



SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

VOL. LI]

MBABANE, Friday, JULY 26th 2013

[No. 91

CONTENTS

No.

Page

PART B - ACT

6. Elections Act, 2013	S1
------------------------------	----

ELECTIONS ACT, 2013

Act No. 6 of 2013

**I ASSENT****MSWATI III
KING OF SWAZILAND**25th July, 2013

**AN ACT
ENTITLED**

AN ACT to provide for the election of persons as elected members of the House of Assembly, as Indvuna yeNkhundla and as Bucopho; to provide for the conduct of the foregoing elections; to provide for the accreditation of election observers and monitors by the Commission, and to provide for other related matters.

ENACTED by the King and the Parliament of Swaziland.

ARRANGEMENT OF SECTIONS**PART I
PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Application of Act.

**PART II
CONSTITUENCIES FOR ELECTIONS (TINKHUNDLA)**

4. Tinkhundla.
5. Boundaries of Tinkhundla
6. Elected member of House of Assembly.
7. Bucopho
8. Indvuna yeNkhundla

PART III
GENERAL PROVISIONS RELATING TO CONDUCT
OF ELECTIONS

9. Appointment of returning officer.
10. Appointment of presiding officer.
11. Appointment of polling officers.
12. Appointment of counting officers.
13. General provisions concerning appointment of electoral officer
14. Appointment of election agents and polling agents.
15. Declaration of secrecy.
16. Polling divisions.
17. Polling stations.
18. Power to adjourn polling day in event of emergencies.
19. Requisition of building for polling station.
20. Furniture and polling booths for polling stations.
21. Forms, stationery and equipment for polling stations.
22. Voters' register for election.
23. Ballot paper.
24. Official mark and instrument.
25. Printing of ordinary and tendered ballot papers.
26. Ballot boxes.

PART IV
PROCLAMATION FOR ELECTIONS
AND WRIT OF ELECTIONS

27. Proclamation of general elections of elected members.
28. Postponement of general elections of elected members.

29. By-election to fill vacancy of elected member.

30. Postponement of by-election to fill vacancy.

PART V
NOMINATION OF CANDIDATES FOR ELECTIONS
AND CANVASSING FOR VOTES

31. Nomination of candidates.

32. Returning officer to receive nominations, declaration and police certificate

33. Declaration of candidate duly nominated for election.

34. Inspection of nomination paper and lodging of complaint.

35. Withdrawal of candidature nomination.

36. Uncontested elections

37. Contested elections.

38. Death or ineligibility of a candidate.

PART VI
ELECTION CAMPAIGN

39. Canvassing for votes

40. General Campaign

41. Organised campaign

42. Use of foul language prohibited

43. Close of campaign

PART VII
VOTING AND VOTING PROCEDURE

44. Right to vote

45. Poll to be taken by ballot.

46. Hours of voting

47. Notice at polling station.

48. Admission to polling stations.
49. Presiding officer's duties.
50. Emptying and sealing of ballot boxes.
51. Voting procedure
52. Issue of ordinary ballot papers.
53. Issue of tendered ballot papers
54. Objections against issue of ballot paper.
55. Marking and disposal of ballot paper.
56. Assistance in voting
57. Spoilt ballot paper.
58. Closing of poll, sealing of ballot boxes and making up of election material.
59. Procedure of poll on more than one day.
60. Adjournment of poll in case of riot.
61. Delivery of election material to returning officer.
62. Persons allowed inside place of counting.
63. Checking of election material
64. Counting of votes.
65. Dealing with doubtful ballot papers.
66. Presiding or returning officer's decision on doubtful ballot papers.
67. Equality of votes in an election.
68. Declaration of result.
69. Publication of name of successful candidate.
70. Opening of envelopes and other action by returning officer.
71. Disposal of election papers.

72. Opening or inspection of election papers.

PART VIII

OBSERVERS, MONITORS AND VOTER EDUCATION

73. Accreditation of observers and monitors

74. Powers and duties of accreditation of observers and monitors.

PART IX

CORRUPT PRACTICES, ELECTION OFFENCES AND CERTAIN PROCEDURES

75. Bribery.

76. Impersonation.

77. Treating

78. Undue influence

79. Illegal practices of publishing false statements in respect of candidates

80. Illegal practice in respect of nomination of candidates.

81. Illegal practices in respect of public meetings.

82. Illegal practices relating to the poll.

83. Election offences

84. Meeting on premises where liquor is usually sold.

85. Defacement of notice.

86. Offences by election officers.

87. Secrecy and penalty for breach of secrecy

88. Criminal proceedings against a candidate or a person who intends to be a candidate

PART XI

MISCELLANEOUS PROVISIONS

89. Penalty for employer not allowing employee reasonable period for voting.

90. Peace and security.

91. Electoral code of conduct and other codes.
92. Candidate's powers.
93. Non-attendance of agent.
94. Variation of period.
95. Effect of certain irregularities.
96. Inspection and copying of documents.
97. Limitation of liability.
98. Prohibition from disclosing how a person voted.
99. Validation of certain documents
100. General penalty
101. Regulations.
102. Repeal of Act No. 4 of 1971, Act No. 2 of 1991 and Order No.5 of 1998.
103. Savings

Schedule: Forms and Envelope

AN ACT
ENTITLED

AN ACT to provide for the election of persons as elected members of the House of Assembly, as Indvuna yeNkhundla and as Bucopho; to provide for the accreditation of election observers and monitors by the Commission, and to provide for other related matters.

ENACTED by the King and the Parliament of Swaziland.

PART I
PRELIMINARY PROVISIONS

Short title and commencement.

1. (1) This Act may be cited as the Elections Act, 2013.
- (2) This Act shall come into force on the date of publication in the gazette.

Interpretation.

2. In this Act, unless the context otherwise requires—

“approved Form” means a form approved by the Commission for the purposes of this Act.

“ballot box” means a box prescribed by the Commission for the purpose of an election;

“ballot paper” means the document prescribed by the Commission in respect of an election;

“ballot paper account” means a document prescribed by the Commission for purposes of recording the ballot papers issued to a returning officer and completed by a presiding officer at the close of a poll;

“Bucopho” means the executive committee of an Inkhundla referred to under section 81 of the Constitution;

“candidate” means any person nominated as a candidate for an election;

“Commission” means the Elections and Boundaries Commission established under section 90 of the Constitution;

“counting officer” means any person appointed as a counting officer by the Commission;

“electoral officer” includes a person appointed by the Commission to be—

(a) a returning officer;

(b) a presiding officer;

(c) a polling officer; or

(d) a counting officer;

“general election” means the election of an elected member of the House of Assembly, Indvuna yeNkhundla or a member of Bucopho, as the context may require, and includes a by-election;

“House” means the House of Assembly;

“House of Assembly election” means the election of one or more elected members of the House of Assembly in terms of section 95(1) (a) of the Constitution;

“Indvuna yeNkhundla” means the chairperson of Bucopho referred to under section 81(3) of the Constitution;

“Inkhundla” means one of the Tinkhundla (constituencies) into which Swaziland is divided in terms of section 80 of the Constitution;

“Minister” means the Minister responsible for elections;

“nomination day” means the day appointed by the King by proclamation as the day on which candidates are nominated in their respective chiefdoms or designated areas;

“nomination paper” means a form prescribed by the Commission for the purpose of a candidate registering their intention to contest an election under this Act;

“polling agent” means an agent appointed by a candidate in respect of each polling station;

“polling day” means- in relation to a general election or a by-election, a day appointed by the King by Proclamation for the taking of the poll in that election, as the case may be;

“polling division” means one of the polling divisions into which an Inkhundla is for the time being divided by the Commission;

“polling officer” means a person appointed polling officer by the Commission;

“polling station” means a place established by the Commission as a polling station in a polling division;

“prescribe” means prescribed by the Commission by statutory instrument and

“prescribed” has a corresponding meaning;

“presiding officer” means a person appointed as presiding officer by the Commission;

“register of voters” means a register of voters for any Inkhundla, or part of an Inkhundla, prepared and maintained under the Voters Registration Act;

“registered voter” or “voter” means a person whose name appears on the voters register;

“returning officer” means the returning officer appointed by the Commission in terms of section 9 of this Act;

“Umphakatsi” means a chiefdom;

“voters card” means a voter’s registration card as prescribed and issued by the Commission.

Application of Act.

3. This Act applies to the election of—

- (a) the elected members of the House of Assembly;
- (b) members of Bucopho; and
- (c) Tindvuna Tetinkhundla;

PART II
CONSTITUENCIES FOR ELECTIONS

Tinkhundla.

4. (1) For purposes of political organisation and popular representation of the people in Parliament, Swaziland shall be divided into several areas called Tinkhundla (Constituencies).

(2) An Inkhundla (Constituency)—

- (a) is established by the King on the recommendation of the Commission;
- (b) consists of one or more chiefdoms which act as nomination areas for the elected members of the House of Assembly during primary elections; and
- (c) is, among other things, used as an Inkhundla for the election of the elected members of the House of Assembly during secondary elections.

Boundaries of Tinkhundla

5. (1) The boundaries of each Inkhundla shall be such that the number of inhabitants in an Inkhundla is as nearly equal to the population quota as is reasonably practicable having regard to the terrain, the means of communication (transport) within that Inkhundla and any other relevant community interest.

(2) The Commission shall review the number and boundaries of Tinkhundla into which Swaziland is divided during the fourth year of Parliament and shall submit a report to the King with recommendations to change or retain the existing status.

(3) The review of boundaries or number of Tinkhundla shall comply with the procedure laid down in section 91 of the Constitution.

(4) Where the boundaries of an Inkhundla are altered as a result of a review, the alteration shall come into effect in accordance with section 92 (4) of the Constitution.

(5) In this section “population quota” means the number obtained by dividing the number of inhabitants of the Region, as ascertained by reference by the latest population census, by the number of tinkhundla into which the region is to be divided.

Elected Member of House of Assembly.

6. (1) An elected Member represents an Inkhundla in the House of Assembly.

(2) The election of an elected Member shall be by secret ballot at both primary and secondary levels.

(3) A person shall qualify to be elected as a Member of the House of Assembly if that person—

- (a) qualifies to be elected as a member in terms of section 96 of the Constitution; and
- (b) is not disqualified to stand as elected member in terms of section 97 of the Constitution.

Bucopho.

7. (1) Bucopho is the executive committee of an Inkhundla responsible for the general administration of the Inkhundla.

(2) Bucopho shall consist of persons elected from the chiefdoms or polling divisions within an Inkhundla, also sometimes known as Umphakatsi.

(3) The election of a member of Bucopho shall be by secret ballot.

(4) A person shall qualify to be elected as Bucopho if that person—

- (a) has the same qualification as a member of Parliament;
- (b) is a resident of the Umphakatsi for which the person seeks election; and
- (c) is a registered voter in that Umphakatsi.

(5) The tenure of office of Bucopho is five years.

Indvuna yeNkhundla

8. (1) Indvuna yeNkhundla is the chairperson of Bucopho.

(2) A person shall qualify to be elected as Indvuna yeNkhundla if that person—

- (a) has the same qualification as a member of Parliament;

(b) is a resident of that Inkhundla; and

(c) is a registered voter in that Inkhundla.

(3) The election of Indvuna yeNkhundla shall be by secret ballot at both primary and secondary levels.

(4) The tenure of office of Indvuna Yenkhundla shall be five years.

PART III

GENERAL PROVISIONS RELATING TO CONDUCT OF ELECTIONS

Appointment of returning officer.

9. (1) For the purpose of holding a general or by-election, the Commission shall appoint a returning officer in accordance with **Form No. 1A** for the Inkhundla in which the election is to be held.

(2) A returning officer shall perform the duties of a returning officer specified under this Act under the general supervision of the Commission.

Appointment of presiding officer.

10. (1) As soon as practicable, after prescribing a date for an election, the Commission shall, in accordance with **Form No. 1B** appoint a presiding officer for each polling station at which that election is to be conducted.

(2) A presiding officer shall co-ordinate and supervise the voting at a polling station so as to ensure that the election at the polling station is free and fair.

(3) The presiding officer—

(a) shall exercise the powers and perform the duties assigned to a presiding officer by or under this Act;

(b) shall take all reasonable steps to ensure orderly conduct at a polling station; and

(c) may order a Police Officer or other security personnel to assist in ensuring orderly conduct at that polling station and that Officer shall comply with the order.

(4) The presiding officer may exclude from the area within the boundary of a polling station any person other than—

(a) a member, employee or officer of the Commission;

- (b) an election or polling agent who is entitled under this Act to be present at a polling station;
- (c) a candidate in that election;
- (d) a person appointed as an accredited observer or monitor;
- (e) a voter present for the purpose of casting a vote; and
- (f) any person or category of persons authorised by the Commission to be present at the polling station.

(5) Notwithstanding subsection (4), the presiding officer may order any person, referred to in subsection (4) (b) to (f), to leave the area within the boundary of the polling station if that person's conduct is not conducive to a free and fair election at that polling station and shall give that person reasons for making the order.

(6) If a person refuses to comply with an order under subsection (5), the presiding officer may direct a police officer to forcibly remove that person, and that officer shall comply with that order.

Appointment of polling officers.

11. (1) As soon as practicable after a date for an election has been set, the Commission shall, in accordance with **Form No. 1B** appoint for each polling station as many polling officers as it considers necessary to conduct a free and fair election.

(2) A polling officer—

- (a) shall assist the presiding officer in the exercise of the presiding officer's powers and the performance of the presiding officer's duties; and
- (b) shall exercise the powers and perform the duties assigned to a polling officer under this Act.

Appointment of counting officers.

12. (1) As soon as practicable, after prescribing a date of an election, the Commission shall, in accordance with **Form No.1B** appoint a counting officer for each polling station.

(2) Notwithstanding subsection (1), the Commission may appoint the presiding officer or a polling officer for a polling station, as the counting officer for that polling station.

(3) A counting officer for a polling station shall co-ordinate and supervise the counting of votes.

General provisions concerning appointment of electoral officer

13. (1) A person shall not be appointed as an electoral officer or remain in that office, if that person—

- (a) is a candidate contesting that election;
- (b) is an election or polling agent in that election;
- (c) was convicted of an offence or reported guilty of any corrupt practice or illegal practice, under this Act, within a period of five years preceding that election.

(2) An electoral officer shall exercise the powers and perform the duties assigned to that officer subject to the direction, control and discipline of the Commission.

(3) The Commission shall determine, in writing, the terms and conditions of appointment of an electoral officer.

(4) The assignment of a power or duty to an electoral officer shall not prevent the Commission from exercising that power or performing that duty.

(5) A person shall not be appointed as an electoral officer unless that person has signed a declaration of secrecy.

(6) An electoral officer shall be impartial and exercise the powers and perform the duties, stipulated by or under this Act, independently and without fear, favour or prejudice.

(7) An electoral officer shall not, whether directly or indirectly, in any manner, give support to any of the issues in contention between candidates.

(8) An electoral officer shall not place in jeopardy that officer's independence or harm the credibility, impartiality, independence or integrity of the Commission, by any membership, association, statement or conduct.

(9) An electoral officer shall not be liable for any loss suffered by a person as a result of an act performed or omitted in good faith in the exercise of a power or the performance of a duty under this Act.

(10) An electoral officer may be dismissed by the Commission on account of—

- (a) misconduct, incompetence or incapacity;
- (b) absence from duty without leave of the Commission;
- (c) bias;
- (d) a material contravention of this section;

- (e) a material contravention of the declaration of secrecy; or
- (f) any other consideration related to a free and fair election.

(11) A person aggrieved by a decision of the Commission in appointing a person as an electoral officer or dismissing an election officer may approach the court on review.

Appointment of election agents and polling agents.

14. (1) Every candidate contesting an election may, seven days before the date of the election, in accordance with approved **Form No. 5** appoint one polling agent and one messenger for each polling station in the Inkhundla and such messenger shall perform duties as may be directed by the polling agent.

(2) A polling agent shall not be a candidate in an election.

(3) The appointment and revocation of appointment of a person as an election or polling agent shall be effected in the manner prescribed.

(4) A polling agent may observe the proceedings during—

- (a) voting;
- (b) the counting of votes; and
- (c) the determination and declaration of the result of an election.

(5) The absence of a polling agent from a place where any electoral proceeding is being conducted shall not invalidate those proceedings.

(6) Whilst present at any polling station, an election or polling agent shall—

- (a) wear the prescribed identification indicating—
 - (i) that the person is an election or polling agent; and
 - (ii) the candidate represented by that election or polling agent; and
- (b) comply with any order issued by—
 - (i) an electoral officer; or
 - (ii) a police officer acting on the instructions of an electoral officer.

(7) A person shall not be appointed a polling agent if that person is—

- (a) a Member of Bucopho, a Member of Parliament or Indvuna yeNkhundla;
and
- (b) is not qualified to vote.

Declaration of secrecy.

15. (1) A returning officer and every presiding officer, polling officer, counting officer, candidate, polling agent of a candidate or any other person authorized to be present in a polling station at the counting of votes shall make and sign a declaration of secrecy as set out in the approved **Form No. 6** before a commissioner of oaths or a justice of the peace.

(2) Every police officer authorized to be present in a polling station shall make and sign a declaration of secrecy in the approved **Form No. 6** before the presiding officer.

(3) The declaration of secrecy of—

- (a) a presiding officer shall be handed to the returning officer before the returning officer supplies the things set out in section 21 to the presiding officer;
- (b) every other person authorized to be present in a polling station shall, before the commencement of the poll, be handed to the presiding officer at the polling station, except the declaration of a candidate which shall be retained by the candidate for production at polling stations and be handed to the returning officer before the commencement of the counting of votes; and
- (c) all persons authorized at the counting of votes shall be handed to the returning officer before the commencement of the counting of votes unless already handed in under paragraphs (a) or (b).

Polling divisions.

16. (1) The Commission may sub-divide an Inkhundla into as many polling divisions as may be necessary for the purpose of conveniently taking a poll of the registered voters of the Inkhundla.

(2) The Commission may, in like manner increase or decrease the number of polling divisions in an Inkhundla or alter the boundaries of the polling divisions.

(3) Any sub-division of an Inkhundla into polling divisions shall remain in force until altered under this section.

(4) The Commission shall determine the boundaries of a polling division by taking into account any factor within the proposed polling division that could affect the free, fair and orderly conduct of elections, including—

- (a) the availability of a suitable venue for a polling station;
- (b) the number and distribution of eligible voters;
- (c) the accessibility of a polling station to voters; and
- (d) Inkhundla boundary.

(5) The Commission shall, as soon as practicable after completing the division of Tinkhundla into polling divisions, give notice to the public of the polling divisions and if possible, make maps of the polling divisions.

(6) The notice shall be published in the Government Gazette and publicised in the media so as to ensure wide publicity of polling divisions.

Polling stations.

17.(1) The Commission may establish one or more polling stations within an Inkhundla or, if the Inkhundla is divided into polling divisions, there shall be at least one polling station within each polling division.

(2) In the interest of conducting a free and fair election, the Commission may establish—

- (a) more than one polling station in the Inkhundla or in a polling division; or
- (b) one polling station in respect of two or more polling divisions.

(3) When determining the location of a polling station, the Commission shall take into account any factor that could affect the free, fair and orderly conduct of elections, including—

- (a) the number and distribution of eligible voters;
- (b) the availability of suitable venues for polling stations;
- (c) the distance to be travelled to reach those venues;
- (d) access routes to those venues;
- (e) the availability of transport to those venues;
- (f) general facilities at those venues;
- (g) the safety and convenience of voters;
- (h) any geographical or physical feature that may impede access to or at those venues; and

(i) the ease with which those venues can be secured.

(4) By not later than the relevant date stated in the election timetable, the Commission shall give notice that copies of a register containing the physical address of each polling station shall be available for inspection.

(5) In addition to the polling stations referred to in sub-sections (1) and (2), the office of each Ambassador, High Commissioner or Trade Representative of Swaziland abroad shall be a polling station at which registered voters residing in the country to which the Ambassador, High Commissioner, Trade Representative, as the case may be, is accredited, may cast their votes in respect of any contested election held under this Act, and the Ambassador, High Commissioner or Trade Representative, as the case may be, or a person deputed thereto by him, shall be the presiding officer for such polling station.

Power to adjourn polling day in event of emergencies.

18.(1) If at any time between the issue of a Proclamation for Elections and the day appointed by the Proclamation under section 27 for the taking of the poll at an election, the Commission is satisfied that it is expedient in the public interest to do so, it may by notice in the Gazette adjourn the taking of the poll to some other day or days specified, not being more than thirty days after the day specified in the Proclamation or Proclamations issued under section 27

(2) A notice made under sub-section (1) may be expressed to apply only to such Tinkhundla as are specified in it, in event the poll shall be taken in every Inkhundla for which the Proclamation has been issued, and which is not so specified, upon the day or days appointed for the taking of the poll.

(3) Where a notice is given under subsection (1) the Proclamation for all Tinkhundla to which it applies shall be deemed to have been amended by the substitution for the day or days specified in the Proclamation as being the days for the holding of the poll of the day so specified in the notice.

(4) Where a notice under sub-section (1) is published before the day which would have constituted the nomination day if the notice had not been given, the nomination day shall be deemed to have been adjourned to the twenty-third day next before the day to which the holding of the poll is adjourned by the notice:

(5) If the twenty-third is a Sunday or a public holiday, the nomination day shall be deemed to have been adjourned to the first day, not being Sunday or a public holiday, after the twenty-third day.

Requisition of building for polling station.

19.(1) A returning officer may require that any convenient building, other than a dwelling house, be used for the purpose of taking a poll.

(2) The Commission shall construct signs and directions to lead voters to a polling station or any other aids.

Furniture and polling booths for polling stations.

20. (1) A returning officer shall ensure that the following furniture is provided at each polling station before the day of the poll—

- (a) sufficient tables and chairs for the presiding officer, polling officer and the agents of the candidates; and
- (b) a sufficient number of screened polling booths provided—
 - (i) with a writing-flap, desk or table;
 - (ii) an instrument which shall be attached by string to the writing-flap, desk or table; and
 - (iii) specimen in the approved **Form No. 7** on how the ballot paper is to be marked by the voter.

(2) The presiding officer shall, before the commencement of the poll, affix inside each polling booth in a position facing the voter, a specimen on how the ballot paper should be marked by the voter.

(3) A polling booth shall be arranged in such a manner that no person can enter or leave it without being seen by the presiding officer or a polling officer.

(4) The presiding officer shall, throughout the hours of polling, from time to time inspect or cause to be inspected every polling booth when not occupied by a voter, with a view to ensuring that the writing-flap, desk or table has an instrument attached to it, that a copy of the directions for the guidance of voters is still in position and has not been tampered with and that no other notice or paper is contained therein.

(5) Subject to section subsection (4) of this section and section 56, no person other than a voter proceeding to cast a vote shall enter a polling booth during the hours of polling, and in no case shall more than one voter be in a polling booth at the same time.

(6) A person who brings or uses a camera, cellular telephone, or similar device inside a polling booth commits an offence and shall be liable on conviction to pay a fine not exceeding five thousand Emalangeneni or imprisonment for a period not exceeding one year or to both.

Forms, stationery and equipment for polling stations.

21. (1) The Commission shall, before the day of the poll, supply each presiding officer through the returning officer with the following forms, stationery and equipment for use at the polling station of the presiding officer—

- (a) a register of the candidates;
- (b) a sufficient number of the certified voters register or portion thereof containing the names of the voters entitled to vote at that polling station;
- (c) a copy of this Act;
- (d) a supply of ordinary ballot papers and tendered ballot papers;
- (e) a supply of approved **Forms Nos. 16** to 33 inclusive, and **No. 40**, and of the Form contained in the Second Schedule;
- (f) a sufficient number of instruments for placing the official mark on ballot papers;
- (g) a sufficient number of instruments for marking ballot papers;
- (h) one official seal;
- (i) a supply of pencils, sealing wax, matches, brown paper, tape, string, paste and drawing pins; and
- (j) a sufficient number of ballot boxes.

(2) The Commission shall provide any other materials or do any other thing necessary for conducting the election in the manner provided by this Act.

(3) A returning officer shall give a receipt for the things supplied to the returning officer by the Commission and shall, in turn, receive a receipt from the presiding officer for the things supplied to the presiding officer.

Voters' register for election.

22. (1) The voters' register, or the division of the voters' register that is to be used for an election, are those that exist on the day the election is proclaimed.

(2) By not later than a date to be specified by the Commission, the Commission shall certify the voters' register or the segments of the voters' register to be used in that election.

(3) The Commission shall publish the register to be used in the election and make it available for inspection at the following venues—

- (a) at the head office of the Commission, the segments of the register for all Tinkhundla in which the election will take place;
- (b) in each Inkhundla, the segments for all polling stations in which the election will take place; and

- (c) in urban or industrial centres, the segments for all polling stations in which the election will take place.

Ballot paper.

23. (1) The ballot of every voter shall consist of a ballot paper.

(2) Each ballot paper shall—

(a) contain the names and photographs of all the candidates contesting the election;

(b) be capable of being folded up;

(c) have a number printed on it; and

(d) have attached to it a counterfoil with the same number printed on it.

(3) The names of the candidates on a ballot paper shall appear in alphabetical order of their surnames and, if there are two or more candidates of the same surname, in alphabetical order of their other names.

(4) The Commission may prescribe the form and design and other features to be printed on a ballot paper and the manner in which ballot papers issued shall be accounted for in a ballot paper account.

Official mark and instrument.

24. (1) The Commission shall decide on the official mark to be placed on the ballot papers and shall not communicate any particulars of that mark to any person other than the returning officer.

(2) Before handing the instrument for placing the official mark on ballot papers to a presiding officer, the returning officer shall insert the instrument in a separate envelope in the approved **Form No. 30** and seal it with sealing wax impressed with the official seal of the returning officer.

(3) At the hour of commencement of the poll, and not before, the presiding officer shall open only as many instruments as may be necessary for the purpose of the poll.

Printing of ordinary and tendered ballot papers.

25. (1) The Commission shall cause to be printed in the approved **Form No. 4** a sufficient number of ordinary ballot papers and a sufficient number of tendered ballot papers.

(2) Both ordinary ballot papers and tendered ballot papers shall be numbered consecutively starting with number one on the back of the ballot paper, each having a counterfoil with the corresponding number on the face of the ballot paper.

(3) A photograph shall be printed opposite the name of the candidate to whom the photograph is allotted.

Ballot boxes.

26. (1) A ballot box shall be provided with a lock or other device for securing it when closed and shall be constructed in such a manner that ballot papers cannot be removed from the ballot box without opening the lid and have an aperture of sufficient size to permit the introduction of ballot papers into the ballot box.

(2) The Commission shall prescribe the manner in which ballot boxes shall be—

- (a) numbered and labeled; and
- (b) closed, secured, opened, sealed and unsealed.

PART IV
PROCLAMATION FOR ELECTIONS

Proclamation of general elections of elected members.

27. (1) A general election of members of the House, Indvuna yeNkhundla and Bucopho shall be held at any time within sixty days after the dissolution of Parliament, as the King shall appoint by Proclamation published in the Gazette.

(2) The Proclamation in subsection (1) shall—

- (a) be addressed to the Commission;
- (b) specify the date of nomination of candidates;
- (c) specify the day or days on which primary level and secondary level elections shall take place;
- (d) be in a prescribed form.

(3) As soon as the proclamation has been made, the Commission shall publish a notice in the Gazette stating that the proclamation has been made and the notice shall specify—

- (a) the date and place for the nomination of candidates in respect of each Umphakatsi;

- (b) the day on which the poll is to be taken, for both primary elections and secondary elections; and
- (c) the period of campaigning after the primary elections but before the secondary elections.

Postponement of general elections.

28.(1) The Commission may request the King to postpone the voting day for the general election as specified in section 27 if the Commission is satisfied that—

- (a) the postponement is necessary for ensuring a free and fair election; and
- (b) the voting day for the election will still fall within the period stipulated in section 136 of the Constitution.

(2) If the King accedes to the request, the King shall, by Proclamation postpone the voting day for the election to a day determined by the King, but that day must fall within the period referred to in section 136 of the Constitution.

By-election

29.(1) Whenever a vacancy occurs in the membership of the House of Assembly the Clerk, in the case of an elected member, or in the case of the Indvuna yeNkhundla and the Bucopho the Ministry responsible for Tinkhundla or Bucopho administration, shall notify the Commission in writing within seven days after the vacancy has occurred, and a by-election shall be held within a reasonable period.

(2) Notwithstanding subsection (1), unless more than two vacancies occur in one of the chambers in subsection (1) a by-election shall not be held to fill a vacancy where Parliament, the Indvuna yeNkhundla, the Bucopho are to be dissolved within a period of less than nine months.

(3) As soon as the Commission receives the notice in subsection (1), the Commission shall request the King to issue a Writ of Election for a by- election to fill the vacancy.

(4) A Writ of Election issued by the King shall be forwarded to the Commission for transmission to the returning officer to whom it is addressed.

(5) The Writ shall be in a prescribed form and shall specify the day for nomination of candidates, the times and place of the nomination, and the day or days on which the poll shall be taken.

(6) Immediately after a writ has been issued under sub-section (1), the Commission shall publish a notice—

(a) for the nomination of candidates in respect of the Umphakatsi concerned; and

(b) the day or days on which the poll shall be taken in the Inkhundla concerned.

(7) Following the notice in subsection (6), the returning officer shall proceed to hold an election in the manner provided in this Act.

Postponement of by-election.

30. (1) The Commission may request the King to postpone the voting day for a by-election in any chamber in terms of section 29 if the Commission is satisfied that the postponement is necessary for ensuring a free and fair election.

(2) If the King accedes to the request, the King shall issue a Writ of Election to postpone the voting day for the by-election to a day determined by the King.

PART V
NOMINATION OF CANDIDATES FOR ELECTIONS

Nomination of candidates.

31. (1) On the day, times and places specified under section 27, the returning officer shall attend to receive nominations of candidates for election.

(2) The number of candidates nominated pursuant to section 27 shall not be less than three and not more than twenty.

(3) The nomination of candidates for the respective elections shall be endorsed with the consent of the candidate for nomination and supported by at least ten registered voters.

(4) The fact that the name of a supporter of a candidate is struck off the voters list subsequent to nomination shall not invalidate the nomination of the candidate.

(5) The nomination of a candidate shall be made on the approved Form No. 2 which shall be delivered to the returning officer.

(6) A candidate shall at the time of his nomination deliver to the returning officer a declaration on oath in the approved Form No. 3 as to the qualification of that candidate to be elected and also that the candidate is not disqualified from being so elected.

(7) Following nomination, a candidate shall present himself to the Police for the purpose of getting a clearance certificate which shall be delivered to the returning officer.

(8) A candidate shall not be nominated for election—

- (a) for more than one Umphakatsi or recognizable community;
- (b) in more than one Inkhundla;
- (c) whilst the candidate is a member of the House of Assembly, Indvuna yeNkhundla and Bucopo; or
- (d) where the candidate has at any time been, under a –
 - (i) the Prevention of Corruption Act, 2006;
 - (ii) the Prevention of Organised Crime Act;
 - (iii) the Sexual Offence and Domestic Violence Act, 2013; or
 - (iv) any other offence listed in the under the Fourth and Fifth Schedules of the Criminal Procedure and Evidence Act, 1938

Provided that if five years or more have elapsed since the termination of the sentence of imprisonment, this paragraph shall not apply.

Returning officer to receive nominations, declaration and police certificate

32.(1) A returning officer shall attend in person to receive nomination papers, declarations on oath and police clearance certificates.

(2) The returning officer may authorise a presiding officer in each Umphakatsi to perform the duties assigned to the returning officer by subsection (1).

Declaration of candidate duly nominated for election.

33.(1) Where the presiding officer delivers to the returning officer a–

- (a) nomination paper;
- (b) declaration on oath;
- (c) police clearance certificate,
- (d) proof of payment of tax or arrangement thereof, and
- (e) subject to subsection (6), consent letter from employer, in the case of a public officer

the returning officer shall, after examining the documents and finding them satisfactory, declare the candidate duly nominated, unless proof is given to the satisfaction of the returning officer of the candidate's death, withdrawal or disqualification.

(2) The returning officer shall inform a candidate that the candidate's nomination is invalid where—

(a) the particulars of the candidate or the persons subscribing to the nomination paper are not as required by law; or

(b) the nomination paper is not subscribed to as required by law.

(3) Where the returning officer rejects a nomination, the returning officer shall immediately notify the candidate or any person supporting the nomination of that candidate of the rejection and the grounds for the rejection, and shall afford that candidate an opportunity, at any time before close of nominations, to make any amendment or alteration that the candidate considers necessary.

(4) The returning officer shall, as soon as practicable after close of day for nominations, submit to the Commission a register containing the full names, registration number and address of every nominated candidate.

(5) As soon as practicable after the last day for nomination, the returning officer shall post at the Umphakatsi centre and at such other places as the Commission may direct, a notice proving the names and photographs of the nominated candidates.

(6) The employer shall cancel the consent letter required under subsection (1) (e) where the Public Officer is not successful in the election and such cancellation of leave of absence shall have effect from the date of losing the election.

(7) The employer shall not issue a consent letter more than once in relation to the same public officer who has had a term of election in any category under this Act.

Inspection of nomination paper and lodging of complaint.

34. (1) Any registered voter in an Inkhundla may, after the close of the nomination time and during a period as may be prescribed, inspect a nomination paper at a time and place subject to conditions as may be prescribed.

(2) The person may, after inspection of the nomination paper under subsection (1) lodge a complaint with the returning officer in respect of the nomination challenging the qualifications of the nominated candidate or any other aspect of the nomination.

(3) Where the returning officer rejects or renders void the nomination of a candidate by virtue of subsection (2), the returning officer shall forthwith notify the person of the decision and the reasons for the decision.

(4) A person aggrieved by the decision of the returning officer in subsection (3) shall have a right to complain against the decision to the Commission within seven days from the date of the decision of the returning officer and the Commission may confirm or reverse the decision of the returning officer within seven days from the date of receipt of the complaint.

(5) The decision of the Commission under subsection (4) shall be final.

Withdrawal of candidature nomination.

35. (1) A candidate may, before four o'clock of the afternoon of nomination day withdraw his candidature by giving written notice, signed by the candidate to that effect, to the returning officer.

(2) The returning officer shall forthwith cause notice of the withdrawal to be posted in a conspicuous position outside the place of nomination.

(3) Where a duly nominated candidate whose name appears on the nominated register exhibited under this Act withdraws his or her candidature after the printing of ballot papers, the ballot papers may continue to include that candidate's name, except that any vote cast on polling day for a candidate who has withdrawn shall be invalid.

Uncontested elections

36. Subject to section 33 where at the expiry of the time allowed for delivery of nomination papers on nomination day, the number of candidates duly nominated does not exceed the number of candidates to be elected, the returning officer shall as soon as possible publicly declare the candidates to be elected and shall immediately thereafter by endorsement of the writ, certify the return of the persons declared elected to the Commission.

Contested elections.

37. (1) If the number of candidates duly nominated in a Chiefdom or Urban Industrial area or Inkhundla exceeds the number of candidates to be elected, the returning officer shall adjourn the election for the holding of a poll in accordance with the proclamation as prescribed in the Gazette, and a poll shall be taken in the manner provided by this Act.

(2) The returning officer shall as soon as practicable after adjourning the election, publish notice of the election in the Gazette, two national newspapers and in any other place in the Inkhundla as the Commission may direct and the notice shall state—

- (a) the day or days on which and the time or times at which the poll will be taken;
- (b) location of polling station;
- (c) voters assigned to each polling station in a polling division where there is more than one polling station; and
- (d) full names, physical addresses, occupations and photographs of the candidates nominated for election.

Death or ineligibility of a candidate.

38. (1) If after the polling day has been fixed for an election in any Inkhundla, any duly nominated candidate dies or is ineligible to contest the elections for whatever reason before the poll is taken, the Commission shall, upon being satisfied of the fact of the death or his ineligibility, withdraw the notice fixing the polling day, and all proceedings relating to that election in that Inkhundla shall be commenced afresh in precisely the same manner as if a vacancy had occurred.

(2) A fresh nomination under subsection (1) shall not be undertaken in the case of a candidate who was duly nominated in accordance with this Act.

**PART VI
ELECTION CAMPAIGN**

Canvassing for votes

39. (1) Canvassing for votes during primary elections is prohibited.

(2) A candidate contesting an election at secondary elections has the right to conduct campaigns freely in accordance with this Act.

(3) A candidate may, during an electoral campaign, publish campaign materials of such a nature and in a manner that may be approved by the Commission.

General campaign

40. (1) The Commission shall prescribe a code of conduct to be complied with by all candidates during an election campaign.

(2) Subject to the provisions of this section and section 39, every candidate has the right to conduct that candidate's campaign freely.

(3) A public officer or public entity shall give and be seen to give equal treatment to all candidates to enable each candidate to conduct that candidate's campaign freely.

Organised campaign

41. (1) The Commission may determine the manner in which campaigns shall take place.

(2) In furtherance of subsection (1), the Commission shall give equal treatment to all candidates and enable each candidate to conduct that candidate's campaign freely, and each candidate shall be given an opportunity to address the meeting on matters of national interest and socio-economic development.

(3) The Commission shall ensure that adequate security is provided at campaign meetings organized by the Commission.

Use of foul language prohibited

42. (1) A person shall not, whether in a general or organized campaign, use any language—

- (a) which constitutes incitement to public order, insurrection or violence;
- (b) which is defamatory or insulting or which contains incitement to hatred; or
- (c) which seeks to excite or promote disharmony, enmity or hatred against any person.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or to imprisonment for a period not exceeding one year or to both.

Close of campaign

43. A campaign meeting shall not be held within twenty four hours before the polling day.

PART VII

VOTING AND VOTING PROCEDURE

Right to vote.

44. (1) Every person who is registered in a register of voters for an Inkhundla, and who is not disqualified to vote under this Act or any other law, shall be entitled to vote at an election held in that Inkhundla.

(2) A voter shall not cast more than one vote when a poll is taken.

Poll to be taken by ballot.

45. (1) The votes at the poll shall be given by ballot and the result shall be ascertained by counting the votes cast for each candidate.

(2) Voting at every election shall be by secret ballot using one ballot box in respect of the election of a Member of Parliament, Indvuna yeNkhundla and Bucopho for all the candidates at each polling station.

(3) The candidate who receives the most valid votes cast shall be declared elected.

Hours of voting.

46. (1) The voting hours as prescribed in the proclamation shall be published by the Commission in the media.

(2) A polling station shall—

- (a) open for voting at the prescribed time and;
- (b) remain open for voting until the prescribed time, or such later time as the Commission may determine.

(3) A person may not be admitted to a polling station for the purpose of voting after the polling station has closed for voting.

(4) Voting at a polling station shall continue until every voter has voted who—

- (a) is entitled to vote at that polling station; and
- (b) had reported for voting at that polling station at the time prescribed for that polling station to close for voting.

(5) The Commission shall provide for a special voting procedure for electoral officers, staff and security personnel who are on duty on polling day.

Notice at polling station.

47. (1) Before the hour fixed for the start of the poll, a presiding officer shall place a notice showing the full names, in alphabetical order of surname, and if there are two or more candidates of the same surname, in alphabetical order of their other names, and photographs.

(2) A notice in subsection (1), both within and outside a polling station shall be in siSwati and English.

Admission to polling stations.

48. (1) A person shall not be admitted to vote at a polling station—

- (a) except at the polling station in the polling division where the name of the person appears on the voters register; and
- (b) where there is more than one polling station in that polling division, except at the polling station assigned to that person in accordance with section 37 (2) (c).

(2) The presiding officer shall regulate the number of voters to be admitted to the polling station at the same time.

(3) No other person, except a member or an officer of the Commission, the returning officer, the presiding officer, the polling officers, the candidates, the polling agents and a police officer on duty shall enter the polling station.

Presiding officer's duties.

49. (1) A presiding officer shall give directions to the persons inside a polling station as may be necessary to ensure compliance with this Act and to keep order at the polling station.

(2) The presiding officer may require any person, other than a person actually recording a vote or the persons mentioned in section 48 (3) who misconducts himself or herself or fails to obey the lawful directions of the presiding officer, to leave the polling station.

(3) The presiding officer may authorize a polling officer to perform the functions, under this Act, of the presiding officer during the temporary absence of the presiding officer from the polling station or in other special circumstances, and where this happens, a reference in sub-sections (1) and (2) to the presiding officer shall be construed accordingly.

(4) A person who fails to leave the polling station when required to do so may be arrested by a police officer without warrant on the order of the presiding officer and shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand Emalangeni or imprisonment for a period not exceeding one year.

(5) The functions conferred by this section shall not be exercised so as to prevent any voter who is otherwise entitled to vote at any polling station from having an opportunity of voting at that polling station.

Emptying and sealing of ballot boxes.

50. (1) Immediately before the commencement of the poll, a presiding officer shall show those present inside the polling station that the ballot box is empty and the presiding officer shall thereafter close and secure the lid of the ballot box in such a way that the lid cannot be opened without the official seal or fastening of the candidates being broken or damaged.

(2) The sealed ballot box shall not be opened except as provided in this Act and shall not be removed from the polling station for the duration of the poll.

(3) The presiding officer shall place and keep each ballot box in a position where the ballot box will be within the view of persons present at the polling station.

(4) Where more than one ballot box is used after the first ballot box is filled, the procedure prescribed in this section shall be followed prior to using any additional ballot box.

Voting procedure.

51. (1) A voter is entitled to vote at a polling station—

- (a) on production of that voter's card to the polling officer at the polling station; and
- (b) if that voter's name is in the segment of the voter's register for the polling division concerned.

(2) When a voter produces a voter registration card to the polling officer as required by subsection (1) (a), the polling officer shall examine the voter's card and determine whether—

- (a) the voter is the person described in that voter registration card;
- (b) the voter's name is in the certified segment of the voter's register for the polling division concerned; and
- (c) the voter has not already voted in the election.

(3) Where a person does not have a voter registration card but is able to prove to the presiding officer that the person is the one whose name appears on the voters register, the polling officer may allow the person to vote subject to subsection (4).

(4) A presiding officer may, before allowing any person to vote under subsection (3), require that person to produce a satisfactory form of identification upon which the presiding officer shall issue a temporary voter's card.

(5) A person who produces a false identification to a polling officer commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or, in default of payment of the fine, to imprisonment for a term not exceeding two years, or both.

Issue of ordinary ballot papers.

52. (1) If a polling officer is satisfied in respect of all the matters referred to in section 51 the officer shall issue to the applicant an ordinary ballot paper in a manner specified in subsection (2).

(2) The polling officer shall -

- (a) call out the number and name of the voter as it appears in voters register;
- (b) enter the number in the space provided on the counterfoil of the ballot paper to be issued to the applicant;
- (c) tear out the ballot paper and mark it with the official mark on the back in the space provided;

- (d) fold the ballot paper in four lengthwise and crosswise, so that the face of the ballot paper is on the inside and the official mark on the outside, then unfold it and hand it to the applicant; and
- (e) draw a line in red ink through the number and name or photograph of the voter in the voters register as evidence that a ballot paper has been issued.

(3) If, for any reason, the presiding officer or a polling officer has any doubt as to a ballot paper held by a voter being the ballot paper issued to the voter, the presiding officer may for the purpose of comparing with the number printed on the counterfoil require a voter, before dropping the ballot paper in the ballot box, to show the presiding officer the number and official mark on the back of the ballot paper.

Issue of tendered ballot papers.

53. (1) If an applicant for a ballot paper states that a particular name in the voters register refers to the applicant and there is evidence that a ballot paper has already been issued in respect of that name, the polling officer shall not issue an ordinary ballot paper to the applicant but shall refer the matter to the presiding officer who shall ask the applicant the questions set out in the form contained in the approved Form No. 30, record the answers and require the applicant to make and sign declaration set out in that form.

(2) If the applicant answers the first of those questions distinctly and absolutely in the affirmative and the second and third questions distinctly and absolutely in the negative, and makes and signs the declaration, the presiding officer shall issue to the applicant a ballot paper, called a tendered ballot paper, in like manner to an ordinary ballot paper, and a note "tendered ballot paper issued" shall be made in the voters register against the name concerned.

(3) A person who, when required by the presiding officer, fails or refuses to complete and sign the declaration set out in Form No. 30 shall not be permitted to vote.

(4) A person who makes a false answer to any of those questions commits an offence and is liable on conviction to a fine of five thousand emalangeni or, in default of payment thereof, to imprisonment for two years, or both.

Objections against issue of ballot paper.

54. (1) A presiding officer or polling officer may refuse to issue a ballot paper to any applicant for a ballot paper if a candidate or a candidate's agent or any registered voter in the polling station makes an objection to issuing a ballot paper to the applicant on grounds that a person registered on the voters register is dead or is so incapacitated by sickness, absence, or otherwise, that it is impossible for that person to be present at the polling station to vote at the election in question.

(2) The objection in subsection (1) shall be by declaration on oath in the approved Form No. 30 before the presiding officer.

(3) The presiding officer shall refuse to issue a ballot paper to the applicant referred to in subsection (1), unless the applicant proves his or her identity to the satisfaction of the presiding officer or makes a declaration on oath before the presiding officer that the applicant is the person whose name appears on the voters register for the Inkhundla and that the statements made in the first-mentioned declaration (which shall be read over to him) are false.

(4) The presiding officer is authorized and required to administer any oath described in this section.

(5) A person who makes a false statement in any declaration mentioned in this section, knowing the statement to be false, commits an offence and is liable on conviction to the penalties prescribed by law for perjury.

(6) More than one person may be referred to in any declaration on oath made under sub-section (2), but the reason why each of the persons referred to is unable to attend at polling station shall be clearly connected with the person to whom the declaration relates.

(7) A person aggrieved with the decision of the presiding officer under this section may immediately appeal against the decision to the returning officer of the Inkhundla whose decision shall be final.

Marking and disposal of ballot paper.

55. (1) A person to whom a ballot paper has been issued shall immediately take it to an unoccupied polling booth and there without delay secretly signify with the instrument provided the candidate for whom the person wishes to vote by making a mark on the ballot paper in the space provided for the name and photograph of the candidate.

(2) After marking the ballot paper, the voter shall fold it in four lengthwise and crosswise so that the face of the ballot paper is on the inside and the official mark on the outside and—

(a) put it in the ballot box provided; and

(b) thereafter without delay leave the polling station.

(3) A voter shall not remove a ballot paper from the polling station.

(4) If through inadvertence the official mark has not been placed on a ballot paper about to be put into the ballot box handed to the presiding officer, the presiding officer may cause the mark to be placed on the ballot paper.

(5) The number of the voter as shown in the voters register shall be endorsed by the presiding officer on the back of the tendered ballot paper and entered on the tendered votes register in the approved **Form No. 8** duly completed.

(6) The presiding officer shall set aside the tendered ballot paper in a separate envelope marked No. 9 duly completed.

Assistance in voting

56. (1) A voter who is unable to read or who is unable to vote due to blindness or other physical infirmity, may request a presiding officer to help that voter in voting or to allow a person accompanying that voter to assist the voter in voting.

(2) The presiding officer or a person allowed by the presiding officer shall take the voter aside and shall ascertain from the voter the name of the candidate or candidates for whom the voter wishes to vote.

(3) The presiding officer or a person allowed by the presiding officer shall immediately go into the polling booth with the voter and mark the ballot paper of the voter in the manner directed by the voter, and fold and dispose the ballot paper, in a manner provided by this Act.

(4) The secrecy of voting as stipulated in the Constitution and this Act shall be preserved in the application of this section.

(5) A presiding officer shall record in a copy of the voters register, by means of a mark placed next to the name of the voter concerned, that the presiding officer or another person has assisted the voter as provided under this section and give the reasons for doing so in accordance with approved **Form No. 10**.

Spoilt ballot paper.

57. (1) A voter who has inadvertently spoilt a ballot paper may return it to the presiding officer who shall, if satisfied of the inadvertence, issue the voter with a fresh ballot paper and the presiding officer shall—

- (a) retain and immediately cancel the spoilt ballot paper and note the fact of the cancellation on the counterfoil;
- (b) note on the counterfoil of the spoilt ballot paper the number of the fresh ballot paper issued thus “see also counterfoil No.”; and
- (c) note on the counterfoil of the fresh ballot paper issued the number of the spoilt paper thus “see also counterfoil No.”.

(2) The presiding officer shall set aside the spoilt ballot papers in a separate envelope marked No. 11 duly completed.

Closing of poll, sealing of ballot boxes and marking up of election material.

58. (1) A ballot paper shall not be delivered to a person after the hour fixed for closing the poll but if at that hour there is in the polling station a voter who has queued to vote, that voter shall be allowed to vote.

(2) After the voters inside the polling station entitled to vote have voted, the presiding officer shall close the poll and shall immediately close the aperture of the lid of every ballot box and seal it with the official seal and other seals of such candidates or their agents who may wish to affix their seals.

(3) The presiding officer shall sign the tendered votes register in the approved **Form No. 8** and the register of voters whose ballot papers have been marked by the presiding officer in the approved **Form No.10**, and complete and sign the "ballot paper account", in duplicate, in the approved **Form No.12**.

(4) The presiding officer shall, in the presence of the persons lawfully present inside the polling station, enclose the following envelopes, and seal each envelope with sealing wax impressed with the official seal and the seals of any candidates or their agents who may wish to affix their seals—

- (a) the appointment of the presiding officer and the polling officers, and the declarations of secrecy handed to the presiding officer in terms of section 15(3)(b) in an envelope marked No. 13 duly completed;
- (b) the completed approved **Form No. 30** in an envelope marked No. 14 duly completed;
- (c) used tendered ballot papers and tendered votes register in the approved **Form No. 8** in an envelope marked No. 9 duly completed;
- (d) register of voters whose ballot papers have been marked by the presiding officer in the approved **Form No. 10** in an envelope in the approved **Form No. 15** duly completed;
- (e) the spoilt ballot papers in an envelope marked No. 11 duly completed;
- (f) the ballot paper account in duplicate in approved **Form No. 12** in an envelope in the approved **Form No. 16** duly completed;
- (g) the counterfoils of the used ballot papers in an envelope marked No.17 duly completed;
- (h) the marked copies of the voters register in an envelope marked No.18 duly completed;
- (i) the unused ballot papers, in an envelope marked No. 20 duly completed;

(j) the instruments for marking ballot papers with official marks, in an envelope marked No.19 duly completed;

(k) all other election material except such as may be necessary for the purpose of sub-sections (6) and (7) in an envelope marked No.21 duly completed.

(5) For the purpose of separating the counterfoil of used ballot papers from the unused ballot papers, a partly used ballot paper book shall be divided into two.

(6) The envelopes referred to in sub-section (4) shall, after being sealed as required and signed by the presiding officer, be made up into one parcel with a label signed by the presiding officer in accordance with the approved **Form No.22** and duly completed and sealed with wax impressed with the official seal and the seals of those candidates or their agents who may wish to affix their seals.

(7) The presiding officer shall enclose the official seal in an envelope marked No.23 duly completed and signed by the presiding officer.

Procedure of poll on more than one day.

59. (1) Where the Writ of Proclamation calling for an election under section 27 or a Writ of Election issued under section 27 specifies that the poll shall be taken on more than one day, the presiding officer shall, for the purpose of closing the poll on each day that it continues, comply with the requirements of section 58 except the requirements of section 58(4) relating to the completion and sealing of each envelope with the official seal and the seals of the candidates or their agents, and shall adjourn the poll to the following day on which the hours of polling shall be the same as for the first day.

(2) Before re-opening the poll on the following day, the presiding officer shall permit those candidates or their agents who may be present to examine the seals on the ballot box and all packages sealed on the previous day, and any seal which has been broken or tampered with shall be noted and the fact reported to the returning officer forthwith.

Adjournment of poll in case of riot.

60. (1) If the proceedings at any polling station are interrupted or obstructed by riot, open violence or an emergency, the presiding officer shall adjourn the proceedings till the following day and forthwith give notice of the adjournment to the returning officer.

(2) If the poll is adjourned at any polling station the procedure shall be the same as provided in section 59.

Delivery of election material to returning officer.

61. (1) A presiding officer shall personally deliver to the returning officer, at a venue notified by the returning officer for the receiving of votes from polling stations—

- (a) the ballot boxes;
- (b) the envelope marked No.23 containing the official seal; and
- (c) parcel under label in the approved **Form No.22** containing the other election materials.

(2) On receipt of the materials specified in subsection (1), the returning officer shall, as soon as practicable, make arrangements for counting the votes given at the election in accordance with the proclamation for those elections.

Persons allowed inside place of counting.

62. The following persons may witness the counting of votes at the place where the counting takes place—

- (a) returning officer;
- (b) counting officers;
- (c) presiding officers;
- (d) polling officers;
- (e) a member or officer of the Commission;
- (f) a candidate or candidate's agents;
- (g) election observers or monitors;
- (h) any registered voter allowed by the returning officer to witness the vote count.

Checking of election material.

63. (1) The returning officer shall deal with the election material received from each polling station separately in the following manner—

- (a) open the envelope marked No.23 containing the official seal used by the presiding officer;
- (b) with any candidate or candidate's agent who may wish to do so, examine seals and fastenings on the ballot boxes and parcel labelled in the approved **Form No. 22**, in order to ascertain whether they have been tampered with;

- (c) open the parcel labelled in the approved **Form No.22**, and with any candidate or candidate's agent who may wish to do so, examine the different packets in the parcel, in particular the seals of each packet, in order to ascertain whether they have been tampered with;
- (d) open the envelope marked No.16 containing the ballot paper account;
- (e) open each ballot box and take out, count and return to the ballot box, the total number of ordinary ballot papers in each ballot box;
- (f) open the envelope marked Nos. 9, 11 and 17 and verify the ballot paper account (in the approved **Form No.12**) with the—
 - (i) number of ordinary ballot papers in the ballot boxes;
 - (ii) number of tendered ballot papers according to the tendered register of voters (approved **Form No.8**);
 - (iii) spoilt ballot papers;
 - (iv) counterfoils of ballot papers issued; and
 - (v) number of unused ballot papers;
- (g) record on the ballot paper account any errors found and permit any candidate or candidate's agent who may wish to do so, to make a copy of the account and their remarks on the account; and
- (h) replace the tendered votes register, the spoilt ballot papers, the ballot paper account, the counterfoils of used ballot papers, and the unused ballot papers in their respective envelopes, and reseal those envelopes with the official seal.

(2) The returning officer shall make a record of the seals and fastening of any ballot box or packet which appears to have been tampered with.

Counting of votes.

64.(1) After checking the election material as required under section 63, the ballot papers shall then be unfolded with their backs upwards, and the official marks checked.

(2) A ballot paper which does not bear the official mark shall be put aside for the decision of the returning officer.

(3) Each ballot paper shall be turned over face upwards and the votes given for each candidate counted.

Dealing with doubtful ballot papers.

65. A counting officer shall put aside for the decision of the presiding officer or returning officer a ballot paper –

- (a) which does not bear the official mark of the Commission; or
- (b) which is not marked by the voter so as to clearly identify the candidate for whom the vote was cast; or
- (c) which is not marked at all; or
- (d) which has on it writing or mark by which the voter could easily be identified.

Presiding officer or Returning officer's decision on doubtful ballot papers.

66. (1) Subject to subsection (2), a Presiding Officer or Returning Officer shall, with any candidate or candidate's agent who may wish to do so, scrutinize a ballot paper put aside for the Presiding or Returning Officer's decision, and shall, after considering any objections or arguments put forward in respect of a ballot paper by any candidate or candidate's agent, decide–

- (a) whether to reject the ballot paper; or
- (b) having accepted it, for which candidate or candidates the vote is given.

(2) A Presiding or Returning Officer shall reject and not count a ballot paper–

- (a) which does not bear the official mark of the Commission;
- (b) on which votes are given for more candidates than the number to be returned;
- (c) which is unmarked;
- (d) which bears writing or mark by which the voter could be identified; or
- (e) which is not marked by the voter so as to clearly identify the candidate for whom the vote was cast

(3) The Presiding or Returning Officer shall enter the word "rejected" on a ballot paper that is rejected and, if objection to the Presiding or Returning Officer's decision is made by or on behalf of a candidate, the Officer shall add the words "rejection objected to".

(4) If objection to the acceptance of a ballot paper is made by or on behalf of a candidate, the Presiding or Returning Officer shall enter on the ballot paper the words "acceptance objected to".

(5) A candidate or candidate's agent may, if present when the counting or any recount of votes is completed, require the Presiding or Returning Officer to have the votes recounted or again recounted but the Officer may refuse to do so, if in the Officer's opinion, the request is unreasonable.

(6) No step shall be taken on the completion of the counting or any recount of votes until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-section (5).

(7) The decision of the Officer in respect of a ballot paper is subject to adjudication or review by the High Court.

Equality of votes in an election.

67. In the event of the number of votes for two or more candidates being equal, the returning officer shall announce the date on which a by-election shall be held to decide the winner between the tying candidates.

Declaration of result.

68. (1) After counting and ascertaining the number of votes for each candidate, the returning officer shall declare the candidate who has received more votes than any other candidates to have won the election.

(2) The returning officer shall immediately complete and sign the approved **Form No. 24** and shall forthwith—

- (a) declare the result of the poll by reading the completed form aloud outside the place of counting and displaying a copy of the form at that place;
- (b) forward to the Commission the endorsed writ and a copy of the completed approved **Form No. 24**.

Publication of name of successful candidate.

69. The Commission shall publish in the Gazette the results of the election and the names of the candidates who won the election.

Opening of envelopes and other action by returning officer.

70. As soon as possible after the declaration of the result of the poll, the returning officer shall—

- (a) open the envelope marked No.13 containing the appointment of presiding and polling officers and declaration of secrecy;
- (b) open the envelope marked No.14 containing the approved **Form No.30**;
- (c) open the envelope in the approved **Form No.25** containing the register of votes marked by the presiding officer in the approved **Form No.10** and ascertain the number of votes marked by the presiding officer, reseal that envelope with the official seal and affix his signature to the back of that envelope; and
- (d) open the envelope marked No.16 containing the ballot paper account in duplicate in the approved **Form No.12**, remove from the envelope the duplicate copy of that account, reseal the envelope with the official seal and affix the returning officer's signature to the back of the envelope.

Disposal of election papers.

71. (1) The returning officer shall then make up into separate packets impressed with the official seal, the—

- (a) appointments of presiding officers, polling officers and counting officers in the approved **Form No.1B**, the advices of appointments of candidates' election agents and messengers in the approved **Form No.5** and the declarations of secrecy in the approved **Form No.6** placed together in an envelope marked No.13 duly completed;
- (b) completed approved **Form No.30** placed in an envelope marked No.14 duly completed;
- (c) sealed envelopes in the approved **Form No. 9** containing tendered ballot papers and tendered votes register placed together in a bigger envelope marked No.9 duly completed;
- (d) sealed envelopes marked No.15 containing the register of votes marked by the presiding officers placed together in a bigger envelope marked No.15 duly completed;
- (e) sealed envelopes marked No.11 containing spoilt ballot papers, placed together in a bigger envelope marked No.11 duly completed;
- (f) sealed envelopes marked No.16 containing ballot paper accounts placed together in a bigger envelope marked No.16 duly completed;
- (g) sealed envelopes marked No.17 containing counterfoils of used ballot papers placed together in a bigger envelope marked No.17 duly completed;

- (h) sealed envelopes marked No.19 containing unused ballot papers, placed together in a bigger envelope marked No.19 duly completed;
- (i) counted ordinary ballot papers, with a label in the approved **Form No.25** duly completed and affixed;
- (j) rejected ordinary papers placed together in an envelope marked No.26 duly completed; and
- (k) all nomination papers and withdrawal forms of candidates placed together in an envelope marked No.27 duly completed.

(2) The returning officer shall make up into a packet impressed with the official seal, the sealed envelope marked No.18 and affix to the bag or box the label No.28 duly completed.

(3) The returning officer shall place the packets referred to in sub-sections (1) and (2) in a bag or box impressed with the official seal, and affix to the bag or box the label No.29 duly completed.

(4) The returning officer shall deliver the sealed bag or box to the Commission and the Commission shall be responsible for the safe custody of all election documents and shall retain the documents for a period of one year from the date of the election after which they shall, unless the High Court directs otherwise, be destroyed.

Opening or inspection of election papers.

72. (1) The bag or box referred to in section 71(3) or any packet in the bag or box shall not be opened, nor shall any person be allowed to inspect any election document, except under the order of the High Court for the production by the Commission of the document, on its being satisfied by evidence on oath that the inspection or production is required for the purpose of instituting or maintaining a prosecution for an offence under this Act or for the purpose of proceedings questioning an election or a return, and the order may be made subject to any conditions that the court may determine.

(2) The court in making an order under subsection (1) shall take care not to disclose or make known for which candidate a particular voter has voted.

(3) Where the court makes an order for the Commission to produce any document or packet in the custody of the Commission relating to a specified election—

- (a) the production by the Commission of the document or packet, in the manner directed by the order or in accordance with a rule of court, shall be conclusive evidence that the document or packet relates to the election;

- (b) any entry appearing on a packet produced by the Commission shall be evidence of the contents of the packet being what they are stated to be by the entry; and
- (c) the production by the Commission of a ballot paper, purporting to have been used at the election and of a counterfoil marked with the same printed number and having a number marked on the ballot paper in writing, shall be prima facie evidence that the person who voted by the ballot paper in question was the person opposite whose name in the voters register there appeared at the election the same number as that written on the counterfoil.

(4) A power given to a court by this section may be exercised by a judge in chambers.

PART VIII

OBSERVERS, MONITORS AND VOTER EDUCATION

Accreditation of observers and monitors.

73. (1) The Commission may, on an application accredit any individual, group or institution as an election observer or monitor at any election.

(2) The Commission may require any information it may consider necessary in support of an application under subsection (1).

(3) The Commission may accredit an applicant, without the payment of any fee, to observe or monitor an election after considering the application, any other information provided by the applicant, and whether—

- (a) the accreditation of the applicant shall promote conditions conducive to a free and fair election; and

- (b) the persons appointed by the applicant shall—

- (i) observe the election impartially and independently of any candidate contesting that election; and

- (ii) be competent and professional in observing the election.

(4) If the Commission decides to accredit the applicant, the Commission shall—

- (a) enter the applicant's name in the register of persons accredited as observers and monitors;

- (b) issue a certificate of accreditation in the applicant's name stating the period and other conditions of accreditation;

(5) If the Commission rejects the application for accreditation, the Commission shall advise the unsuccessful applicant of its decision.

(6) If a person accredited as an observer or monitor fails to comply, to a material extent, with the conditions of the accreditation, the Commission may cancel that accreditation and, in writing, notify the person concerned of the cancellation and state the reasons for such cancellation.

(7) A register of persons accredited under subsection (1) shall be kept at the Commission's head office.

(8) In this section, a "person" means an individual, group or institution applying for accreditation as an observer or monitor.

Powers and duties of observers and monitors.

74. (1) An accredited observer or monitor may, in relation to an election for which that observer or monitor is accredited, observe the proceedings up to the determination and declaration of the elections results.

(2) Whilst observing an election, a person accredited as an observer or monitor shall wear the prescribed identification.

(3) A person accredited as an observer or monitor shall comply with any order issued by an electoral officer or a police officer acting on the instructions of an electoral officer.

PART IX
CORRUPT PRACTICES, ELECTION OFFENCES
AND CERTAIN PROCEDURES

Bribery.

75. (1) A person who corruptly either directly or indirectly, by oneself or any other person—

- (a) gives, lends, or procures, or offers, promises or agrees to give, lend or procure any money to or for any person to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;
- (b) gives, lends or procures, or offers, promises or agrees to give, lend, or procure, any money to or for any voter or to or for any other person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;
- (c) makes any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;

- (d) upon or in consequence of any gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavors to procure, the return of any candidate at any election or the vote of any voter at any election;
- (e) advances or pays or causes to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election;
- (f) before or during any election, receives or contracts for any money or loan for oneself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election;
- (g) after any election, receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or
- (h) conveys or transfers or is concerned with the conveyance or transfer of any property, or pays or is concerned with the payment of any money, to any person for the purpose of enabling that person to be registered as a voter, thereby to influence that person's vote at any future election, or pays to or is concerned with the payment of any money on account of any voter for the purpose of inducing that person to vote or refrain from voting,

commits an offence of bribery and shall, on conviction be liable to as fine not exceeding ten thousand Emalangeni or imprisonment for a period not exceeding two years or both

(2) Nothing in this Act shall be construed as applying to any money paid or agreed to be paid for, or on account of, any expenditure *bona fide* and lawfully incurred in respect of the conduct or management of an election.

Impersonation.

76. A person who—

- (a) at any election, applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person;
- (b) having voted once at any election, applies again at the same election for a ballot paper;
- (c) votes at any election knowing that the person is not entitled to vote at that election or induces or procures any person to vote at any election knowing that person is not entitled to vote at that election;

(d) applies to be registered as a voter in the name of any other person, whether living, dead or fictitious; or

(e) impersonates—

(i) a candidate in an election;

(ii) a member, employee or officer of the Commission; or

(iii) a person appointed as an accredited observer, or monitor

commits an offence of impersonation and shall on conviction be liable to a fine not exceeding ten thousand Emalangeni or imprisonment for a period not exceeding two years or both.

Treating.

77. A person who corruptly by oneself or by any person either before, during or after an election, directly or indirectly, gives or provides or pays, wholly or in part, the expenses of, any food, drink, entertainment, lodging or provisions to, or for, any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving that person's vote at an election commits an offence of treating and shall on conviction be liable to pay a fine not exceeding ten thousand Emalangeni or imprisonment for a period not exceeding two years or both.

Undue influence.

78. (1) A person shall not directly or indirectly, by oneself or by any other person—

(a) make use of or threaten to make use of any force, violence or restraint upon any other person;

(b) inflict or threaten to inflict by oneself or by any other person, or by any supernatural or non-natural means, or pretended supernatural or non-natural means, any physical, psychological, mental or spiritual injury, damage, harm or loss upon or against any person; and

(c) do or threaten to do anything to the disadvantage of any person; in order to induce or compel any person—

(i) to register or not to register as a voter;

(iii) to vote or not to vote;

(iv) to vote or not to vote for any candidate;

(v) to support or not to support any candidate; or

- (vi) to attend and participate in, or not to attend and participate in, any election meeting, march, demonstration or other election event;
- (d) interfere with the independence or impartiality of the Commission, any member, employee or officer of the Commission;
- (e) prejudice any person because of any past, present or anticipated performance of a function under this Act;
- (f) advantage, or promise to advantage, a person in exchange for that person not performing a function under this Act; or
- (g) unlawfully prevent the holding of any election meeting.

(2) Subject to the other provisions of this Act, no person shall prevent anyone from exercising a right conferred by this Act.

(3) A person, knowing that another person is not entitled to be registered as a voter, shall not—

- (a) persuade that other person that that other person is entitled to be registered as a voter; or
- (b) represent to anyone else that that other person is entitled to be registered as a voter.

(4) A person, knowing that another person is not entitled to vote, shall not—

- (a) assist, compel or persuade that other person to vote; or
- (b) represent to anyone else that that other person is entitled to vote.

(5) A person who contravenes any of the provisions of subsections (1) to (4) commits an offence of undue influence.

(6) A person who, by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the vote of any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving the person's vote at any election, commits an offence of undue influence and shall on conviction be liable to pay fine not exceeding ten thousand Emalangeni or imprisonment for a period not exceeding two years or both.

Illegal practice of publishing false statements in respect of candidates.

79. (1) A person who, before or during an election, publishes a false statement of the illness, death or withdrawal from election of a candidate at that election for the purpose of promoting or procuring the election of another candidate, knowing that statement to be false or not believing it to be true, commits an illegal practice.

(2) A person who, before or during an election, publishes any false statement of fact in relation to the personal character or conduct of a candidate in that election, shall be guilty of an illegal practice, unless that person can show that that person had reasonable grounds for believing, and did believe, the statement to be true.

(3) A person who is found guilty of an illegal practice for publishing a false statement in respect of a candidate in terms of subsections (1) and (2), shall be liable on conviction to pay a fine not exceeding twenty thousand Emalangeni or imprisonment for a period not exceeding three years or both.

Illegal practice in respect of nomination of candidates.

80. (1) A person who forges or fraudulently destroys any written authority of a candidate or nomination paper, or delivers to a returning officer any written authority of a candidate or nomination paper knowing the same to be forged shall be guilty of an illegal practice.

(2) A person who knowingly makes a false statement relating to that person's nomination in that person's nominating paper shall be guilty of an illegal practice.

(3) A person who is found guilty of an illegal practice in respect to the nomination of a candidate in terms of subsections (1) and (2) shall on conviction be liable to pay fine not exceeding twenty thousand Emalangeni or imprisonment for a period not exceeding three years or both.

Illegal practices in respect of public meetings.

81. A person who, at a lawful public meeting held in connection with the election of any person between the day of the publication of a notice appointing a nomination day and the day on which the result of the election is published, acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called, shall be guilty of an illegal practice and shall on conviction be liable to a fine not exceeding twenty thousand Emalangeni or imprisonment for a period not exceeding three years or both.

Illegal practices relating to the poll.

82. (1) A person who—

- (a) forges, counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (b) without authority supplies any ballot paper to any person;
- (c) without authority puts into any ballot box any ballot paper which that person is not authorised by law to put in;

- (d) sells or offers to sell any ballot paper or voter's card to any person or purchases or offers to purchase any ballot paper or voter's card from any person;
- (e) not being a person entitled under this Act to be in possession of a ballot paper or voter's card, has any such ballot paper or voter's card in that persons' possession;
- (f) without authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers in use or intended to be used for the purpose of an election;
- (g) without authority prints or makes any ballot paper or what purports to be or is capable of being used as a ballot paper or any identity document at an election;
- (h) manufactures, constructs, has in that persons' possession, supplies, or uses for the purpose of an election, or causes to be manufactured, constructed, supplied or used for the purposes of any election any appliance, device or mechanism by which a ballot paper may be extracted or manipulated after having been deposited in a ballot box in the course of polling at any polling station; or
- (i) at an election obstructs a voter either at the polling station or on that voter's way thereto or therefrom

commits an illegal practice and shall on conviction to a fine not exceeding twenty thousand Emalangeni or imprisonment for a period not exceeding three years or both.

(2) A person who attempts to commit an illegal practice under subsection (1), shall be guilty of an illegal practice shall on conviction to a fine not exceeding ten thousand Emalangeni or imprisonment for a period not exceeding two years or both.

Election offences.

83. (1) A person who—

- (a) having been required to leave a nomination centre, fails to leave such nomination centre or the precincts thereof;
- (b) puts into any ballot box anything other than the ballot paper which that person is authorised by law to put in the ballot box;
- (c) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;

- (d) on any polling day, at the entrance to or within a polling station, or in any public place or in any private place within four hundred metres from the entrance to such polling station—
 - (i) canvasses for votes;
 - (ii) solicits the vote of any person;
 - (iii) induces any person not to vote; or
 - (iv) induces any person not to vote for a particular candidate;
- (e) on any polling day exhibits in any public or private place within one hundred metres from the entrance to any polling station any notice or sign, other than an official notice or sign authorised by an election officer under this Act, relating to the election;
- (f) not being a presiding officer, an election officer, candidate, an election agent or a polling agent in the course of their functions within a polling station, makes any record showing that any particular person has voted in an election;
- (g) without lawful authority, destroys, mutilates, defaces or removes any notice which is exhibited in accordance with this Act or under any regulations issued under this Act, or any document made available for inspection under this Act and any such regulations;
- (h) willfully obstructs or interferes with a returning officer, presiding officer, or election officer in the execution of their duties;
- (i) makes a false answer to any question put to that person by a presiding officer or an election officer under this Act;
- (j) has any communication with a voter while such voter is in the precincts of a polling station for the purpose of voting;
- (k) fails to comply with any requirement or direction to leave a polling station or the precincts of the polling station,

commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or to imprisonment for a period not exceeding one year or to both.

(2) A person who attempts to commit an offence against this section shall be liable to the punishment prescribed for that offence.

Meeting on premises where liquor is usually sold.

84. (1) A person who hires or uses premises or a part of premises where intoxicating liquor is sold or where it is supplied under a licence granted under the Liquor Licences Act No. 30 of 1964, as a committee room or for any meeting of voters for the purpose of promoting or procuring the election of a candidate at an election or in connection with arrangements made by any person in reference to an election commits an offence.

(2) A person who lets such premises or part thereof or permits the use thereof for any of the purposes mentioned in sub-section (1) knowing that it is, or is intended to be used for such purposes commits an offence.

(3) A person contravening sub-section (1) or (2) shall be liable on conviction to a fine of one thousand Emalangeni or to imprisonment for six months, or both.

Defacement of notice.

85. A person who without lawful authority destroys, mutilates, or removes a notice which is exhibited under the authority of this Act, or a document which is made available for inspection in accordance with this Act, commits an offence and is liable on conviction to a fine not exceeding two thousand Emalangeni or, in default of payment of the fine, to imprisonment for a period not exceeding twelve months.

Offences by election officers.

86. An electoral officer who willfully fails to perform the functions of that office under this Act commits an offence and is liable on conviction, to a fine not exceeding ten thousand Emalangeni or to imprisonment not exceeding two years, or to both.

Secrecy and penalty for breach of secrecy

87. (1) Every person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law, to any person, any information as to the name or number on the register of voters of any voter who has or has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

(2) A person, except a presiding officer or polling officer in exercise of their functions under this Act, shall not obtain or attempt to obtain in a polling station information as to the candidate for whom any person in such polling station is about to vote for or has voted or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any person in such polling station is about to vote for or has voted, or as to the number on the ballot paper issued to any person at such polling station.

(3) Every person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain at the counting the number on any ballot paper or communicate any information obtained at the counting as to the manner in which any vote is given by any particular ballot paper.

(4) A person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding two thousand Emalangeni or to imprisonment for a period not exceeding one year, or to both.

Criminal proceedings against a candidate or a person who intends to be a candidate

88. (1) Where a candidate or a person who intends to be a candidate for an election has been charged with an offence mentioned under the Prevention of Corruption Act, 2006, Prevention of Organised Crime Act, Sexual Offences and Domestic Violence Act and the fourth and fifth schedules of the Criminal Procedure and Evidence Act No. 67 of 1938, the Court shall ensure that the proceedings of that matter are expedited and dealt with as a matter of urgency.

(2) Where, however, the trial of a person charged in terms of this section is not completed within six months the prosecutor shall submit to the Minister a report, signed by the Director of Public Prosecutions and countersigned by the Registrar of the High Court, explaining the reason for the delay.

(3) Where the trial is still not completed after nine months and a subsequent report by the Judge presiding over the case reveals that the delay in finalising the proceedings is attributable to the accused, the accused shall at the end of twelve months, if the trial is still not completed, be disqualified from the position in which the accused was elected.

(4) Through practice directives the Chief Justice shall develop a process to ensure compliance with this section.

(5) The provisions of this section shall also apply in the case of a person nominated, elected or appointed under this Act, Senate (Elections) Act, 2013 the provisions of sections 94 and 95 of the Constitution.

PART X
MISCELLANEOUS PROVISIONS

Penalty for an employer not allowing employee reasonable period for voting

89. (1) An employer shall allow every voter in his employ a reasonable period for voting on polling day, and an employer shall not make a deduction from the pay or other remuneration of that voter or impose upon or extract from that employee a penalty by reason of absence during that period.

(2) An employer who directly or indirectly refuses to grant, or by intimidation, undue influence, or in any other manner interferes with the granting to a voter in his employ of a reasonable period for voting as provided for in this section or makes a deduction from the pay or other remuneration of that voter or extracts a penalty from that voter by reason of absence from work during that period shall be guilty of an offence and shall on conviction be liable to pay fine not exceeding ten thousand Emalangeni or to imprisonment for a period not exceeding twelve months or both.

Peace and security

90. The Government shall, for the purpose of maintaining peace and security during nomination process, election campaign and election, provide adequate and sufficient security to any—

- (a) place where nomination process or election campaign is conducted; and
- (b) other place, area or to persons as it may determine.

Electoral code of conduct and other codes.

91. (1) The Commission shall, in order to promote free, fair and orderly elections, issue by notice, an electoral code of conduct and any other codes as it may consider necessary.

(2) A person bound by the code shall not contravene or fail to comply with a provision of that code.

Candidate's powers.

92. (1) A candidate may do any act or thing which an agent of the candidate, if appointed, would have been authorized or required to do or may assist the agent in doing any such act or thing.

(2) Where a candidate has no agent, any notice to be given shall be given to the candidate.

Non-attendance of a candidate or agent.

93. Where in this Act, an act or thing is required or authorized to be done in the presence of a candidate, agent of a candidate, the failure by the candidate or agent to attend at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

Variation of period.

94. (1) Any period within which an act is required to be done under this Act may be varied by the Commission by notice in the Gazette.

(2) The notice shall be published in the Inkhundla which will be affected by the change in a manner directed by the Commission.

Effect of certain irregularities.

95. Any mistake in the certified segment of the voters' register under this Act shall not invalidate that votes' register.

Inspection and copying of documents.

96. Where this Act requires that documents be publicised, or made available for inspection or copying, the Commission shall endeavor to also publicise or make available those documents by way of electronic technology.

Limitation of liability.

97. The Commission, a member, employee and officer of the Commission, electoral officer or a person with whom the Commission has contracted to work for the Commission shall not be liable for any loss suffered by any person as a result of any act performed or omitted to be done in good faith in the course of exercising a power or performing a duty assigned by or under this Act.

Prohibition from disclosing how a person voted.

98. A person who has voted at an election shall not in any proceedings, whether brought under this Act or otherwise, be required, to state for whom that person voted for.

Validation of certain documents.

99. A misnomer or any inaccurate description of any person or place in any register, nomination paper, notice or other document required for the purposes of this Act shall not affect the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

General penalty.

100. Except where otherwise expressly provided in this Act, a person who is convicted of an offence under this Act shall be liable on conviction to a fine not exceeding ten thousand Emalangenis or to imprisonment not exceeding two years, or to both.

Regulations.

101. (1) Subject to the provisions of the Constitution and of this Act, the Minister may, by statutory instrument, make regulations providing for the procedure and manner of conducting elections.

(2) Without prejudice to the generality of subsection (1), the Commission may, by statutory instrument, make regulations providing for all or any of the following matters—

- (a) the manner and form for nomination of candidates;
- (b) the making and determination of appeals against the rejection of nominations by a returning officer;
- (c) the publication of the names of candidates whose nominations are accepted;
- (d) the use of symbols at an election;
- (e) the manner and procedure of voting at an election;
- (f) the manner of ascertaining the identity of persons wishing to vote at elections;
- (g) the procedure to be followed at the conclusion of a poll in an election;
- (h) the declaration, notification and publication of the results of an election;
- (i) the custody and disposal of nomination papers, ballot papers, records, documents or other things relating to the registration of voters and the conduct of elections;
- (j) the forms and records to be used for any of the purposes of this Act;
- (k) the fixing of notices or putting up of signs at polling stations; and
- (l) any matter to be prescribed by or under this Act.

(3) Regulations under this section may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding five thousand Emalangeni or to a term of imprisonment not exceeding two years, or to both.

Repeal of Act No. 4 of 1971, Order No. 2 of 1991 and Order No. 5 of 1998

102. The following enactments are repealed—

- (a) the Electoral Act, No. 4 of 1971;
- (b) the Elections Order, No. 2 of 1992;
- (c) the Electoral Office Order, No. 5 of 1998; and
- (d) the Establishment of Parliament of Swaziland Order, No. 1 of 1992.
Savings.

103. Notwithstanding the repeal of the Elections Order, No. 2 of 1992, the elected members elected under the repealed Order shall be deemed to have been validly elected and shall continue in office until the next dissolution of Parliament after the commencement of this Act.

SCHEDULE

Forms and Envelopes 1A – 30

Under Section No.	Forms and envelopes	Particulars
9	1A	Appointment of Returning Officer.
10-12	1B	Appointment of Presiding Officer, Polling Officer and Counting Officer.
31(5)	2	Candidate nomination form.
31(6)	3	Declaration of qualification to be elected.
25(1)	4	Ballot paper.
14(1)	5	Appointment of candidate's agents and messengers.
15(1)&15 (2)	6	Declaration of secrecy.
20(1)	7	Specimen on marking a ballot paper.
55(5)	8	Tendered votes register.
55(6)	9	Envelope for tendered ballot paper.
56(5)	10	Assisted voter information.
57(2)	11	Envelope for spoiled ballot papers.
58(3)	12	Ballot paper account.
58(4)(a)	13	Envelope for appointment of Presiding Officers, Poling Officer and Declaration of secrecy forms.

Under Section No.	Forms and envelopes	Particulars
58(4)(b)	14	Envelope for declaration by voter under Form 30.
58(4)(d)	15	Envelope for Register of Voters whose ballot papers have been marked by a Presiding Officer.
58(4)(f)	16	Envelope for ballot paper account.
58(4)(g)	17	Envelope for counterfoils of used ballot papers.
58(4)(h)	18	Envelope for marked copies of voters registers.
58(4)(j)	19	Envelope for instruments for marking ballot papers.
58(4)(i)	20	Envelope for unused ballot papers.
58(4)(k)	21	Envelope for unused forms, stationery and other election material.
58(6)	22	Label for all election material.
58(7)	23	Envelope for official seal.
68(2)	24	Declaration of results form.
71(1)(i)	25	Label for counted ordinary ballot papers.
71(1)(j)	26	Envelope for rejected ballot papers.
71(1)(k)	27	Envelope for nomination papers and withdrawal forms.
71(2)	28	Label for marked registers of voters.

Under Section No.	Forms and envelopes	Particulars
71(3)	29	Label for all election documents.
54(2)	30	Declaration on oath by a voter.

