidential constituency centre or a presidential constituency elections officer respectively), other than sections 66, 67 and 68, for which the following provisions are substituted—

- (a) after the number of votes received by each candidate as shown in each polling-station return has been added together in terms of section 65(3)(i) and the resulting figure added to the number of postal votes received by each candidate, the constituency elections officer shall forthwith—
  - (i) record on the constituency return the votes obtained by each candidate and the number of rejected ballot papers in such a manner that the results of the count for each polling station are shown on the return; and

- (ii) display the completed constituency return to those present and afford each candidate or his or her election agent the opportunity to subscribe their signatures thereto; and
  - (iii) transmit to the Chief Elections Officer by hand through a messenger the constituency return or a copy thereof certified by the constituency elections officer to be correct;
- (b) immediately after arranging for the constituency return to be transmitted in terms of paragraph (a)(iii), the constituency elections officer shall affix a copy of the constituency return on the outside the constituency centre so that it is visible to the public;
- (c) immediately after receiving all the constituency returns transmitted in terms of paragraph (a)(iii), the Chief Elections Officer shall verify them, having given reasonable notice to each candidate or to his or her chief election agent of the time and place at which the returns are to be verified;
- (d) at the time and place notified for the verification of the constituency returns referred to in paragraph (c) and in the presence of such candidates, their chief election agents and observers as are present, the Chief Elections Officer shall display each constituency return to those present and shall, on request, allow a candidate or chief election agent of a candidate to make notes of the contents of each constituency return;
- (e) when the Chief Elections Officer has completed the verification of the constituency returns under paragraph (d) the Chief Elections Officer shall, in the presence of such persons referred to in paragraph (d) as are present, add together the number of votes received by each candidate as shown in each constituency return;
- (f) subject to paragraph (h), after the number of votes received by each candidate as shown in each constituency return has been added together in terms of paragraph (e), the Chief Elections Officer shall—
  - (i) where there are two candidates, forthwith declare the candidate who has received the greater number of votes to be duly elected as President of the Republic of Zimbabwe with effect from the day of such declaration; or
  - (ii) where there are more than two candidates, forthwith declare the candidate who has received more than half the number of votes to be duly elected as President of the Republic of Zimbabwe with effect from the day of such declaration; or
  - (iii) where there are more than two candidates, and no candidate has received more than half the number of votes, forthwith declare that a runoff presidential election shall be held on the date fixed by the President in terms of section 38(1)(a)(iii) (that is to say, a fixed date not less than twenty-one and not more than sixty-three days after the polling day or last polling day, the case may be, of the original election):

Provided that the Electoral Court, on the application of the Commission, may for good cause extend the period;

- (g) subject to this section, if a runoff presidential election is required to be held—
- (i) only the two candidates who received the highest and next highest numbers of valid votes cast at the previous election shall be eligible to contest the election; and
  - (ii) the election shall be held in accordance with this Act or, in case any situation arises that may be peculiar to such election, in the manner prescribed;
  - (iii) after the number of votes received by each candidate at a presidential runoff election as shown in each constituency return has been added together in terms of paragraph (e), the Chief Elections Officer shall forthwith declare the candidate who has received the greater number of votes to be duly elected as President of the Republic of Zimbabwe with effect from the day of such declaration:

Provided that if the two candidates receive an equal number of votes, Parliament shall, as soon as practicable after the declaration of the result of that election, meet as an electoral college and elect one of the two candidates as President by secret ballot and without prior debate;

- (h) a declaration by the Chief Elections Officer under paragraph (f) or (g)(iii) shall be made not later than—
- (i) five days after the polling day or last polling day, as the case may be, in the presidential election or runoff presidential election concerned; or
  - (ii) where a recount has been ordered in terms of section 67A, five days after the completion of the recount:

Provided that the Electoral Court may, on application by the Commission, for good cause extend the ten-day period.”;

- (i) a declaration by the Chief Elections Officer under paragraph (h) be final, subject to reversal on petition to the Electoral Court that such declaration be set aside or to the proceedings relating to that election being declared void;
- (j) the Chief Elections Officer shall as soon as possible after he or she has declared the result of an election to the office of President in terms of paragraph (i), publish such result by notice in the *Gazette* and in such other manner as he or she considers necessary to give sufficient publicity to the result, which notice shall also, in the event that the candidate in question has obtained more than half of the votes at the election, give the full name of the person duly elected as President of the Republic of Zimbabwe and the day with effect from which he or she was so elected.

(4) Subject to this Part, Parts XIV and XV, shall apply, with any changes that may be necessary, to an election to the office of President, any references to a constituency centre or a constituency elections officer being construed as references to a presidential constituency centre or a presidential constituency elections officer respectively.

(5) In accordance with section 28(5) of the Constitution, a person elected as President shall assume office on the day upon which he or she is declared so elected by the Chief Elections Officer or within forty-eight hours thereafter.”.

### 30 Repeal of section 112 of Cap 2:13

Section 112 of the principal Act is repealed.

**31 Amendment of section 125 of Cap. 2:13**

Section 125 (“Nomination of candidates”) of the principal Act is amended by the repeal of subsection (3).

**32 Amendment of section 133 of Cap. 2:13**

Section 133 (“Application of provisions of this Act to local authority elections”) of the principal Act is amended by the deletion of “constituency elections officer were references to the Registrar-General of Voters or the Chief Elections Officer, as the case may be” and the substitution of “constituency centre or a constituency elections officer were references to a ward centre or a ward elections officer respectively”.

**33 New Part inserted in Cap. 2:13**

The principal Act is amended by the insertion after Part XVIII A of the following Part—

“PART XVIII B

MEASURES AGAINST POLITICALLY-MOTIVATED VIOLENCE AND INTIMIDATION

**133F Interpretation in Part XVIII B**

In this Part—

“intimidation” has the meaning assigned to it in section 133A;

“Special Investigation Committee” means a Special Investigation Committee established in terms of section 133H;

“special police liaison officer” means a senior police officer appointed in terms of section 133H(1).

**133G Responsibilities of political parties and candidates**

Every office-bearer of a political party that is contesting an election, and every candidate and election agent—

- (a) shall take all appropriate measures to prevent politically-motivated violence and any electoral malpractices before, during and after the election period; and
- (b) shall in the case of an office-bearer of a political party, take effective steps to discipline all members of the party who engage in politically-motivated violence or who commit any electoral malpractice before, during or after the election period; and
- (c) whenever called upon to do so by the Commission, shall publicly undertake to abide by the code of conduct for political parties and candidates set out in the Fourth Schedule.

**133H Appointment and functions of special police liaison officer and Special Investigation Committee**

(1) For the purpose of every general election and by-election, the Commission-General of Police shall, in consultation with the Zimbabwe Human Rights Commission, appoint a senior police officer for each provincial centre who shall be the special police liaison officer responsible for the expeditious investigation of cases of politically-motivated violence or intimidation within that province which come to the attention of the police, a multiparty liaison committee, the Commission or the Zimbabwe Human Rights Commission during the election period.

(2) To assist each special police liaison officer, the Zimbabwe Human Rights Commission shall, in consultation with the Commission, establish a Special Investigation Committee for each provincial centre, to be chaired by a Zimbabwe Human Rights Commissioner or a member of the staff of the Zimbabwe Human Rights Commission chosen by the Zimbabwe Human Rights Commission, and consisting of—

- (a) the special police liaison officer for the province in question; and
- (b) two representatives of each political party contesting the election, who shall be selected by the party concerned:

Provided that an independent candidate contesting a Presidential election shall be entitled to select two representatives to represent him or her on the committee.

(3) Section 11 (“Provisions to ensure independence, impartiality and professionalism of Commissioners and staff and agents of Commission”) shall apply, with any necessary changes, to the members of a Special Investigation Committee appointed under subsection (3).

(4) Where a Special Investigation Committee becomes aware, whether through the police, a multiparty liaison committee, the Commission or the Zimbabwe Human Rights Commission or otherwise, of any case of politically-motivated violence or intimidation within the province for which it was appointed, it shall direct the special police liaison officer to conduct the required investigations, and may for that purpose, if the members so resolve, accompany the special police liaison officer during his or her investigations.

(5) Where members of the Committee have resolved to accompany the special police liaison officer for the purposes of an investigation under this section, they shall have the powers of peace officers under the Criminal Procedure and Evidence Act [*Chapter 9:07*].

### **133I Powers of Commission after investigation of alleged violence or intimidation**

If, after any investigation in terms of section 133H, the Committee considers that an incident of politically-motivated violence or intimidation did take place, the Commission may take any of the following steps—

- (a) where the violence or intimidation was perpetrated by a candidate or his or her election agent, warn the candidate that he or she may be prosecuted and prohibited from campaigning in the election; or
- (b) where the violence or intimidation was perpetrated by a supporter of a political party or of a candidate, remind the leader or deputy leader of the political party, or the candidate, that he or she has an obligation to take effective steps to prevent his or her supporters from engaging in politically-motivated violence, and warn him or her that he or she may be prosecuted and, in the case of a candidate, prohibited from campaigning in the election; or

- (c) if any warning referred to in the foregoing paragraphs has gone unheeded, or if the Committee believes that the incident in question is of a very extensive or serious nature, the Committee shall, as soon as possible, submit a written report of the incident identifying (to the extent it is able to do so) the perpetrators of the violence or intimidation, together with a summary of any evidence it has gathered in support of its findings, to any prosecutor appointed in terms of section 133J(4) in the province for which the Committee is responsible

**133J Investigations, prosecutions and trials of cases of politically-motivated violence and intimidation**

(1) Immediately after an election is called, the Commissioner-General of Police, in consultation with the Zimbabwe Human Rights Commission, shall establish one or more special police units to investigate cases of politically-motivated violence and intimidation arising from the election.

(2) The police officers constituting the special police units established in terms of subsection (1) shall investigate as expeditiously as possible all cases of politically-motivated violence and intimidation that are referred to them by the police, a multiparty liaison committee, the Commission or the Zimbabwe Human Rights Commission or are otherwise brought to their attention.

(3) Immediately after an election is called, the Judicial Service Commission shall designate one or more magistrates in each province in which the election is to be held, to try cases involving politically-motivated violence and intimidation, and the magistrates so designated shall give priority to all such cases and ensure that they are brought to trial and completed as expeditiously as possible.

(4) The Attorney-General shall ensure that during every election period sufficient competent prosecutors are provided to ensure that all cases of politically-motivated violence and intimidation arising within the area in which the election is being held are processed quickly and brought to court as soon as possible before the magistrates designated in terms of subsection (3).

**133K Special penalty for politically-motivated violence or intimidation**

(1) A court which convicts a person of an offence involving politically-motivated violence or intimidation committed during an election period may, in addition to any other penalty it imposes on the convicted person, prohibit him or her from campaigning or taking any further part in the election.

(2) Where a person has been prohibited in terms of subsection (1) from campaigning or taking any further part in an election, that person shall not, during the election period—

- (a) attend or address any meeting of a political nature at which more than three other persons are present; or
- (b) encourage, urge or persuade any other person to cast his or her vote in the election for a particular political party or candidate;

but the person may vote in the election and, if he or she has been duly nominated as a candidate in the election, his or her name may appear on the ballot-papers in the election.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(4) Where a magistrates court convicts a person of an offence involving politically-motivated violence or intimidation committed during an election period, the court may adjourn the case in terms of section 54(2) of the Magistrates Court Act [*Chapter 7:10*] and, if the case is thereafter transferred to the High Court for sentence in terms of section 224 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], the High Court may, in addition to any other penalty it imposes on the convicted person, declare him or her to be incapable, for a period not exceeding five years from the date of the conviction, of—

- (a) being registered as a voter or of voting at an election; or
- (b) filling a public office, other than a public office the tenure of which is regulated exclusively by or in terms of the Constitution;

and, if the convicted person holds any such public office, the High Court may declare that the office shall be vacated by him or her as from the date of the conviction.”.

34 New Part inserted in Cap. 2:13

The principal Act is amended by the insertion after Part XXIA of the following Part—

“PART XXIB

MEDIA COVERAGE OF ELECTIONS

**160E Interpretation in Part IVA**

In this Part—

“broadcaster” means a person who operates a broadcasting service for the transmission of television or radio programmes to the public or any substantial section of the public, whether the transmission is effected by wireless or other means;

“print publisher” means a person who publishes a newspaper, magazine or other printed document at regular intervals for sale or distribution to the public generally;

“public broadcaster” means a broadcaster that is owned or controlled by the State.

**160F Application of Part IVA in relation to other media laws**

In the event of inconsistency between this Part and the Broadcasting Services [*Chapter 12:06*] (No. 3 of 2001), the Access to Information and Protection of Privacy [*Chapter 10:27*] (No.5 of 2002) or any other enactment, this Part shall prevail over that enactment to the extent of the inconsistency.

**160G Access to public broadcasting media**

(1) Public broadcasters shall afford all political parties and independent candidates contesting an election such free access to their broadcasting services as may be prescribed.

(2) Regulations made for the purposes of subsection (1) shall provide for—

- (a) the total time to be allocated to each political party and candidate and the duration of each broadcast that may be made by or on behalf of a party or candidate; and
- (b) the times at which broadcasts made by political parties and candidates are to be transmitted; and
- (c) the areas to which broadcasts made by political parties and candidates are to be transmitted;

and the regulations shall ensure—

- (d) a fair and balanced allocation of time between each political party and independent candidate; and
- (e) that each political party and independent candidate is allowed a reasonable opportunity to present a case through the broadcasting service concerned.

#### **160H Political advertising in broadcasting and print media**

(1) A broadcaster or print publisher shall not be obliged, subject to section 160G, to publish any advertisement by or on behalf of a political party or candidate contesting an election, but if the broadcaster or publisher is prepared to publish any such advertisement—

- (a) it shall offer the same terms and conditions of publication, without discrimination, to all the political parties and candidates contesting the election; and
- (b) the price it charges for publication shall be at the lowest rate it offers to publishers of commercial advertisements; and
- (c) every such publication shall be identified clearly as an advertisement.

(2) Subsection (1) shall not be construed as obliging a broadcaster or print publisher to publish an advertisement which would render the broadcaster or publisher liable to any criminal or delictual penalty.

#### **160I Publication of electoral information in public interest**

(1) If required to do so by the Commission, broadcasters and print publishers shall publish statements issued by the Commission for the purpose of informing voters about aspects of the electoral process.

(2) The Commission shall pay for the publication of any statement referred to in subsection (1) such reasonable amount as may be agreed between it and the broadcaster or print publisher concerned.

#### **160J Conduct of news media during election period**

During an election period broadcasters and print publishers shall ensure that—

- (a) all political parties and candidates are treated equitably in their news media, in regard to the extent, timing and prominence of the coverage accorded to them;
- (b) reports on the election in their news media are factually accurate, complete and fair;

- (c) a clear distinction is made in their news media between factual reporting on the election and editorial comment on it;
- (d) inaccuracies in reports on the election in their news media are rectified without delay and with due prominence;
- (e) political parties and candidates are afforded a reasonable right of reply to any allegations made in their news media that are claimed by the political parties or candidates concerned to be false;
- (f) their news media do not promote political parties or candidates that encourage violence or hatred against any class of persons in Zimbabwe;
- (g) their news media avoid language that—
  - (i) encourages racial, ethnic or religious prejudice or hatred; or
  - (ii) encourages or incites violence; or
  - (iii) is likely to lead to undue public contempt towards any political party, candidate or class of person in Zimbabwe.

**160K Monitoring of media by Zimbabwe Media Commission**

(1) The Commission, with the assistance, at its request, of the Zimbabwe Media Commission established by section 100N of the Constitution, and the Broadcasting Authority of Zimbabwe established by section 3 of the Broadcasting Services Act [*Chapter 12:06*] (No. 3 of 2001), shall monitor the Zimbabwean news media during any election period to ensure that political parties, candidates, broadcasters, print publishers and journalists observe the provisions of this Part.

(2) In its post-election report the Commission shall include a report on the coverage of the election by the news media, for which purpose the Zimbabwe Media Commission and the Broadcasting Authority of Zimbabwe will furnish the Commission with such information and reports as the Commission may request.

(3) This section shall not be construed as preventing anyone other than the Zimbabwe Media Commission from monitoring news media and reporting on their conduct during an election period.”.

**35 New section substituted for section 161 of Cap. 2:13**

Section 161 is repealed and the following is substituted—

**“161 Establishment and jurisdiction of Electoral Court**

(1) There is hereby established a court, to be known as the Electoral Court, which shall be a court of record.

- (2) The Electoral Court shall have exclusive jurisdiction—
  - (a) to hear appeals, applications and petitions in terms of this Act; and
  - (b) to review any decision of the Commission or any other person made or purporting to have been made under this Act;

and shall have power to give such judgments, orders and directions in those matters as might be given by the High Court:

Provided that the Electoral Court shall have no jurisdiction to try any criminal case.

(3) Judgments, orders and directions of the Electoral Court shall be enforceable in the same way as judgments, orders and directions of the High Court.”

**36 Amendment of section 162 of Cap. 2:13**

Section 162 (“Judges of Electoral Court and composition thereof”) of the principal Act is amended in subsection (1) by the deletion of “one or more judges of the High Court to be Judge or Judges, as the case may be,” and the substitution of “at least two judges of the High Court to be Judges”.

**37 New section inserted in Cap. 2:13**

The principal Act is amended by the insertion after section 190 of the following section—

**“191 Provision of copies of electoral legislation**

(1) The Commission shall ensure that—

- (a) every political party contesting an election and every observer is provided, for the prescribed fee, if any, with an electronic copy of this Act and all regulations and rules made under this Act; and
- (b) this Act and all regulations and rules made under this Act are available at all times, whether in printed or electronic form, to members of the public for the prescribed fee.

(2) The fees prescribed for the purposes of subsection (1) shall not exceed the minimal cost of providing printed or electronic copies of this Act and all regulations and rules made under this Act.”.

**38 Amendment of section 162 of Cap. 2:13**

Section 192 (“Regulatory powers of Commission”)(2) of the principal Act is amended by the insertion after paragraph (a) of the following paragraph—

“(a1) the terms and conditions of service of the employees of the Commission, including the Chief Elections Officer;”.

**39 Repeal of Second Schedule to Cap 2:13**

The Second Schedule to the principal Act is repealed.

**40 New Schedule substituted for Fourth Schedule to Cap. 2:13**

The Fourth Schedule is repealed and the following is substituted—

“FOURTH SCHEDULE (SECTION 160A)

ELECTORAL CODE OF CONDUCT FOR POLITICAL PARTIES AND CANDIDATES

*Purpose of Code*

1. The purpose of this Code is to promote conditions that are conducive to free and fair elections and a climate of tolerance in which electioneering activity may take place without fear or coercion, intimidation or reprisals.

*General principles*

2.(1) All political parties and their members and supporters, and all candidates and their supporters, must promote conditions conducive to free, fair and democratic elections conducted through a secret ballot in a climate of democratic tolerance in which political activity may take place without fear of intimidation or reprisals.

(2) All political parties and their members and supporters, and all candidates and their supporters, must accept that others have the right to present their political principles and ideas in a peaceful environment without intimidation or fear of reprisal, and must respect that right.

*Application*

3. This Code will apply to political parties, candidates for election, election agents for candidates and members and supporters of political parties and candidates.

*Public commitment*

4. Every political party and every candidate must—

- (a) give wide publicity to this Code and ensure that their members and supporters are familiar with this Code and their obligation to comply with its terms; and
- (b) publicly state that everyone has the right—
  - (i) to freely express their political beliefs and opinions;
  - (ii) to freely challenge and debate the political beliefs and opinions of others;
  - (iii) to freely canvass freely for membership and support from voters;
  - (iv) to freely attend public meetings convened by others;
  - (v) to freely distribute campaign material;
- (c) publicly condemn any action that may undermine the free and fair conduct of elections and in particular to condemn unreservedly and publicly any violence or intimidation and co-operate with the law enforcement agencies in apprehending the culprits;
- (d) disseminate accurate information on electoral processes;
- (e) accept the result of an election or challenge the result by due process of law.

*Prohibited conduct: politically-motivated violence or intimidation*

5. No political party or any of its members or supporters, and no candidate or any of his or her supporters, may—

- (a) use violence, or threaten violence or incite or encourage the use of violence, against anyone on account of his or her political opinions or membership or support of a political party or participation in the election;
- (b) intimidate, or incite or encourage the intimidation, of anyone on account of his or her political opinions or membership or support of a political party; act in a way that may provoke violence or intimidation;
- (c) use violence or threats or illegal pressure to force voter to refrain from voting or to vote for a candidate or political party against his or her will;
- (d) force a voter to reveal the identity of the candidate voted for or take reprisals against a person because of the way in which he or she has voted or is believed to have voted.

*Prohibited conduct: other prohibited acts*

6. No political party or any of its members or supporters, and no candidate or any of his or her supporters, may—

- (a) publish false or defamatory allegations about a party, its candidate(s), representatives or members;
- (b) discriminate on the grounds of race, ethnicity, sex, gender, class or religion in connection with an election or political party;
- (c) damage or deface property, including the election posters, placards, banners and other election material of another party or candidate, and any posters or other voter education materials disseminated by the Zimbabwe Electoral Commission;
- (d) bar or inhibit access to meetings or to voters for the purpose of election campaigning;
- (e) carry or display weapons at political meetings or at marches, demonstrations, rallies or other public political events;
- (f) bribe a voter to exercise his or vote in a particular manner;
- (g) bribe or intimidate an election official to induce him or her to make a false entry in the voters roll or to alter or falsify election results;
- (h) encourage a person to vote knowing that they are not entitled to do so;
- (i) use the information on the voters roll supplied by the Commission for commercial purposes or to harass or intimidate voters nor may they publish personal information about voters contained in the electoral roll.

*Compliance*

7.(1) Every political party and every candidate must comply with this Code and—

- (a) in the case of a political party, instruct its candidates, persons who hold political office in the party and its representatives, members and supporters to comply with this Code and any applicable electoral and general laws;

- (b) in the case of a candidate, instruct the representative and supporters of the candidate to comply with this Code and any applicable electoral and general laws.

(2) Every political party must restrain its office-bearers, members and supporters, and all candidates must restrain their representatives and supporters, from contravening this Code and any applicable electoral or general law, and must take or initiate appropriate disciplinary action against those who contravene this Code or that law.

*Duty to co-operate*

8. Every political party and every candidate must co-operate—
- (a) with other parties to avoid the risk of electoral-related conflict; in particular, they must endeavour not to call public meetings, marches or rallies that coincide with those called by another party or candidate contesting the election;
  - (b) with the election authorities to protect and enhance their role to supervise and administer elections;
  - (c) with law enforcement officers to maintain peace during the election period.

*Conduct during polling period*

9.(1) No political party or candidate may, from midnight twenty-four hours before polling day in any election or referendum until polling stations are closed on that day—

- (a) convene or hold a public gathering of any kind;
- (b) publish, or cause or permit the publication, of any advertisement or statement promoting or opposing a particular party or candidate;
- (c) disrupt the work of election officials at a polling station or counting centre;
- (d) campaign or display campaign material within 200 metres of a polling station or counting centre.

(2) On polling day in any election or referendum, all political parties and their members and supporters, and all candidates and their supporters, must—

- (a) co-operate with election officials to ensure that polling is peaceful and orderly and that voters are completely free to exercise their vote without being subjected to intimidation, annoyance or disturbance; and
- (b) generally, conduct themselves so as to respect the secrecy and integrity of the ballot.

*Announcement of result of election*

10. No candidate, and no office-bearer or member of a political party, may purport to declare or announce the results of an election before it has been declared officially by an electoral officer.

*Respect for media and journalists*

11. Every political party and candidate—

- (a) must respect the role of the news media before, during and after an election or referendum; and
- (b) may not prevent access by members of the news media to public political meetings, marches, demonstrations and rallies; and
- (c) must take all reasonable steps to ensure that journalists are not subjected to harassment, intimidation, threat or physical assault by any of their representatives or supporters.”.

**41 New Schedule inserted in Cap. 2:13**

The principal Act is amended by the insertion after the Fifth Schedule of the following Schedule—

“SIXTH SCHEDULE (SECTIONS 5(2), 6(1), 7 AND 12(4))

PROVISIONS APPLICABLE TO ZIMBABWE ELECTORAL COMMISSION

ARRANGEMENT OF PARAGRAPHS

PART I

ANCILLARY POWERS OF COMMISSION

*Paragraph*

- 1. Ancillary powers.

PART II

TERMS AND CONDITIONS OF OFFICE OF COMMISSIONERS

- 2. Disqualifications for appointment of Commissioners.
- 3. Vacation of office by Commissioners.
- 4. Terms and conditions of office of Commissioners.
- 5. Filling of vacancies on Commission.
- 6. Deputy Chairperson of Commission.
- 7. Remuneration and expenses of Commissioners.

PART III

PROCEDURE OF COMMISSION

- 8. Meetings and procedure of Commission.
- 9. Committees of Commission.
- 10. Commissioners to disclose certain connections and interests.
- 11. Minutes of proceedings of Commission.
- 12. Execution of contracts and instruments by Commission.

PART IV

FINANCIAL PROVISIONS RELATING TO COMMISSION

13. Financial year of Commission.
14. Accounts of Commission.
15. Audit of Commission's accounts.
16. Powers of auditors.
17. Statement of accounts and auditor's report to be laid before House of Assembly.

PART I

ANCILLARY POWERS OF COMMISSION

*Ancillary powers*

1. The Commission shall have the following powers, in addition to those conferred by this Act and by the Constitution—
  - (a) to acquire by lease, purchase, or otherwise, immovable property and to construct buildings thereon.
  - (b) to buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
  - (c) to maintain, alter and improve property acquired by it.
  - (d) to mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Commission may, with the approval of the Minister, determine.
  - (e) to open bank and building society and post office accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.
  - (f) to insure against losses, damages, risks and liabilities which it may incur.
  - (g) to enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind suretyships or guarantees.
  - (h) to enter into, renew, cancel or abandon arrangements with the Government or any local or other authority within Zimbabwe, or, with the approval of the Minister, any foreign government or authority, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Commission thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.

- (i) with the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Commission.
- (j) to employ, upon such terms and conditions as the Commission may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.
- (k) subject to section 47 of the Public Finance Management Act [*Chapter 22:19*], to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay bonuses and the like to its employees as the Commission thinks fit.
- (l) to provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.
- (m) with the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.
- (n) to construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Commission.
- (o) to sell or let dwellings and land for residential purposes to its employees.
- (p) with the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.
- (q) to provide security in respect of loans guaranteed in terms paragraph 16 by the deposit of securities.
- (r) to make loans to any employee of the Commission—
  - (i) not exceeding six months' salary or wages payable to him or her, for any purpose;
  - (ii) with the approval of the Minister, for the purpose of purchasing vehicles, tools or other equipment used by him or her in carrying out his duties;on such security as the Commission considers adequate.
- (s) to do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.
- (t) to provide such services as the Commission considers could properly be provided by the Commission.

- (u) with the approval of the Minister, to provide financial assistance to any person, association, organisation or institution whose activities are such as to be, in the opinion of the Commission, of benefit to the Commission.
- (v) generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Commission under this Act or any other enactment.

PART II

TERMS AND CONDITIONS OF OFFICE OF COMMISSIONERS

*Disqualifications for appointment as Commissioner*

2(1) No person shall be appointed as a Commissioner and no person shall be qualified to hold office as a Commissioner who—

- (a) is not a citizen of Zimbabwe; or
- (b) has a financial interest in any business connected with the provision of services to the Commission, or is engaged in any activity connected with any such service, or is married or connected to or associated with a person who has such an interest or is engaged in such an activity, unless the President is satisfied that the interest or activity will not interfere with the person's impartial discharge of his or her duties as a Commissioner; or
- (c) has, in terms of a law in force in any country—
  - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded or set aside; or
- (d) has, within the period of five years immediately preceding the date of his or her proposed appointment, been convicted—
  - (i) in Zimbabwe, of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;and sentenced to a term of imprisonment exceeding six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person who is—

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies;

shall not be appointed as a Commissioner, nor shall he or she be qualified to hold office as a Commissioner.

(3) For the purposes of subparagraph (2)(b) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

*Vacation of office by Commissioner*

3. A Commissioner shall vacate his or her office and his or her office shall become vacant—
- (a) three months after the date upon which he or she gives notice in writing to the President of his or her intention to resign, or on the expiry of such other period of notice as he or she and the President may agree; or
  - (b) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine—
    - (i) in Zimbabwe, in respect of an offence; or
    - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence; or
  - (c) if he or she becomes disqualified in terms of paragraph 2(1)(a), (b) or (c), or in terms of subparagraph (2) of that paragraph, to hold office as a Commissioner; or
  - (d) if he or she is required in terms of section 6 to vacate his or her office.

*Terms and conditions of office of Commissioners*

4. Subject to paragraph 5, a Commissioner shall hold office on such terms and conditions as the President may fix in relation to Commissioners generally.

*Filling of vacancies on Commission*

5. On the death of, or vacation of office by, a Commissioner, the President shall, in accordance with the Constitution, appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy the number of Commissioners falls below the minimum number specified in paragraph 6(2), the President shall fill the vacancy within a reasonable time.

*Deputy Chairperson of Commission*

6.(1) The President shall designate one of the Commissioners as Deputy Chairperson of the Commission.

(2) The Deputy Chairperson of the Commission shall perform the Chairperson's functions whenever the Chairperson is for any reason unable to perform them.

(3) The Deputy Chairperson of the Commission may at any time resign his or her office as such by giving one month's written notice thereof to the President.

(4) Whenever the office of Deputy Chairperson of the Commission falls vacant, the President shall fill the vacancy within a reasonable time.

*Remuneration and expenses of Commissioners*

7. (1) Commissioners shall be paid—
- (a) such remuneration, if any, as the President, may from time to time fix for Commissioners generally; and
  - (b) such allowances, if any, as the Minister, with the agreement of the Minister responsible for finance, may from time to time fix to meet any reasonable expenses incurred by Commissioners in connection with the business of the Commission.
- (2) The salary, allowances and other benefits payable to a Commissioner shall not be reduced during his or her tenure of office.

### PART III

#### PROCEDURE OF COMMISSION

##### *Meetings and procedure of Commission*

8. (1) The Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this paragraph, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Commission shall meet at least six times in each year.

- (2) Five Commissioners shall constitute a quorum for the conduct of the business of the Commission.
- (3) The Chairperson of the Commission—
- (a) may at any time convene a special meeting of the Commission; and
  - (b) shall convene a special meeting of the Commission on the written request of—
    - (i) the Minister, within such period as the Minister may specify; or
    - (ii) not fewer than two Commissioners, not later than fourteen days after his or her receipt of such request.
- (4) Written notice of any special meeting convened in terms of subparagraph (3) shall be sent to each Commissioner not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the Chairperson, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

- (5) No business shall be discussed at a special meeting convened in terms of subparagraph (3) other than—
- (a) such business as may be determined by the Chairperson of the Commission, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (3)(a); or
  - (b) the business specified in the request for the meeting, where the Chairperson of the Commission has convened the meeting in terms of subparagraph (3)(b).

(6) The Chairperson or, in his or her absence, the Deputy Chairperson shall preside at all meetings of the Commission:

Provided that, if the Chairperson and the Deputy Chairperson are both absent from a meeting of the Commission, the Commissioners present may elect one of their number to preside at that meeting as Chairperson.

(7) All acts, matters or things authorised or required to be done by the Commission may be decided by a majority vote at a meeting of the Commission at which a quorum is present.

(8) Subject to paragraph 10, at all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission and, in the event of an equality of votes, the Commissioner presiding at the meeting shall have a casting vote in addition to a deliberative vote.

(10) Any proposal circulated among all members and agreed to in writing by a majority of all Commissioners shall have the same effect as a resolution passed at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that, if a Commissioner requires that such proposal be placed before a meeting of the Commission, this subparagraph shall not apply to such proposal.

*Committees of Commission*

9.(1) For the better exercise of its functions, the Commission may establish one or more committees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the Commission from itself exercising that function, and the Commission may amend or rescind any decision of the committee in the exercise of that function.

(2) The Commission may appoint persons other than Commissioners to be members of a committee established under subparagraph (1):

Provided that every committee must have a Commissioner for its chairperson.

(3) The Chairperson of the Commission or of a committee may at any reasonable time and place convene a meeting of that committee.

(4) The procedure of each committee shall be as fixed from time to time by the Commission.

(5) Subject to this paragraph, paragraph 8(2) to (9) shall apply, with any necessary changes, to committees and their members as they apply to the Commission and to Commissioners.

*Commissioners to disclose certain connections and interests*

11.(1) In this paragraph—

“relative”, in relation to a Commissioner, means the Commissioner’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

- (a) if a Commissioner—
  - (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or
  - (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his or her functions as a Commissioner; or
  - (iii) knows or has reason to believe that a relative of his or hers—
    - A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or
    - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner; or
    - C. is a member or office-bearer of a political party whose conduct is under consideration by the Commission;

or

- (b) if for any reason the private interests of a Commissioner come into conflict with his or her functions as a Commissioner;

the Commissioner shall forthwith disclose the fact to the Commission.

(3) A Commissioner referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subparagraph.

(4) A Commissioner who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable—

- (a) to a fine not exceeding level ten or, where quantifiable, a fine equivalent to the extent of the pecuniary advantage obtained by the Commissioner from the Commission as a direct result of his or her contravention, whichever is the greater; or
- (b) to imprisonment for a period not exceeding twelve months;

or to both such fine and such imprisonment.

*Minutes of proceedings of Commission*

11.(1) The Commission shall cause minutes of all proceedings of and decisions taken at every meeting of the Commission to be entered in books kept for the purpose.

(2) Any minutes referred to in subparagraph (1) which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Commission or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

*Execution of contracts and instruments by Commission*

12. Any agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose.

PART IV

FINANCIAL PROVISIONS RELATING TO COMMISSION

*Financial year of Commission*

13. The financial year of the Commission shall be the period of twelve months ending on the 31st December in each year.

*Accounts of Commission*

14.(1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than three months after the end of each financial year, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

*Audit of Commission's accounts and internal auditor*

15.(1) Subject to the Public Finance Management Act [Chapter 22:19] (No. 11 of 2009), the Commission shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [Chapter 27:12].

(2) The accounts kept by the Commission in terms of paragraph 14(1) shall be examined by the auditors appointed in terms of subparagraph (1).

(3) The auditors appointed in terms of subparagraph (1) shall make a report to the Commission and the Minister on the statement of accounts prepared in terms of paragraph 14(2), and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's affairs.

(4) In addition to the report referred to in subparagraph (3), the Minister may require the Commission to obtain from its auditors appointed in terms of subparagraph (1) such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider expedient, and the Commission shall forthwith comply with any such requirement.

(5) Section 80 of the Public Finance Management Act [Chapter 22:19] (No. 11 of 2009) shall apply, with any necessary changes, to the appointment of an internal auditor to the Commission in all respects as if the Commission were a Ministry or department of a Ministry.

*Powers of auditors*

17.(1) An auditor referred to in paragraph 15 shall be entitled at all reasonable times to require to be produced to him or her all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any Commissioner or

employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purposes of his or her audit.

(2) Any Commissioner or employee or agent of the Commission who fails without just cause to comply with a requirement of an auditor in terms of subparagraph (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

*Statement of accounts of and auditor's report to be laid before House of Assembly*

18. The Minister shall, within six months after the end of each financial year, lay before the House of Assembly the Commission's statement of accounts and auditor's report for that financial year."

**42 Amendments to Cap. 2:13 regarding polling station voters rolls**

(1) Part IV ("Registrar-General of Voters and Constituency Registrars") of the principal Act is amended by the insertion after section 22 of the following section—

**"22A Polling station voters rolls**

(1) The Commission shall—

(a) subject to section 51, determine—

(i) the places where polling stations are to be situated within each ward and constituency for the purposes of all elections in terms of this Act; and

(ii) the areas within the ward or constituency concerned that are to be served by each such polling station;

and

(b) subject to Parts IV and V, prepare a voters roll for each polling station area determined in terms of paragraph (a)(ii), on which roll shall be entered the names of all registered voters ordinarily resident within the area.

(2) The Commission shall consult all interested parties when determining the location of polling stations and their areas for the purposes of subsection (1).

(3) Notwithstanding any other provision of this Act, where a voters roll has been prepared for a polling station area—

(a) voters who are registered on that roll shall cast their votes in any election at the polling station for whose area the roll was prepared, unless they are permitted by this Act to vote by post or to cast a special vote;

(b) the provisions of this Act applicable to or in respect of constituencies and wards, and constituency and ward voters rolls, shall apply, with any necessary changes, to or in respect of the polling station area and such voters roll."

(2) When the Commission is satisfied that voters rolls for all polling station areas have been prepared in accordance with the section 22A set out in subsection (1), the Commission shall publish a notice in the *Gazette* fixing the date on which this section shall come into operation.

(3) On the date that the Commission has published a notice bringing section 22A into operation, the following consequential amendments to the principal Act as amended by this Act shall apply and come into operation—

- (a) in section 21 (“Inspection of voters rolls and provision of copies”), repeal subsection (8) and substitute—

“(8) For the purposes of any election the Chief Elections Officer shall, through the appropriate constituency elections officer, supply to every polling station sufficient copies of the voters roll for each polling station area determined in terms of section 22A(1)(a)(ii).”;

- (b) in section 74 (“Issue of postal ballot papers”)—

- (i) in subsection (1), repeal paragraph (c) and substitute—

“(c) a smaller envelope marked “Ballot Paper Envelope” on the back of which shall be written the name of the voter, his or her voter registration number, and the constituency and ward in which, and the address of the polling station at which, he or she is registered.”;

- (ii) in subsection (4), repeal paragraph (c) and substitute—

“(c) the constituency and ward in which, and the address of the polling station at which, the person is registered.”;

- (iii) in subsection (5), delete “constituency centre” and substitute “polling station”;

- (c) in section 76 (“Distribution of postal ballots by Chief Elections Officer and ward elections officers”)—

- (i) repeal subsection (4) and substitute—

“(4) Upon receipt of the ballot paper envelopes dispatched in terms of subsection (3), the constituency elections officer shall forthwith distribute each ballot paper envelope to the presiding officer of the polling station indicated on the back of the envelope, together with an accompanying note indicating the number of envelopes that are sent.”;

- ii) in subsection (6) delete “ward elections officer” and substitute “presiding officer”;

- (d) in section 77 (“Postal ballot boxes”)—

- (i) in subsection (1) delete “ward elections officer” and substitute “presiding officer”;

- (ii) in subsection (2) delete “ward elections officer” and substitute “presiding officer”;

- (iii) in subsection (3) delete “ward elections officer” wherever it occurs and substitute “presiding officer”;

- (iv) in subsection (4) delete “ward elections officer” and substitute “presiding officer”;

- (e) in section 78 (“Opening of postal ballot boxes”)—
  - (i) in subsection (1) delete “ward elections officer” and substitute “presiding officer”;
  - (ii) in subsection (2) delete “ward elections officer” and substitute “presiding officer”;
  - (iii) in subsection (3) —
    - A. delete from paragraph (a) “voters roll of the ward and is noted as that of a voter to whom a postal ballot paper has been issued, the ward elections officer” and substitute “voters roll of the polling station and is noted as that of a voter to whom a postal ballot paper has been issued, the presiding officer shall”;
    - B. delete from paragraph (b) “voters roll of the ward and is not noted as that of a voter to whom a postal ballot paper has been issued, the ward elections officer” and substitute “voters roll of the polling station and is not noted as that of a voter to whom a postal ballot paper has been issued, the presiding officer shall”;
  - (iii) in subsection (4) delete “ward elections officer” wherever it occurs and substitute “presiding officer”;
- (e) in section 79 (“Safe-keeping of documents”), delete “ward elections officer” and substitute “presiding officer”;
- (f) in section 81D (“Issue or refusal of authorisation to cast special vote”)—
  - (i) in subsection (2) insert the following paragraph after paragraph (c)—

“and

    - (d) the polling station at which the person is registered;”;
  - (ii) in subsection (3), delete “ward centre” and “in the ward” and substitute “polling station” and “registered at the polling station” respectively;
- (g) in section 81E (“Procedure for special voting”) (6)(b), delete “name of the constituency and ward in which he or she is registered” and substitute “name of the constituency and ward in which, and the address of the polling station at which, he or she is registered”
- (h) in section 81F (“Opening of special ballot boxes”)—
  - (i) in subsection (5), delete “the wards” and substitute “the ordinary polling stations”;
  - (ii) in subsection (6), delete “the wards” and substitute “the ordinary polling stations”
  - (iii) in subsection (7), delete “ward elections officers of the ward” and substitute “presiding officers of an ordinary polling stations”

- (iv) in subsection (8), delete “ward elections officer of a ward” and substitute “presiding officer of an ordinary polling station”
- (v) in subsection (9), delete “ward elections officer of the ward” and substitute “presiding officer of the ordinary polling station”
- (vi) in subsection (10), delete “ward elections officer of the ward” and (wherever it occurs thereafter) “ward elections officer” and substitute “presiding officer of the ordinary polling station” and “presiding officer”;
- (vii) in subsection (11), delete “ward elections officer of the ward” and substitute “presiding officer of the ordinary polling station”;
- (viii) in subsection (12), delete “ward centre” and “ward elections officer” and substitute “ordinary polling station” and “presiding officer”;
- (ix) delete subsections (13) and (14) and substitute—

“(13) The presiding officer shall then examine each envelope from the special ballot box and ensure that the names of the constituency, ward and polling station written on the back of the envelope is that of his or her constituency, ward and polling station.

(14) If the names of the constituency, ward and polling station written on the back of an envelope—

(a) are correct, the presiding officer shall cause the envelope to be opened and the ballot paper therein to be placed in a separate package, to be counted along with the votes cast at the ordinary polling station in the election concerned;

(b) is not correct, the presiding officer shall endorse the envelope “vote rejected” and place the envelope, unopened, in a separate package.

- (x) in subsection (15), delete “ward elections officer” wherever it occurs and substitute “presiding officer”;
- (i) in section 81G (“Safe-keeping of documents related to special voting”), by the deletion of “ward elections officer” and the substitution of “presiding officer”.

#### **43 Substitution of Long Title to Cap 2:12**

The Long Title to the principal Act is deleted and substituted by—

“AN ACT to provide for the terms of office, conditions of service, qualifications and vacation of office of members of the Zimbabwe Electoral Commission, the procedure at meetings of the Zimbabwe Electoral Commission and the appointment of the Chief Elections Officer; to provide for the Registrar-General of Voters and constituency registrars; to make provision for the registration of voters and for the lodging of objections thereto; to provide for the preparation, compilation and maintenance of voters rolls; to prescribe the residence qualifications of voters and the procedure for the nomination and election of candidates to and the filling in of vacancies in Parliament; to provide for elections to the office of the President; to provide for local authority elections; to provide for offences and penalties, and for the prevention of electoral malpractices in

connection with elections; to establish the Electoral Court and provide for its functions; to make provision for the hearing and determination of election petitions; and to provide for matters connected with or incidental to the foregoing.”.

**44 Repeal of Cap. 2:12 and savings**

(1) Subject to subsection (2), the Zimbabwe Electoral Commission Act [*Chapter 2:12*] (No. 22 of 2004) is repealed.

(2) Notwithstanding subsection (1)—

- (a) all statutory instruments made under the Zimbabwe Electoral Commission Act [*Chapter 2:12*] that were in force immediately before the commencement of this Act shall continue to be in force thereafter until repealed or replaced under section 192;
- (b) anything made, done or commenced under the Zimbabwe Electoral Commission Act [*Chapter 2:12*] which, immediately before the date of commencement of this Act, had effect or was capable of acquiring legal effect shall continue to have effect or be capable of acquiring legal effect from and after that date in all respects as if it had been made, done or commenced, as the case may be, in terms of the appropriate provisions of the principal Act as amended by this Act.