

ELECTORAL (AMENDMENT) ACT, 2008

No. 21



of 2008

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Electoral Act.

Date of Assent: 18.12.2008

Date of Commencement: 24.12.2008

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Electoral (Amendment) Act, 2008.
2. The Electoral Act (hereinafter referred to as “the Act”) is amended in section 8 (2) thereof by substituting for the words “District Commissioner” appearing therein, the words “principal registration officer”, and for the word “district” the word “constituency”.
3. Section 10 of the Act is amended —
 - (a) by substituting for subsection (3) the following new subsection —

“(3) If an application for registration is made, the registration officer shall determine whether or not the applicant is entitled to registration in respect of that polling station, and, if satisfied that he is, shall —

 - (a) complete a voter’s registration record card in Form A in relation to the applicant;
 - (b) require the applicant to make the declaration set out in that Form;
 - (c) register the applicant as a voter in respect of that polling station by completing the voter’s registration card in Form B in relation to the applicant, and giving it to the applicant; and

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- (d) forward the completed voter's registration record card to the Secretary."; and
- (b) in subsection (4) thereof by deleting that subsection.
- Amendment of section 12 of the Act **4.** Section 12 of the Act is amended by adding immediately after subsection (7) thereof, the following new subsection —
“(8) Notwithstanding any provision of this Act, the Secretary shall determine a cut-off date for registration of voters and shall, before a writ of elections is issued, compile and mature all rolls into one operative roll.”.
- Amendment of section 16 of the Act **5.** Section 16 of the Act is amended in subsection (3) thereof by substituting that subsection with the following new subsection —
“(3) Any person may, upon payment of a fee prescribed by the Secretary from time to time, make hard copies of a roll or take extracts therefrom during the hours aforesaid.”.
- Amendment of section 19 of the Act **6.** Section 19 of the Act is amended in subsection (7) thereof by substituting for the figure “100” appearing therein, the figure “500”.
- Amendment of section 20 of the Act **7.** Section 20 of the Act is amended by adding immediately after the word “objection” appearing in the last line thereof, the words “and may order the objector to pay such costs to the person against whom the objection was made, as the magistrate may determine.”.
- Amendment of section 25 of the Act **8.** Section 25 of the Act is amended by adding immediately after subsection (7) thereof, the following new subsection —
“(8) For the avoidance of doubt, no person shall make an application for the transfer of his registration under this section after a vacancy has occurred in the constituency or polling district in which the polling station to which he wishes to transfer is situated.”.
- Amendment of section 28 of the Act **9.** Section 28 of the Act is amended —
(a) in paragraph (a) thereof by substituting for that paragraph, the following new paragraph —
“(a) prepare, publish or certify any roll other than an election roll;”;
and
(b) in paragraph (d) thereof by substituting for that paragraph, the following new paragraph —
“(d) make any alteration to a roll to correct a patent error;”.
- Amendment of section 35 of the Act **10.** Section 35 of the Act is amended by adding immediately after subsection (8) thereof, the following new subsection —
“(9) Any person who makes a false declaration under this section commits an offence and shall be liable on conviction to the penalties prescribed in section 146.”.
- Amendment of section 49 of the Act **11.** Section 49 of the Act is amended in subsection (3) thereof by substituting for the word “he” appearing therein, the word “be”.
- Amendment of section 52 of the Act **12.** Section 52 of the Act is amended in paragraph (e) thereof by substituting for the words “for the constituency” the words “for the polling station”.

13. Section 66 of the Act is amended by inserting at the beginning of subsection (1), the words “Subject to the provisions of section 50”.

Amendment of
section 66 of
the Act

14. Section 69 of the Act is amended by substituting for that section the following new section —

Amendment of
section 69 of
the Act

“69. The returning officer shall as soon as practicable after the closing of the poll, make arrangements for counting of votes at constituency headquarters in the case of National Assembly elections and polling district headquarters in the case of council elections and in the presence of any candidates or counting agents who wish to be present and shall as far as practicable comply with the provisions of sections 70 and 71 until the counting is completed, allowing only reasonable time for refreshment”.

15. Section 87 of the Act is amended in subsection (1) (e) thereof by substituting for the figure “86” appearing therein the figure “87”.

Amendment of
section 87 of
the Act

16. Section 121 of the Act is amended by substituting for that section, the following new section —

Amendment of
section 121 of
the Act

“Trial of
election
petition

121. (1) An election petition shall be tried and determined by the High Court within 90 days of the presentation of the election petition under section 120:

Provided that when an election petition is not tried and determined within the period specified under this subsection due to a failure by the petitioner to actively prosecute the petition, the High Court shall dismiss such petition for want of prosecution.

(2) The following provisions shall apply with respect to the trial of election petitions —

- (a) every election petition shall be tried in open court;
- (b) the trial of election petitions may take place upon any day prescribed by any rule or order of court;
- (c) notice of the time and place at which an election petition will be tried shall be given by the Registrar of the High Court to the parties concerned not less than 14 days before the day on which the trial is to be held;
- (d) the High Court may adjourn the trial from time to time and from place to place;
- (e) where, on the trial of an election petition praying the High Court to determine that some other person than the respondent is entitled to be declared duly elected in place of the respondent, it is proved that any person who voted for the respondent was bribed or treated or subjected to undue influence by the respondent or any one on behalf of the respondent or that such person was guilty of personation or of an illegal practice or was not qualified as a voter at the election, the vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election;

- (f) at the conclusion of the trial of any election petition, the High Court shall determine whether the respondent was duly elected or whether any, and if so what, person other than the respondent was or is entitled to be declared duly elected;
- (g) if the High Court determines that the respondent was duly elected, such election shall be and remain as valid as if no petition had been presented against it;
- (h) if the High Court determines that the respondent was not duly elected, but some other person was or is entitled to be declared duly elected the respondent shall forthwith be deemed to have vacated his seat, and the High Court shall forthwith certify its determination to the Secretary and the Secretary shall thereupon by notice in the Gazette declare such other person duly elected;
- (i) if the High Court determines that the respondent was not duly elected and that no other person was or is entitled to be declared duly elected the seat of the respondent shall be deemed to be vacant and the High Court shall certify its determination to the President that a vacancy has occurred, the cause of such vacancy and the constituency in which such vacancy has occurred;
- (j) where, on the trial of an election petition, the High Court determines that the respondent was not duly elected and is of the opinion, having regard to the circumstances, that it would be just and reasonable to relieve any party to the action from all or a portion of the costs thereof, then —
 - (i) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function bona fide made by any officer, it may, after sufficient notice to the Director of Public Prosecutions to show cause to the contrary, make such order as to the payment by the State of the costs of the action or portion thereof, as it may deem fit;

- (ii) if the High Court finds that the election of the respondent was due to a mistake or improper performance or failure of performance of any function mala fide made by any officer, it may, after sufficient notice to such officer to show cause to the contrary, make such order as to the payment by such officer of the costs of the action or portion thereof, as it may deem fit.”.

PASSED by the National Assembly this 10th day of December, 2008.

E.S. MPOFU,
Clerk of the National Assembly.