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Malta

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# GENERAL ELECTIONS ACT

## (as amended in July 1996)

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## **PART I**

### **General Provisions**

1. This Act may be cited as the General Elections (Amendment) Act, 1996.

2. (1) In this Act and in any regulations made thereunder, unless the context otherwise requires --

'ballot box' means a box wherein voters place their marked ballot papers;

'Commission' shall mean the 'Electoral Commission' established by section 60 of the Constitution;

'House' means the House of Representatives established by the Constitution;

'identity card' means a document which is an identity card for the purposes of the Identity Card Act;

'official mark' means the stamp which the Commission and the political parties direct the Assistant Commissioners to use on the ballot paper prior to giving such ballot papers to the voter and may be of such form as each of them may determine provided that it many

not in any way constitute any form of propaganda and the marks of the political parties shall not be necessary for the validity of the ballot paper. Political parties opting to use official marks shall deposit an imprint of the stamp to be so used at least one hour before the start of the poll;

'political party' shall, for the purposes only of sections 10 and 14 of this Act, mean any person or group of persons who having contested the general election under one name is represented in the House by, at least, one member or was so represented when the House was last dissolved, and in all other cases 'political party' shall mean any person or group of persons contesting the election as one group bearing the same name;

'polling booth' means the room wherein voters attend on the day of the poll to receive and mark a ballot paper and insert the same in a ballot box.

'polling place' means the school, building or other complex or structure wherein one or more polling booths are situated and shall include the grounds, if any, of such complex or structure.

'voting compartment' means such part of a polling booth wherein voters are to mark their ballot papers, and which is to be furnished with an adequate writing surface and instruments for such purpose;

'voting document' means the voting document which is to be forwarded to voters in terms of section 46 of this Act;

(2) Whenever by this Act a penalty is attached to the performance of any act 'before, during or after', an election, no account shall be taken of anything done earlier than

(a) in the case of any election held in consequence of a dissolution of Parliament under subsection (1) of section 76 of the Constitution, the issue of the Proclamation dissolving the House;

(b) in the case of any election held in consequence of a dissolution of Parliament under subsection (2) of section 76 of the Constitution of Malta, three months before the date of such dissolution.

3. The Commission may make regulations not inconsistent with or repugnant to, the provisions of this Act, for prescribing any form or procedure for which no express procedure is contained in this Act for amending the forms contained in the schedules to this Act and, generally, for carrying the provisions of this Act into effect. The Prime Minister shall upon the publication of such regulations lay the same upon the Table of the House.

4. (1) The Minister responsible for Finance shall, from time to time by Warrant under his hand addressed to the Accountant General, authorise and direct that all such moneys as are reasonably required for meeting any expenses lawfully incurred in the execution of the provisions of this Act be paid out of the Consolidated Fund without any further appropriation other than this Act.

(2) A statement of the expense so paid shall, so soon as practicable, be laid on the Table of the House.

5. Where any period of time prescribed by any of the provisions of this Act for carrying into effect any procedure is in the opinion of the President of Malta, insufficient for the

purpose, the President of Malta may, by notice published in the Gazette, extend such period as he may deem necessary.

6. (1) All applications which may be made to the Commission under this Act regarding the registration, cancellation, correction or transfer of a voter may either be delivered to the Electoral Office or to the Local Council office wherein the voter resides or to any police officer in any police station in Malta or Gozo, or forwarded to the Commission free of any charge for posting.

(2) Every Local Council secretary and every police officer to whom an application as is referred to in subsection (1) hereof is delivered shall give a receipt to the person delivering the application, write on the application the date on which the application is received and shall forward the application forthwith to the Commission.

(3) The Commission shall give or forward to each applicant a receipt in respect of each such application received by it.

(4) Any notice or other written communication which may be made by the Commission under this Act may be forwarded through the post and shall be deemed to have been received by the person to whom it was addressed on the day on which a letter regularly posted would in the normal course of postage have been received. Provided that any notice or written communication sent by the Commission to any person regarding his rights as a voter shall be sent by registered post.

(5) It shall be the duty of the Electoral Commission to ensure that an adequate supply of forms is available at all times at Local Council offices and at police stations.

## **PART II**

### **Electoral Commission and Office**

7. (1) The registration, transfer, correction and cancellation of voters, the compilation of the Electoral Register, the election of members of the House of Representatives and the administration of the Electoral Office shall be the sole responsibility of the Commission established by section 60 of the Constitution. The Chief Electoral Commissioner shall be responsible for the day to day running of the Electoral Office.

(2) The Commission shall be composed of the Chief Electoral Commissioner as chairman and eight members as Electoral Commissioners.

(3) The Electoral Commission shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise of its functions under this Act.

(4) The legal representation of the Commission shall vest in the Chief Electoral Commissioner or in such other member or such other members of the Commission, as the Commission may establish by resolution, which resolution shall not come into force before it is published in the Gazette.

8. The Commissioners shall, on their appointment, take before the Attorney General the oath of allegiance set out in the Constitution and the oath of Office set out in the First

Schedule of this Act.

**9.** (1) In the execution of their duties under this Act, the Commissioner shall, in the absence of any express provision in this Act contained, do all such things as appear to them to be necessary for the performance of their duties.

(2) In the execution of their duties under this Act, the Commissioners shall have the powers conferred by law on the Courts of Magistrates for the purpose of enforcing order at their sitting and ensuring the respect due to them.

**10.** (1) Every political party shall have the right to nominate two delegates (hereinafter referred to as the 'party delegates') to the Commission.

(2) Party delegates shall represent the political party nominating them with the Commission and shall have the right in general to be informed in writing at least once a month of all sittings of the Commission and decisions taken thereat.

(3) The party delegates shall notwithstanding the provisions of any other law, have full and free right of access to the Electoral Office, to all records kept therein and to check, verify and obtain any information regarding the work of the Electoral Office:

Provided that the Commission shall have the right to nominate an official of the Commission to accompany such delegates at all times.

(4) The party delegates shall continue in office until removed by the political party nominating them.

(5) Party delegates shall have the right to seek and obtain from the Commissioners as well as from any other official connected with the running, supervising or security of the elections or of any aspect thereof, information showing whether or not such persons are taking adequate measures to comply with the provisions of the law in the forthcoming elections, and the Commissioner or such other persons shall, notwithstanding any other law or regulation, be bound to furnish such information immediately.

(6) Notwithstanding any provisions in this Act granting party delegates and political parties the right to seek and obtain information or their right to be given copies of documents and lists by the Commission or by Government departments, such right shall not include the right of access to medical records or to adoption records of voters and the right to be made aware prior to the day of the poll of security features relating to ballot papers, voting documents and the official mark used by the Commission on ballot papers. The information, documents or lists shall be given to the party delegates orally or written, printed or electronic format as the delegates may require and the Commission is technically able to provide. Where the information, documents or lists are of a confidential nature the party delegates shall have the same obligations as to secrecy as the person from whom such information, documents or lists are obtained.

**11.** (1) There shall be an Electoral Office for the purpose of effecting the registration, transfer and cancellation of voters, the organisation required for the running of elections and all such administrative work as may be required by the Electoral Commission.

(2) The Electoral Office shall be staffed by persons in the public service and whilst serving in the Electoral Office such persons shall only be responsible to the Commission in matters concerning the preparation for and the running of General Elections.

(3) The Commission is to ensure that there is full observance of procedures of control and security, especially in regards to access of terminals, the introduction, use and processing of information and in the printing of documents for identification. The Commission is also to ensure that the Electoral Register database includes only the details of those persons eligible to vote. The parties are further to have the right, prior to the carrying out of any electro-mechanic process during the electoral process, to demand the holding of a dummy run in order to ascertain the validity of the said electro-mechanical process.

**12.** (1) The staff of the Electoral Office shall, on their appointment, take an oath before the Chief Electoral Commissioner, that they will faithfully perform the duties of their office according to law.

(2) Any one of the Commissioners and any other officer authorised by the Commission on their behalf, may administer an oath to any person whenever they shall deem the taking of an oath to be necessary for the purpose of making enquiries according to this Act.

**13.** (1) By virtue of this Act all Magistrates serving in the Court of Magistrates (Malta) and the Court of Magistrates (Gozo) shall be deemed to be Revising Officers.

(2) Revising Officers may hold sittings in any Court or in any Local Council office for the purpose of dealing with any application or appeal regarding the registration, transfer, correction, or cancellation of any voter.

(3) All such applications or appeals to a Revising Officer shall be signed by the applicant or by any person on behalf of and authorized by the applicant or appellant or by an advocate or legal procurator, and shall be filed in the Registry of the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be.

(4) The Revising Officer shall appoint a day for the hearing of an application or appeal and shall direct that a copy of the application or appeal together with the day fixed for the hearing shall be served on the applicant or appellant, on the Commission and on any other person whom such application or appeal concerns.

(5) Service shall be effected by registered post. Where any of the persons to be served with the application or appeal by registered post is not found, the Revising Officer shall direct that the persons shall be served by an officer of the Court. Where the person is not found by such officer of the Court, the Revising Officer shall, on the report of the officer of the Court direct that the application or appeal be posted on the notice board of the police station and the Local Council office of the locality in which the person concerned resides and to be published twice in all local daily newspapers and where necessary, shall appoint another day for the hearing.

(6) Service on all persons concerned shall be effected at least three days before the day fixed for the hearing of the application or appeal.

(7) If the applicant or appellant shall fail to appear on the day appointed for the hearing and is not represented by an advocate or legal procurator or other person, the application or appeal shall be considered as abandoned.

(8) In the case of an application for the removal of the name of a person from the Electoral Register, if such person shall fail to appear on the day appointed for the hearing

and is not represented by an advocate or legal procurator or other person, the application may be decided in default.

(9) In the case of an application or appeal based on the grounds of mental infirmity the Revising Officer shall, notwithstanding the absence of the applicant or appellant or of an advocate, legal procurator or other person representing him, refer the application or appeal to the Medical Board for determination.

(10) In determining the application the Revising Officer shall state the reasons for his decision and the applicant or appellant, the Commission or the voter concerned shall have the right to appeal to the Court of Appeal on any point of law by means of an application filed within seven days of the delivery of the decision by the Revising Officer.

(11) No fee shall be charged in the Registry on any application or appeal, for the service thereof, for any other proceeding in consequence thereof or for any decision thereon.

**14. (1)** There shall be a Medical Board to whom shall be referred questions as to whether a person who has applied to be registered as a voter or is already registered is disqualified from being so registered in terms of paragraph (a) of section 58 of the Constitution.

(2) The Medical Board shall consist of a doctor appointed by the Commission, who shall act as Chairperson, and a doctor appointed by each of the political parties. The Medical Board shall be deemed to be validly constituted once the chairperson or any one of the members is appointed.

### **PART III**

#### **Voters**

**15.** Subject to the provisions of the next following section, a person shall be entitled to be registered as a voter for the election of Members of the House if, and shall not be entitled to be registered unless, he has the qualifications required by section 57 of the Constitution and provided he is not so disqualified in terms of section 58 of the Constitution or in accordance with the provisions of this Act.

**16. (1)** Subject to the following provisions of this Act every person registered as a voter in an electoral division shall, while so registered, be entitled to vote at the election of Members of the House for that division.

(2) No person shall vote at the election of Members of the House in any division other than a division in which he is registered as a voter.

(3) Any person who contravenes the provisions of subsection (2) of this section shall be guilty of an offence and shall on conviction be liable to the penalties established for offences against section 112 of this Act.

### **PART IV**

#### **Electoral Divisions and Method of Election**

**17. (1)** For the purpose of the election of members of the House, the Island of Malta and its Dependencies shall be divided into thirteen electoral divisions.



(2) Subject to the provisions of subsection (1) of section 52 of the Constitution the House shall consist of sixty-five members, each electoral division returning five members.

(3) The boundaries of the electoral divisions referred to in subsection (1) of this section shall be those established in accordance with section 61 of the Constitution.

(4) Any change in the number of electoral divisions, or in the boundaries thereof, or in the number of Members of the House shall have effect as provided in subsections (2) and (3) of section 61 and subsection (6) of section 66 of the Constitution:

Provided that, where an alteration to the boundaries of the electoral divisions has been published under paragraph (d) of subsection (3) of section 61 of the Constitution, nothing in this subsection shall be construed as preventing the publication of a revised electoral register or preventing any other requirement under this Act connected with the registration of voters being carried out in accordance with such alteration, before the dissolution of Parliament upon which the alteration comes into effect.

**18.** The election of Members of the House shall be according to the principle of proportional representation, each voter having one transferable vote.

## **PART V**

### **Registration of Voters**

**19.** (1) The Commission shall make all such enquiries, and require from any person such information, as it may deem necessary for the purpose of determining whether a person is entitled to be registered as a voter or to remain so registered or where he is to be registered.

(2) The Electoral Commission shall ensure that adequate staff are deployed for the specific purpose of verifying voter qualifications and registration and shall carry out such verification both with the voter and other persons who may provide the necessary information as well as with any government departments which may have relevant information.

**20.** (1) All public officers in the service of the Government of Malta and all officers of bodies corporate established by law are, notwithstanding the provisions of any other law, hereby authorised and required to furnish to the Commission all information that it may require in order to be able to determine whether a person is entitled to be registered as a voter or to remain so registered.

(2) The Commissioner of Police shall assist the Commission by causing enquiries to be made, information to be collected, and claims to be checked and in such other manner as may be necessary.

(3) The public officer or officers responsible for the Public Registries of Malta and Gozo shall, within the first five days of each month, forward to the Commission a list containing the name, surname, identity card number, if any, and other particulars of each person whose death has been registered during the preceding month as well as a list containing similar particulars of all persons who have contracted marriage in the preceding month and a list containing similar particulars of all persons who have reached the age of eighteen years in the preceding month.

(4) The Registrar of Superior Courts in Malta and the Registrar of the Courts of Gozo or other persons having such function shall, each with regard to the Court to which he is attached, within the first five days of each month, forward to the Commission a list containing the name, surname, identity card number, if any, and other particulars of each person who has been interdicted for reasons of mental incapacity by a competent Court as well as a list containing similar particulars of all persons who have been sentenced by any Court in Malta to imprisonment (by whatever name called) for a term exceeding twelve months or to such a sentence of imprisonment the execution of which has been suspended.

(5) Any public officer or other person responsible for any prison in Malta shall within the first five days of each month forward to the Commission a list containing the name, surname, identity card number, if any, and other particulars of any person who has been released from prison in the preceding month.

(6) The public officer or other person responsible for the office responsible for the grant or withdrawal of citizenship shall within the first five days of each month, forward to the Commission a list containing the name, surname, identity card number, if any, and other particulars of any person who has been granted citizenship or whose citizenship has been withdrawn in the preceding month.

(7) The Commission shall forward to the party delegates a copy of such lists within five days of the receipt thereof.

**21. (1)** Any person who has the requisite qualifications to vote at elections of members of the House may apply for registration to the Commission in the form set out in the Second Schedule to this Act:

Provided that the Commission shall register as a voter any person who is entitled to be so registered whether or not such an application has been made.

(2) The Commission shall refuse an application by a person to be registered as a voter and the Commission shall not, on its own initiative in accordance with subsection (1) of this section, register a person as a voter only if such person

(a) has lost any of the qualifications necessary to be registered as a voter in accordance with section 37 of the Constitution: or

(b) has become disqualified for being so registered for any of the reasons mentioned in section 58 of the Constitution.

**22.** A person who is qualified to be registered as a voter shall only be registered in the Division and under the address at which he ordinarily resides;

Provided that if it is proved to the satisfaction of the Commission that any person is not registered in the division and under the address at which he ordinarily resides, the Commission shall not have the right to cancel the registration of such person but shall apply the provisions of section 23 of this Act.

**23.** Any person registered as a voter and who requires any correction in his designation or other particulars or to have his name transferred to another address or electoral division may apply to the Electoral Commission in the form set out in the Third, Fourth or Fifth Schedule to this Act, as the case may be:

Provided that such correction or transfer shall be made by the Commission whether or not any such application has been made, either on its own initiative or following the application by any other registered voter, hereinafter referred to as the applicant, if it is satisfied that such correction or transfer is justified and provided that it shall first communicate its decision in writing to the person to whom it relates and to the applicant, if any, either of whom shall have the right to appeal to a Revising Officer.

**24.** Where the Commission is satisfied following the application by any other registered voter, hereinafter referred to as the applicant, or on its own initiative, that any person who is registered as a voter and whose name appears on the Electoral Register is not qualified to be registered as a voter, the Commission shall, subject to the provisions of section 26 of this Act, cancel the registration of such voter and expunge his name from the Electoral Register.

**25. (1)** The Commission shall inform the applicant and the voter concerned of its decisions on any application for registration as a voter or to correct, to transfer or cancel the registration of a voter and of any registration, correction, transfer or cancellation made on its own initiative.

**(2)** The Commission shall effect the necessary changes in the Register in accordance with its decision and shall inform the voter concerned and the applicant of his right to appeal to a Revising Officer.

**26. (1)** Prior to proceeding to the cancellation of the registration of any voter in terms of section 24 of this Act the Commission shall by notice in writing require such person to provide such information or such proof or evidence as it may deem necessary to establish such person's right to remain registered as a voter and if such person fails, within ten days of the posting of such notice by the Commission, to provide in writing such information, proof or evidence to the satisfaction of the Commission, the Commission may cancel his registration or expunge his name from the Electoral register:

Provided that in the case of a person's total failure to answer the aforesaid notice within the aforesaid period of time, the Commission shall not proceed to cancel his registration or expunge such person's name from the Electoral Register before it shall have served upon such person a further notice in writing to provide such information, proof or evidence to the satisfaction of the Commission within a period of seven days from the service of such further notice.

**(2)** Any written communication which the Commission requires to be made to it under this section may either be delivered at the Electoral Office or forwarded to the Commission free of any charge for posting.

**(3)** The further notice referred to in the proviso to subsection (1) of this section shall be served by a police officer or by any other person appointed for the purpose by the Commission and such notice shall be deemed to have been served by delivery of the notice to the person to whom it is addressed, or to a person who is or reasonably appears to be not under fourteen years of age and who is either a member of the family or household or in its service at the address of the voter as shown in the Electoral Register.

**(4)** Where the Commission decides to expunge the name of a voter from the Electoral Register, it shall inform the voter accordingly by means of a letter addressed to him and shall copy such letter to the party delegates.

**27. (1)** The Commission may not refuse an application by a person to be registered as a

voter or cancel the registration of a voter, or expunge his name from the Electoral Register in terms of paragraph (a) of section 58 of the Constitution before it obtains the decision of the Medical Board established in terms of section 14 of this Act or unless such person has been interdicted for mental incapacity by a competent court.

(2) The decision of the Medical Board shall be final and binding on the Commission and the voter and no appeal shall lie therefrom.

(3) Decisions of the Medical Board that a voter is of unsound mind shall be taken by unanimous vote and shall be communicated in writing to the Commission who shall thereupon inform the voter.

(4) Every public officer shall be duty bound to provide the Board with any information it may require regarding the health of the person whose entitlement to be registered or to continue to be registered as a voter is being considered.

(5) The Medical Board shall regulate its own procedure.

**28.** The Commission shall, at least, every calendar month give to each party delegate a list showing new registrations, corrections, transfers and cancellations carried out by it in virtue of the preceding provision of this Act indicating the name and all particulars of the person concerned and the reason for effecting any change as well as a list showing any change effected to street names and all particulars of voters effected by any such change.

**29.** The party delegates shall have the same powers granted to the Commission by virtue of section 19 of this Act to seek, through the Commission, information from public officers regarding the entitlement of a person to be registered as a voter and the duty of such public officers to give such information shall also apply in relation to the party delegates. This information is to be given with all the necessary details and is to be given forthwith. The Commission shall give a copy of all requests for information and of all replies as to the other party delegates.

## **PART VI**

### **Publication of Electoral Register**

**30.** (1) The lists of all persons who are entitled to be registered as voters for the election of Members to the House in accordance with the provisions of this Act, shall constitute the Electoral Register.

(2) The Electoral Register shall be compiled in accordance with the provisions of this Act.

(3) The Electoral Register shall be compiled in such manner that the public may be aware of the persons who are registered as voters, and in such manner to enable the identification of every voter and give every voter the opportunity to object to the inclusion of any other voter in accordance with the provisions of this Act.

**31.** (1) The Electoral Register shall consist of as many parts as there are localities, one for each locality, and each locality may be subdivided into as many parts as the Commission may deem necessary or convenient. For the purposes of this Act, the word 'locality' shall have the same meaning assigned to it in the Local Councils Act, 1993.

(2) The Electoral Register shall, in each section be drawn up in alphabetical order

according to the name of each street and voters shall be shown in alphabetical order of surnames under the name of the street where they are registered and against the name of each voter his ordinary place of residence and identity card number shall be shown.

(3) The Electoral Register may also include against the name of each voter any other particulars which may be considered necessary for the proper identification of each voter.

(4) Any printing error in any particular so shown shall not of itself affect a person's entitlement to vote.

**32.** (1) The Electoral Register shall include all persons who are entitled to be registered as voters in accordance with the provisions of this Act, on the day mentioned in the following section.

(2) The Electoral Register shall not include any person who is not entitled to be registered as a voter in accordance with the preceding provisions of this Act, on the day mentioned in the following section.

**33.** (1) The Commission shall cause a revised Electoral Register to be published in the Gazette twice a year, that is to say, in the month of April and in the month of October. Such Register shall contain all corrections, additions, transfers and cancellations as on the thirty-first day of March and the thirtieth day of September immediately preceding the publication thereof.

(2) The Electoral Register shall be published in two distinct formats. The first format shall be divided into as many parts as there are localities whilst the second format shall be divided into as many parts as there are divisions.

For all the purposes of this Act the Electoral Register published in the first format shall be considered to be the Electoral Register required by this Act and changes relative to the registration of voters in the said register appearing in the said first format shall also be made and published by the Commission in the register published in the second format.

(3) Each format of the Electoral Register shall indicate the total number of voters registered in each locality or division as the case may be subdivided by street, part of locality or locality as the case may be, as well as the total number of voters for each locality and division, as the case may be, that have been added, deleted, transferred from one locality or division, as the case may be, to another and shall indicate by a distinguishing mark the names of all voters who have been registered for the first time or who have been added to the register after their registration had been previously canceled by the Commission. Such information shall be given in such format as the Commission may deem makes it most comprehensible to the public.

(4) Where the Commission in exercise of its powers under subsection (1) of section 31 of this Act, subdivides any locality it shall show such information for each part of that locality so subdivided.

(5) The provisions of this section shall be and remain inoperative from the day of any dissolution of the House until the conclusion of the following general election.

(6) Notwithstanding the provisions of the last preceding subsection, where, prior to any dissolution of the House of Representatives --

(a) any alteration to the boundaries of the electoral divisions has been approved by the House under the provisions of section 61 of the Constitution: and

(b) such alteration has not been shown in a revised electoral register under subsection (1) of this section,

the Commission shall cause to be published in the Gazette, as soon as possible after the dissolution and in any case not later than three working days after the publication of the election Writ in the Gazette, a revised Electoral Register, the revision of which consisting in the name included in the Electoral Register last published being shown in accordance with such alteration.

(7) The Commission shall in addition publish the Electoral Register in electro-magnetic format.

**34.** Any additions, cancellations or corrections to the Electoral Register ordered by a Revising Officer in accordance with the provisions of this Act shall be published by the Commission in the Government Gazette and shall form part of the Electoral Register.

**35.** Whenever an election is to be held, the voters shall be those whose names appear in the revised Electoral Register last published, subject to such additions, cancellations or corrections ordered by the Revising Officer, and the Commission shall not have the right to withhold any voting document to any voter who is so registered unless such voter has died:

Provided that nothing in this section shall entitle any person to vote who has ceased to have the necessary qualifications to vote or relieve such person from any penalties to which he may be liable for so voting. Nor shall anything in this section entitle any person to vote unless he satisfies the requirements of this Act.

## **PART VII**

### **Appeals to Revising Officer**

**36.** Any person who has his designation or other particulars in the Electoral Register corrected or his name transferred to another address or division by virtue of the power vested in the Commission by the proviso of section 23 of this Act may appeal to a Revising Officer not later than twenty-one days from the day when he is officially informed of the decision of the Commission.

**37.** Any person whose application to be registered as a voter or for the correction of his designation or other particulars appearing in the Register or for the transfer of his name to another address or division is rejected by the Commission shall have the right to appeal to a Revising Officer not later than twenty-one days from the day when he is officially informed of the decision of the Commission.

**38.** Any person whose registration as a voter is canceled from the Electoral Register by virtue of the power vested in the Commission in terms of section 24 of this Act shall have the right to appeal to a Revising Officer not later than twenty-one days from the day he was officially informed of the decision of the Commission.

**39. (1)** Any person whose name has not been included in the Electoral Register and who

claims that he has the necessary qualifications to vote, and, every voter who claims that his designation' address or other particulars have not been correctly shown in the Electoral Register may appeal to a Revising Officer to have his name included in the Electoral Register or to have his designation, address or other particulars corrected as the case may be, not later than twenty-one days after the publication of the Electoral Register.

(2) A Revising Officer may order the inclusion of a person's name in the Electoral Register or the correction of the designation, address or other particulars in accordance with subsection (1) of this section, notwithstanding that no prior application may have been made to the Commission for such purpose.

**40.** (1) Any registered voter who claims that any other person whose name appears in the Electoral Register either is not entitled to be registered as a voter, or, that the relative designation, address or other particulars are not correctly shown in the Electoral Register in accordance with the provisions of this Act, shall have the right to appeal to a Revising Officer not later than twenty-one days after the publication of the Electoral Register either to have the name of such voter expunged from the Electoral Register or to have the designation, address or other particulars correctly shown.

(2) A Revising Officer may order the cancellation of the registration of such voter or the correction of the designation, address or other particulars in accordance with subsection (1) of this section, notwithstanding no prior application may have been made to the Commission for such purpose.

**41.** (1) A Revising Officer shall before determining any appeal hear the appellant, the Commission and the person, if any, against whom the appeal is made, and shall admit such other evidence and hear such other persons as he may consider necessary.

(2) Where the application is for the cancellation of the registration of a voter on the grounds of mental infirmity' the Revising Officer shall forthwith refer such application to the Medical Board referred to in section 27 of this Act.

(3) The provisions of subsection (1) of this section shall mutatis mutandis apply to proceedings before the Medical Board as they apply, to proceedings before a Revising Officer.

(4) The decision of the Medical Board shall be signed by all the members of the Medical Board and its Chairman shall refer it to the Revising Officer who shall determine the appeal in accordance with such decision.

**42.** Revising Officers and the Court of Appeal shall adjourn sine die the consideration of all applications filed under the provisions of this Act and still pending fourteen days before the date fixed for the election.

**43.** The Registrar of each of the Courts of Magistrates shall without delay forward to the Commission a certificate signed by the Registrar personally giving the names, addresses and particulars of all persons who, by order of the Revising Officer are to be added to or expunged from the Electoral Register or whose designation, address or other particulars are to be corrected and the Commission shall revise the Electoral Register accordingly. Copies of such certificates shall be sent by the Commission to the party delegates within five days of their receipt and shall be published in the Gazette as soon as possible.

## PART VIII

### **Notices, Voting Documents and Ballot Papers.**

**44. (1)** Whenever an election is to be held, the President shall give notice thereof to the Commissioners by a Writ under his hand, hereinafter referred to as 'the Writ' in the form set out in the Sixth Schedule to this Act.

(2) The Commissioner shall cause the Writ to be published in the Gazette.

**45.** Within three days of the publication of the Writ, the Commissioners shall cause a notice or notices to be published in the Gazette stating

(a) the place where, and date and time when, the Commissioners will be in attendance to receive nominations of candidates for election as Members of the House, and any objections to such nominations, such place being referred to in this Act as the Electoral Office. The time during which nominations of candidates for election may be made shall not be less than three days and shall not commence to run before six days from the date of the publication of the notice referred to in this section, and the time during which objections to such nominations may be made shall not extend beyond two days from the expiration of the time fixed for the receipt of nominations;

(b) the places where, and the days and hours when voting shall be held. Voting shall not take place before the expiration of three days from the date of the publication of the notice referred to in subsection (3) of section 54 of this Act;

(c) the place to which the ballot boxes shall be taken by the Assistant Commissioners after the close of voting, which shall also be the place where such boxes shall be kept until the counting of the votes;

(d) the place where, the date and time when the ballot boxes shall be opened and the counting of votes shall take place.

**46. (1)** Within nineteen days of the publication of the Writ, the Commission shall forward to each voter, whose name appears in the last revised Electoral Register, a document hereinafter referred to as the 'voting document' in the form set out in the Seventh Schedule to this Act and made of such security paper and material and in such manner as in the opinion of the Commission provides adequate security against forgery. Voting documents shall be numbered consecutively, each document having such distinctive number stamped on the face of it:

Provided that wherever the Commission is satisfied that a person whose name appears on the Electoral Register is dead, the relative voting document shall not be forwarded, and where such voting document has been forwarded the Commission shall withdraw it.

Provided further that the Commission shall not forward a voting document to any voter in respect of whom the Commission does not possess a photograph, and in respect of such voters the Commission shall following the following procedure

(i) within three days of the publication of the writ, the Commission shall publish in the Gazette a list of the said voters stating their name, surname, place of residence and identity card number;



(ii) the names of such voters shall not be published in the list mentioned in subsection (5) of this section;

(iii) the voting document of such voters shall only be issued if the voter satisfies the requirements of section 47 of this Act and shall be in accordance with the provisions of that section.

(2) The political parties shall be granted all reasonable facilities to watch the printing of all voting documents, to check the exactness thereof and generally to ensure that only voting documents of voters entitled to receive them are printed. The Commission shall also print on the voting document such reasonable security code as requested by the political parties and as the Commission may think fit, provided that the political parties shall deliver such security code to the Commission immediately prior to the start of printing of the voting documents or not later than such time, not being prior to twenty-four hours prior to such printing, that the Commission may establish because of technical necessity; the delegates shall be given the facility to verify the exactness thereof even by means of a dummy run of the process and by means of an audit trail that establishes the validity of the system at any stage of the process and to be given a copy of the audit trail.

(3) The voting documents printed in accordance with the previous subsection of this section shall, until such time as they are forwarded to voters, be kept in boxes sealed with the seal of the Commission. The party delegates shall have the right to affix their own seals to such boxes and to be present whenever such seals are broken. This section shall mutatis mutandis also apply with regard to the voting documents which remain undistributed, in terms of subsection (4) of this section, when voting documents are issued in terms of subsection (6) of this section, and to the voting documents which remain undistributed.

(4) The voting document shall be served on each voter by a police officer or by any other person appointed for the purpose by the Commission, and such document shall be deemed to have been served by delivery to the person to whom it is addressed or to an adult person, who either resides at the same address or is in his employment, at the address of the voter as shown in the Electoral Register. The political parties shall have the right to each nominate one representative to accompany each police officer or other person effecting service as aforesaid.

(5) When the Commissioners are unable to effect service of the document aforesaid they shall as soon as possible and in no case later than fifteen days from the time established in subsection (1) of this section, publish in the Gazette a list containing the names, identity card number and addresses of the persons on whom the voting document has not been served, and shall state the reason why service has not been effected.

(6) Any person on whom the voting document has not been served and whose name appears in the list published in accordance with the preceding subsection, may up to the Thursday immediately, preceding the day of the voting, appear personally before one of the Commissioners or other person appointed by the Commission to act on behalf of the Commissioners and claim delivery of the document.

(7) The Commissioner or other person appointed by the Commission to act on behalf of the Commissioners may examine on oath any person so appearing for the purpose of ascertaining his identity and of establishing his claim to receive the document:

(8) The Commission shall publish the place and times when voters may take delivery of their voting documents in terms of subsection (6) of this section. The Commission may

designate any place for the collection of undelivered voting documents provided that the Commission shall allow a sufficient period for the collection of documents from each locality and a further period of time for collection from its office

(9) Notwithstanding anything contained in subsections (6), (7) and (8) of this section, where the Commission is aware that any person whose name appears on the list mentioned in subsection (5) of this section is registered in a retirement home, or is in a hospital, or suffers from a disability or is bed-ridden or is otherwise physically unable to appear at one of the places designated by the Commission in terms of subsection (8) of this section to claim delivery of his voting document, it shall be the duty of the Commission to effect service of such document on the person concerned either through one of the Commissioners or by any person appointed for the purpose by the Commission in their stead. The Commissioner or person appointed as aforesaid may examine such person on oath for the purpose of establishing his identity and of establishing the claim to receive the document. The document aforesaid shall not be delivered to such person unless he produces his identity card to the Commissioner or person appointed as aforesaid, as the case may be.

(10) If for any reason whatsoever other than any of the reasons mentioned in section 47 of this Act, the Commission decides that it is necessary to reprint any voting document or documents it shall immediately inform the political parties accordingly giving them all relative information thereto. Any documents so reprinted shall bear the mark 'REPRINT' which mark shall not in any way obscure any of the information contained in the document.

(11) The political parties shall be given the faculty to supervise the process mentioned in the preceding subsections.

Provided that the document aforesaid shall not be delivered to him unless he produces his identity card to the Commissioners or other person appointed by the Commission to act on behalf of the Commissioners.

47. Where a person whose name appears in the last revised Electoral Register, but does not appear in the list published under subsection (5) of section 46 of this Act, has not received the voting document or, after the receipt of such document, has lost or destroyed such document such person may not later than 9.00 p.m. of the Wednesday immediately preceding the commencement of voting, appear before one of the Commissioners, and if

(a) he proves his identity by the production of his identity card; and

(b) makes a declaration on oath before any such Commissioner that he has not received the voting document or that, after the receipt of such document, he has lost or destroyed it, and such further declarations on oath as the Commissioner may require, he shall be given a voting document which shall bear the mark 'SPECIAL', which mark shall not in any way obscure any of the information contained in the document. The word 'SPECIAL' shall also be entered again the name of such voter in the list mentioned in subsection (1) of section 64 of this Act and a list of all the persons to whom a voting document is issued under this subsection shall be kept at the Electoral Office and shall be open to inspection by any candidate, candidate's agent, party agent or party delegate at all reasonable times until the poll closes.

48. (1) Not later than the Friday before the start of the poll, the Commissioners shall cause to be published in the Government Gazette a list indicating the number of voting

documents printed, the number distributed in terms of subsection ( 1 ) of section 46, the names and addresses of the persons who up to that time have claimed delivery thereof in terms of subsection (6) of section 46, the number of voting documents issued in terms of section 47 and the name, address and identity card number of the persons to whom such documents have been delivered, the number and reasons for voting documents withheld and the names, addresses and identity card numbers of the voters concerned and the number of voting documents remaining uncollected and the names, addresses and identity card numbers of the voters concerned.

(2) Any political party shall have the right to nominate representatives to be present during the issuing of the voting documents in terms of subsection (6) of section 46 and section 47 of this Act and for this purpose the said parties shall be provided by the Commission with all such information as is required by them and as they may deem necessary for the better performance of their duties.

**49.** (1) The Commission shall as near as practically possible to the day of the poll print such number of ballot papers as may be necessary for the poll in such form and on such material as may be provided for in this Act and not later than two days prior to the commencement of voting, the Commission shall cause to be published in the Government Gazette the number of ballot papers printed for each electoral division and the number to be distributed to each individual polling booth.

(2) The Commission shall ensure as far as is practically possible that ballot papers are made of such security paper and carry such markings as to ensure that they may not be duplicated.

(3) The ballot-paper of each voter shall consist of a paper in the form set out in the Eighth Schedule of this Act, containing a list of candidates described by the name (including any nickname), address and profession or occupation as given in their respective nomination paper and as approved by the Electoral Commissioners.

(4) Candidates shall be arranged by political party and, within each party group alphabetically in the order of their name. If there are two or more candidates of one party with the same surname, they will be arranged in order of their other name or names.

(5) Every political party contesting the election shall provide the Commission with the names of the candidates contesting the election in its own interest. Such list shall be conclusive evidence as to whether a particular candidate belongs to that political party.

(6) If supplied by the party to which he belongs, there shall be printed on the ballot paper opposite the name of each candidate belonging to that party any badge or device, approved by the Electoral Commission, indicating the political party, if any, to which the candidate belongs, or otherwise calculated to assist the identification of the candidate by the voter.

(7) Ballot-papers shall show different colours for parties contesting all electoral divisions and having not less than four candidates in each division. Such colours shall be assigned by the Electoral Commission

Provided that any party may decline the colour so assigned to it, and in any such case the ballot paper shall not shown any special colour for that party.

(8) Parties will be placed on the ballot paper in alphabetical order.

**50.** (1) On the day or days as near as practicable to the day of voting, the Commission shall prepare in different packets the ballot papers and all other documents and materials to be consigned to the Assistant Commissioners on the day of voting.

(2) The Electoral Commission shall retain possession of all packets until the day of the poll when it shall deliver the same to the Assistant Commissioners prior to the start of voting.

(3) Representatives of the political parties shall be granted all reasonable facilities to oversee the printing and checking of all ballot papers, the packing thereof and their distribution to the Assistant Commissioners, and to affix their seals to all packets prepared by the Electoral Commission for delivery to the Assistant Commissioners.

## **PART IX**

### **Nomination of Candidates**

**51.** (1) A candidate for election shall be nominated in writing. The nomination paper which shall be in the form set out in the Ninth Schedule to this Act, shall be signed by the candidate himself, (or, in the event of his absence from these Islands, by a duly appointed representative), and by, at least, four voters registered in the electoral division for which the candidate is nominated. The nomination paper shall be delivered to one of the Commissioners at the Electoral Office by the candidate himself or if he is prevented by illness or absence from these Islands by his lawful representative within the period specified in the notice referred to in section 45.

(2) Immediately after a nomination paper has been delivered to the Commission the name of the candidate shall be posted at the entrance of the Electoral Office with an indication of the division for which the candidate was nominated. Delivery of the nomination paper to the Commission and acceptance of delivery by the Commission shall not of itself indicate the validity of the nomination and the Commission shall not make any statement thereon other than inform the candidate accordingly and to take delivery of the form and deposit, if any, and give due receipt.

(3) Objections may be made to a nomination on the ground the candidate is not registered as a voter in the last published Electoral Register or that the description of the candidate is insufficient to identify the candidate, that the nomination paper does not comply with, or was not delivered in accordance with the provisions of this Act, that the deposit prescribed by section 52 of this Act has not been paid or that the candidate already stands nominated for two electoral divisions:

Provided that no such objection may be made after the expiration of the time fixed for the making of such objection in the notice referred to in section 45.

(4) Every objection shall be in writing and signed by the objector and shall specify the ground of the objection. The Commission itself shall raise an objection if it believes that any of the grounds mentioned in subsection (3) of this section exist.

(5) For the purpose of this section, any voter may ask the Commissioners to be allowed to see and examine any nomination paper accepted by them.

(6) On receipt of any objection in terms of subsections (3) and (4) of this section, the Commission shall fix a date for the hearing of the objection, shall immediately inform in

writing the candidate objected to, giving him a copy of the objection filed against him, and shall inform both the objector as well as the candidate of the day appointed for the hearing of the objection. Service shall be effected by any means which the Commission deems proper to ensure receipt by the parties concerned of the said notices in the least possible time.

(7) All objections shall be determined by the Commission not later than two days after the expiration of the time allowed for the making of objections by this Act and both the objector as well as the candidate shall have the right to appear before the Commission accompanied by any other person they may think fit to assist them in their representations to the Commission.

(8) The Commission shall at least two days before delivering its decision publicly announce the time and date when its decision shall be delivered. The decision shall be delivered in writing and shall contain the grounds upon which it is based. The Commission shall cause such decision to be posted up in a public place at its office where any person interested may view it.

(9) Where the decision of the Commission does not uphold the objection, it shall be final. Where the decision upholds the objection the candidate may contest the decision by filing an application in contestation with the Commission before the Court of Appeal within twenty four hours of the delivery of the decision by the Commission. The Court of Appeal shall hear such applications with urgency and shall determine the same before the time when in terms of section 49 of this Act the Commission is to start printing the ballot papers.

**52.** (1) A candidate at any election shall deposit, or cause to be deposited on his behalf, with the Commission, before his nomination can be accepted, the sum of forty liri in respect of each nomination, and if he fails to do so the nomination in respect of which no deposit is to be made shall not be accepted by the Commissioners.

(2) If after the deposit is made the candidature is withdrawn in pursuance of the provisions of this Act, the deposit shall be returned to the person by whom it was made; and if the candidate dies after the deposit is made and before the voting has commenced, the deposit, if made by him, shall be returned to his heirs and if not made by him, shall be returned to the person by whom it was made.

(3) If a candidate who has made the required deposit is not elected, and the number of votes polled by him does not exceed one-tenth of the number of votes polled divided by the number of members to be elected for that division, the amount deposited shall be forfeited and paid by the Commissioners into the Consolidated Fund but in any other case the amount shall be returned to the candidate, where the candidate is elected, as soon as he has taken the oath as a member, and where the candidate is not elected, as soon as practicable after the result of the election is declared.

(4) Where a candidate is nominated at an election in two divisions he shall not recover his deposit more than once unless he is elected in both divisions and if such candidate fails to obtain, in either division, the minimum number of votes required in accordance with subsection (3) of this section he shall forfeit both deposits.

(5) For the purpose of this section the number of votes polled by a candidate shall be the highest number of votes credited to him at any time during the counting of the votes.

**53.** If at the expiration of the time fixed for the nominations of candidates, no candidate shall have been nominated for an electoral division, the Commissioners shall cause a

report to that effect to be published in the Gazette on the following day, and in such case the President may issue a new Writ for an election for that division.

**54. (1)** If at the expiration of the time fixed for the receipt of nomination, the number of candidates nominated for an electoral division is equal to or less than the number of candidates that the voters in such divisions are entitled to return, the Commissioner shall return to the President the names of the candidates nominated as members elected to the House to represent that division and such return shall be published in the Gazette.

(2) If the number of candidates nominated for an electoral division be less than that which the voters in that division are entitled to return, the President on the return made to him in terms of subsection (1) of this section, shall issue a new Writ for the election of members to fill the remaining vacant seats in that electoral division, and if thereupon no candidates are nominated or if the number of candidates nominated is less than the number of vacant seats, the seats thereafter remaining vacant may be filled by the co-option of a member of members by the House and the President shall not issue a new Writ in respect thereof.

(3) If more than such number of candidates as aforesaid be nominated for an electoral division, the Commissioners shall cause a notice to be published in the Government Gazette over their signature stating the names of the candidates and the divisor for which they have been nominated. No person whose name has not been published in the said notice may be elected to be a Member of the House

**55.** A candidate may, at any time until the ballot papers for the district he is contesting have started to be printed in terms of section 49 of this Act, withdraw his candidature by giving notice to the Commission to that effect. Such notice shall be signed by the candidate or if he is absent from these Islands, by his duly appointed representative.

## **PART X**

### **Assistant Commissioners**

**56. (1)** Subject to the provisions of the following sections of this Act the Commission shall appoint as many Assistant Electoral Commissioners hereinafter referred to as 'Assistant Commissioners' as may be necessary, to superintend the election in the manner herein prescribed. No Assistant Commissioner shall be appointed to superintend the poll in the electoral division in which he resides or where he habitually exercises his profession or calling.

(2) The Assistant Commissioners shall take the oath of office as set out in the Tenth Schedule to this Act, before one of the Commissioners and shall follow the instructions which they may receive from the Electoral Commission for the discharge of their duties.

**57. (1)** Every political party shall, within ten days of publication of the Writ, be entitled to nominate a number of persons, equal to one and a half time the number of polling booths that there are in the electoral divisions being contested by it, to act as Assistant Commissioners, and to the extent that such persons have the necessary ability to perform the functions of Assistant Commissioner and are not disqualified from so acting by the provisions of this Act the Commission shall appoint Assistant Commissioners from amongst such persons.

(2) In submitting such lists the political parties may distinguish between those persons whom they wish to see appointed to a polling place and those persons whom they wish to be held in reserve and shall moreover have the right to indicate who of the persons

nominated by them should be assigned to polling places in retirement homes and hospitals. The political parties may, if they so prefer, submit such lists in electro-magnetic format. Notwithstanding the nomination by a political party each person so nominated shall still file any application required by the Commission from any other person wishing to serve as Assistant Commissioner

(3) For the purpose of the time established in subsection (1) of this section, the Commission shall not later than two days after the publication of the Writ inform the parties of the number of Assistant Commissioners that each party will be required to nominate.

(4) The Commission shall moreover itself nominate as Assistant Commissioners such number of persons as is necessary in order that in each of the polling booths there be in attendance at all times at least one person nominated by the Commission to act as Assistant Commissioner.

(5) In no case shall there be less than three Assistant Commissioners nominated to superintend the poll in each polling booth and should all or any of the political parties fail to nominate all or any Assistant Commissioners in terms of and within the time established in subsection (1) of this section, the Commission shall itself nominate other Assistant Commissioners in order to ensure that, at least, three Assistant Commissioners are in attendance in each polling booth.

(6) The Assistant Commissioner nominated by the Commission shall act as Chairperson at the polling booth to which each group of Assistant Commissioners are assigned and during voting only the Chairperson shall, when required, communicate with the voters.

(7) The Commission shall, at least five days prior to the start of the poll, forward to each Assistant Commissioner or to the party on their behalf a tag to be worn by them in the polling place indicating their place as Assistant Commissioners and their names..

**58.** (1) A person shall not hold the office of Assistant Commissioner if he is a candidate for election to the House, or is a relative by consanguinity or affinity up to the second degree to any candidate for election, or is not registered as a voter in the last published Electoral Register or is manifestly in the opinion of the Commission, after consulting the party delegates unsuitable or not sufficiently qualified to perform the functions of Assistant Commissioner.

(2) Within two days following the day mentioned in subsection (1) of section 57 the Commission shall deliver to the political parties a list of all persons nominated to act as Assistant Commissioners indicating their names, identity card numbers, addresses and occupation as well as the polling booth at which each will be in attendance.

**59.** (1) The political parties, not later than four days after the day mentioned in subsection (2) of section 58, shall have the right to object in writing to the Commission with respect to the appointment of any person as Assistant Commissioner on any of the grounds mentioned in subsection (1) of section 58.

(2) Where an objection is received by the Commission in terms of the preceding subsection of this section, it shall, not later than the next following day, call a meeting of the party delegates to discuss such objections.

(3) Any objection made in accordance with the preceding subsections shall be determined by the Commission. The determination by the Commission shall be final and binding on all concerned. Where after hearing such objections the Commission

determines that a person nominated by a political party to be appointed as an Assistant Commissioner shall not be so appointed, the political party which had nominated that person shall have the right to nominate another person in his stead.

(4) The fresh nominations mentioned in the preceding subsection of this section shall be made immediately after the determination of all the objections. The times mentioned in subsections (1) and (2) of this section shall apply to objections to persons nominated as Assistant Commissioners in terms of subsection (3) of this section, and if any objection is received and upheld by the Commission, the Commissioner itself shall appoint another person to be Assistant Commissioner in his stead and such appointment shall be final and no objection may be made in respect thereof.

(5) Upon final determination of all objections the Commission shall assign the Assistant Commissioners to the various polling booths, such distribution shall be made in such manner as to ensure that in each polling booth there is, at least, one Assistant Commissioner nominated by the Commission and one Assistant Commissioner nominated by each party contesting the election in that division

Provided that where a political party has not nominated a sufficient number of persons to be appointed Assistant Commissioners, the Commission shall only be required to assign, in respect of that political party' such Assistant Commissioners as have been nominated by it and appointed Assistant Commissioners.

(6) The Commission shall, within two days of the final determination referred to in the preceding subsection, cause a list to be published in the Gazette showing the name, address, identity card number and occupation of each Assistant Commissioner appointed, the polling booths to which each has been assigned, and indicating the Assistant Commissioners who are assigned but held in reserve.

(7) After the final distribution of all Assistant Commissioners and up to the end of voting, the Commission alone shall have the right to substitute Assistant Commissioners and then only for grave and sufficient reasons in such manner as to ensure that where the Assistant Commissioner substituted is one nominated by a political party, his substitute shall be a person nominated by the same party, provided a sufficient number of Assistant Commissioners have been nominated by that party.

## **PART XI**

### **Voting**

**60.** (1) On or before the day of nomination at an election a person shall be named in writing by or on behalf of each candidate as his agent for such election and such person is in this Act referred to as the candidate's agent.

(2) A candidate may name himself as candidate's agent, and thereupon shall, so far as circumstances admit, be subject to the provisions of this Act, both as a candidate and as a candidate's agent, and any reference in this Act to an candidate's agent shall be construed to refer to the candidate acting in his capacity of candidate's agent.

(3) One candidate's agent only shall be appointed for each candidate, but the appointment, whether the candidate's agent appointed be the candidate himself or not, may be revoked, and in the event of such revocation or of the death of the candidate's agent, where such event is before, during or after the election, then forthwith another candidate's agent shall be appointed, and his name and address declared in writing to the Commissioners, who shall forthwith give public notice of the same.



**61.** (1) Every political party shall have the right to nominate as its agents such number of persons as is equal to the number of ballot boxes and such persons are in this Act referred to as party agents. A political party may designate as a party agent, a person already nominated by it as Assistant Commissioner in which case such person may act both as Assistant Commissioner and party agent.

(2) The party agents so nominated shall have the right to be present in the polling booths prior to the start and at the close of the poll for the purposes provided for in this Act.

(3) Political parties exercising the right granted to them by subsection (1) of this section shall forward a list to the Commission containing the names, addresses and identify card numbers of the persons nominated by them as its agents not later than the day appointed for the nomination of Assistant Commissioners in terms of section 57 of this Act.

**61A.** (1) Each political party may nominate a number of persons equal to the number of electoral divisions that are being contested by it to act as district co-ordinators for it and such persons are in this Act referred to as district agents.

(2) The district agents shall represent the party nominating them with the Commission in the district to which they are appointed and for this purpose shall have access to the Commissioners at all times and shall have the right, notwithstanding any other provision of this Act to the contrary, to accompany any Commissioner into any polling place or polling booth for the purpose of determining any matter that may arise during voting:

Provided that a district agent may not so accompany a Commissioner unless a district agent of another party is also present.

(3) Unless exceptionally authorised to do so by any Commissioner, in no case may a district agent interrogate any person lawfully entrusted by the Commission to carry out any duty during the elections or to seek information from them nor may they without such authorisation interrogate any voter.

(4) Political parties exercising the right granted to them by subsection (1) of this section shall forward a list to the Commission containing the names, addresses and identity card numbers of the persons nominated by them as district agents not later than the day appointed for the nomination of Assistant Commissioners in terms of section 57 of this Act.

**62.** No person shall be appointed district agent, candidate's agent or party agent who is not registered as a voter in the last published Electoral Register or who has within seven years previous to such appointment been found guilty of any corrupt practice under this Act or is determined by the Commission to be manifestly unsuitable to act as such.

**63.** (1) The Commissioners shall not later than seven days before the start of the voting forward to such agent a tamper proof identity document bearing the photograph of the agent franked with the seal of the Commission and indicating the name, address and identity card number of the agent and by whom he has been nominated. The identity documents as issued shall be progressively numbered, shall be of a different colour so as to easily distinguish candidate and party agents, and shall be worn in a conspicuous manner by the agent concerned in the exercise of his functions.

(2) The Commission shall forward to each political party which asks for them in writing the lists of all agents submitted by all the other political parties as well as all candidates'

agents submitted by the candidates and by whom they have been nominated within two days of the receipt thereof and the political parties may make objections thereto within four days thereof.

**64. (1)**

(a) In each polling booth a list of voters entitled to vote in that polling booth together with copies of the photograph of each voter shall be kept by the Assistant Commissioners. Every page of such list and every correction or cancellation thereon shall be signed by a Commissioner and a party delegate of each political party.

(b) Copies of such lists without photographs shall be forwarded by the Commission to all political parties contesting the election, who ask for such lists in writing, at least fifteen days prior to the day fixed for voting and the Commission shall keep the political parties informed of all changes effected to such lists. The lists shall identify the polling booth where each voter entitled to vote shall exercise his right to vote, shall list the voters who are to vote in each polling booth in alphabetical order according to the surname so the voters, assigning to each voter a distinct and consecutive number and indicating the name, surname, address and identity card number of each voter as well as the registered number of the respective voting document of each voter.

(c) The Commission shall also forward to political parties receiving such lists any alteration, addition or deletion to or from such lists on a daily basis up to the day immediately preceding the poll and such political parties may check the correctness of the information held or received by the Commission at any time.

(d) The name of every voter who delivers a valid voting document and to whom a ballot paper is delivered by the Assistant Commissioners shall be marked on such list kept for the purpose by the Assistant Commissioners and in such manner as is directed by the Commission.

(2) Voting shall be held on a Saturday. Voting shall start at 7.00 a.m. and shall close at 10.00 p.m.:

Provided that every voter, who at the close of time of voting is present in a polling place for the purpose of voting shall be entitled to receive a ballot paper and to vote:

Provided further that, where the Commission are satisfied that the time allowed for voting has been, or will be, for any reason beyond their control, reduced at all or in any one or more of the places they may, whether before or after the poll has commenced, extend the time fixed for the poll at such polling place or places so as to make good for the time lost, as aforesaid.

(3) The Commission shall, as far as possible, provide facilities so that handicapped persons, including persons in wheelchairs, may vote in comfort.

**65.** No public meeting or public demonstration shall be held on the day immediately preceding the commencement of voting and on the day fixed for voting.

**66.** During the time fixed for voting at any polling place, no person, other than a person

waiting to vote, shall loiter within a distance of fifty metres from that polling place nor shall any person within the said distance of fifty metres make political propaganda in any manner. Any club, shop or other public establishment within such distance shall be kept closed on polling day.

**67.** No person shall congregate during voting, in any street square or other place, leading from the place of residence of any voter to any polling place, in such numbers or otherwise in such manner as to be likely to intimidate any voter, or to obstruct his approach to or from a polling place, or to lead to a breach of the peace.

**68. (1)** The Commission shall ensure that, as far as to polling possible, there is in each polling booth an adequate distance between the place where the Assistant Commissioners sit and the voting compartments within which voters are to mark their ballot papers. The voting compartments shall be constructed in such a manner as to exclude the possibility that any person may see how the voter is marking his ballot paper.

**(2)** The Commission shall request the political parties to furnish it with a sufficient number of photographs of its candidates in order that the Commission may affix one photograph of each candidate in each polling booth of the electoral division in which the candidate is contesting. Each photograph shall have the name of the candidate and the name and badge of the party he is representing, if any, and photographs shall be displayed in the order that the candidates' names appear on the ballot paper. The Commission shall give such directions as it may deem appropriate regarding the size and format of such photographs.

**(3)** The Commission shall ensure that in each voting compartment a copy of the Instructions to Voters set out in Schedule 8B to this Act are affixed in a place clearly visible to the voter and that writing instruments are available for use by voters.

**(4)** The Commission shall direct the Assistant Commissioners to ensure that they place the ballot boxes as near as possible to where they will be sitting and in such manner as they may clearly see the voter introducing the ballot paper into it.

**(5)** The Commission shall prepare a room or rooms in each polling place wherein to store until the polling day the ballot boxes, the list of persons entitled to vote, ballot papers and other relevant documents and materials to be used in that polling place on polling day. The room shall have adequate lighting facilities and shall allow the visual checking of the inside through a small opening in the door.

**(6)** The political parties shall be afforded all facilities to inspect all polling places well in advance of polling day and to make suggestions to the Commission on the use thereof.

**(7)** The ballot boxes shall be of such size and shall be manufactured of such materials as the Commission shall determine provided that the Commission shall ensure that it is suitable to be sealed during voting and may not be tampered with without detection. The top of the ballot box is to be made of translucent material, in as far as this is technically possible.

**68A. (1)** On any day as near as practicable to the day of the poll but not earlier than three days therefrom, the Commission shall deliver to each polling place the ballot boxes, the list of persons entitled to vote thereat, ballot papers and other relevant documents and materials to be used in that polling place on polling day and shall seal such documents and materials in the room designated for the purpose in accordance with the previous section of this Act. The room shall be lit at all times.

(2) The political parties shall have the right to oversee such transportation, to affix their seals to the room and all the openings thereto and to visually check the room through the door opening at all times.

**69.** (1) On the day fixed for polling and thirty minutes prior to the start thereof, the room in the polling place where the ballot boxes and other documents and materials have been stored by the Commission shall be opened and the boxes, documents and materials transferred to each polling booth by the relative Assistant Commissioners.

(2) Prior to the start of polling the Assistant Commissioners, in the presence of any candidates or agents as may be present shall open the ballot box consigned to them and ensure that it is empty prior to sealing it and opening the poll. If no candidate or agent is present the Assistant Commissioners shall ask any person present in the polling place to enter the polling booth and witness the sealing of the ballot boxes.

(3) After ascertaining that the ballot box is empty, if necessary by removing any extraneous material therein, the Chairperson of the Assistant Commissioners shall proceed to seal the ballot box in the manner and with the seal provided to him by the Commission ensuring that he does not seal the opening through which the ballot papers are to be inserted by voters.

(4) One agent or candidate for each of the political parties present at such sealing may affix the party seal to the ballot box.

(5) After the ballot box has been sealed the Chairperson of the Assistant Commissioners shall so attest on the form provided by the Commission and shall ask all the persons present at the sealing to sign as witnesses whereupon all shall leave the room except for the Assistant Commissioners and the poll shall start.

(6) In the event of any disagreement which cannot be resolved between those present the Chairperson of the Assistant Commissioners shall ask a Commissioner to give the necessary direction..

**70.** (1) Any voter wishing to vote shall attend at the polling booth, specified in the voting document received by him and shall deliver such document to an Assistant Commissioner at such polling booth during the hours appointed for voting.

(2) No person shall be allowed to vote unless he produces and delivers the voting document to the Assistant Commissioners.

(3) No inquiry shall be permitted at the time of voting as to the right of any person to vote, so long as the name of such person is included in the list referred to in subsection (1) of section 64 of this Act, but the Assistant Commissioners may, before the delivery of the ballot paper to a voter, put to him such questions as they may deem proper to satisfy themselves of the identity of such voter. All communications between the Assistant Commissioners and the voter whilst the latter is in the polling booth shall be made through the Chairperson of the Assistant Commissioners.

(4) The Assistant Commissioners, upon the production and delivery to them of the voting document and having satisfied themselves of the identity of the voter, shall strike out the name of the voter from the list aforesaid and shall deliver to him, after marking it with official marks, a ballot paper. Only the official mark of the Commission shall be required for the validity of the ballot paper.

(5) The Assistant Commissioners may at their discretion administer an oath to any voter in the form set out in the Eleventh Schedule to this Act.

(6) Any person refusing to answer any questions put to him under subsection (3) of this section or to take the oath referred to in subsection (5) of this section shall not be permitted to vote.

(7) The Assistant Commissioners shall not refuse a ballot paper to any person whose name is included in the list referred to in subsection (1) of section 64 of this Act and otherwise satisfies the requirements of this section, unless the person so claiming to vote, upon being questioned under this section, appears to the Assistant Commissioners not to be the person whose name is on the aforesaid list or to have previously voted at the same election.

(8) The Assistant Commissioners shall keep a written record of the taking of any oath administered to any person under this section, and of their refusal to allow any person to vote.

(9) Saving the provisions of section 77 of this Act no voter shall be allowed to vote except at the polling booth specified in the voting document produced by him for purposes of voting.

(10) A voter, who has inadvertently spoilt his ballot-paper may, on delivering the spoilt ballot paper to the Assistant Commissioner, and proving the fact of inadvertence to the satisfaction of the Assistant Commissioner, obtain another ballot paper in its place and the spoilt ballot paper shall be immediately canceled.

71. (1) Each voter shall have one transferable vote.

(2) a voter, in recording his vote

(a) must place on his ballot paper the figure 1 against the name of the candidate for whom he votes; and

(b) may in addition indicate the order of his choice or preference for as many other candidates as he pleases by placing against their respective names the figure 2, 3, 4, 5 and 6 and so on in consecutive numerical order.

(3) a ballot paper shall be invalid in which

(a) the figure 1 standing alone indicating a first preference for one candidate is not placed; or

(b) the figure 1 standing alone indicating a first preference is set against the name of more than one candidate; or

(c) the figure 1 standing alone indicating a first preference and some other number is set against the name of the same candidate; or

(d) it cannot be determined with certainty for which candidate the first preference of the voter is expressed; or

(e) any writing or mark is made by which the voter can be identified: or

(f) the official mark of the Commission is not made.

(4) A voter shall record his vote secretly in the voting compartment. After marking the ballot paper the voter shall fold the ballot paper so as to show the official mark while concealing his vote, show the official mark to the Chairperson of the Assistant Commissioners, so that the Assistant Commissioners may verify the same, and shall then put the ballot paper in the ballot box in the presence of the Assistant Commissioners.

72. (1) Any voter who declares to, and shows to the satisfaction of, the Assistant Commissioners that he is unable by reason of blindness, other physical cause or illiteracy to mark his ballot paper, may request an Assistant Commissioner to mark the paper on his behalf indicating or which candidate or candidates he wishes to vote and the order in which he wishes to record his vote:

Provided that the voter may not ask for any particular Assistant Commissioner to mark the ballot paper on his behalf.

(2) the Assistant Commissioners are bound to secrecy with regard to the voting of persons whom they have assisted to vote.

(3) there shall be not less than two Assistant Commissioners present when the vote is being recorded under the provisions of subsection (1) of this section, but no other person shall be allowed in the room.

(4) When an Assistant Commissioner is authorised to assist a voter to record his vote, the Assistant Commissioner shall require such voter to confirm his declaration on oath using the format shown in the Fifteenth Schedule annexed to the Act, and on satisfying himself of the correctness of such declaration he shall record the vote of such voter on the ballot paper, in accordance with the indication made by such voter and following the procedure set down hereunder --

(a) The Assistant Commissioner shall ask the voter: 'Which of the candidates do you most desire to see elected?' and shall place the figure 1 on the ballot paper opposite the name of the candidate indicated by the voter.

(b) The Assistant Commissioner shall then ask the voter: 'For which of the candidates do you desire to express a second choice?' and shall place the figure 2 on the ballot paper opposite the name of the candidate indicated by the voter.

(c) The Assistant Commissioner shall repeat the operation in reference to a third or any subsequent preference until the voter shall declare that he does not desire to express any further choice.

(d) In order to assist such voter in indicating his preferences, the Assistant Commissioners may refer the voter to the photographs of the candidates displayed in the polling booth in accordance with section 68 of this Act.

Such photographs shall be of such size and description as the Electoral Commissioners may require and shall be displayed in such manner as they shall direct and in the order in which the candidates' names appear on the

ballot-paper.

(e) At the commencement of these operations and at any subsequent stage the Assistant Commissioner shall, if desired by the voter, read out in the order in which they appear on the ballot paper, the names of all candidates for whom a choice has not already been expressed by the voter.

(f) If any such voter, however, shall request the Assistant Commissioner to read out the names of the candidates of one particular political party only, the Assistant Commissioner shall do so by reading in alphabetical order the names of the candidates who have supplied an indication of their adhesion to that political party and omitting the names of the other candidates.

**73.** While a voter is recording his vote, the Assistant Commissioners shall keep at sufficient distance so as not to be able to see the vote recorded.

**74.** The Assistant Commissioners shall in no case permit any person to take his ballot paper out of the room or out of their sight until it is inserted into the ballot box.

**75.** Saving the provision of section 72, no Assistant Commissioner or any other person shall record the vote of any voter, or shall, at any polling place make any suggestion to him directly or indirectly regarding the candidate or candidates for whom he should vote or regarding his choice of preference.

**76.** Except where otherwise stated in this Act the Assistant Commissioners shall not allow any person not being a police officer on duty, or a person lawfully entrusted with some duty in connection with the elections, or a person entitled to vote at that polling place, to enter such polling place; nor shall they permit any voter or other person to remain in the polling place longer than necessary.

**77. (1)** Notwithstanding anything to the contrary contained in this Act, the Commission shall provide mixed polling places for the purposes and in the manner provided for by this section.

(2) A mixed polling place is a polling place which contains a ballot box for each electoral division and where the voters mentioned in paragraphs (a) and (b) of subsection (4) of this section shall vote independently of the electoral division where they may be registered in the last published Electoral Register by casting their vote in the ballot box appertaining to the electoral division where they are registered.

(3) The Commission shall only provide mixed polling places in the following localities:

(a) at the place where the counting of votes is to take place in terms of section 45 of this Act;

(b) at Saint Vincent de Paule.

(4)

(a) Notwithstanding any other provision of this Act, every person who shall have been selected to serve as an Assistant Electoral Commissioner, including those selected to serve as reserves, shall cast their vote at the place indicated in paragraph (a) of subsection (3) of this section, and shall do so the day preceding the polling day between 7.00 a.m. and 10.00 p.m.

(b) For all effects and purposes of this section, the persons who shall vote in accordance with paragraph (a) shall be all those whose name is published in the list referred to in subsection (6) of section 59 of this Act, even if any one of such persons shall have resigned his appointment after the publication of that list.

(c) All voters who seven days before polling day shall be resident, but not registered as voters, at Saint Vincent de Paule shall vote at the place indicate (1 in paragraph (b) of subsection (3) of this section, and it shall be the duty of the sub-committee set up under section ~ of this Act, to determine who these voters shall be.

(5) For all effects and purposes of this Act a mixed polling place shall be considered as an ordinary polling place and the rights and duties imposed on the Commission and persons appointed by it, political parties, agents and candidates shall mutatis mutandis apply.

(6) A copy of the list of persons entitled to vote in a mixed polling place shall be given by the Electoral Commission to the political parties at least four days prior to polling day..

**78.** (1) After the expiration of the time fixed for voting, the Assistant Commissioners shall seal the opening of the ballot box, shall place in a packet all unused and spoilt ballot papers and all printed or written records kept by them, affixing their seal thereto, after stating and signing on the said packet the number thereof, and shall place in a separate packet all voting documents delivered to them. The official marks used by the Assistant Commissioners including those used by the Assistant Commissioners nominated by the political parties shall be put in a separate packet which shall be sealed with the seal of the Commission after all Assistant Commissioners have affixed their signature thereto.

(2) For the purposes of the previous subsection of this section the Assistant Commissioner shall physically count and reconcile the number of unused and spoilt ballot papers, the number of persons marked as having voted on the list referred to in subsection (1) section 64 and the number of voting documents delivered to them.

(3) After the close of the poll and before the ballot boxes are removed from the polling booths, the Assistant Commissioner shall affix a notice on the door of each polling booth and signed by all the Assistant Commissioners stating the number of voters entitled to vote at that polling booth, the number of ballot papers received by them from the Commission, the number of voting documents delivered to them distinguishing as to whether they are ordinary or special, the number of spoilt ballot papers and the number of unused ballot papers being returned by them to the Commission and the number of persons who have voted in that polling booth. The said notice shall in this section be henceforth referred to as the 'ballot paper account'.

A copy of the ballot paper account shall be delivered by the Assistant Commissioners to each political party by handing it to any candidate, candidate or party agent representing such party as may be present, and shall also be delivered to the Commission at the place specified in paragraph of section 45 of this Act and the Commission shall immediately thereon provide a copy to the party delegates.

(4) On completion of all the duties mentioned in the preceding subsection of this section, the Assistant Commissioners shall deliver the ballot box or boxes and all documents and



packets entrusted to them to the Commission at the place specified in paragraph (c) of section 45.

(5) Party delegates, candidates, candidates' agents and party agents shall have the right to attend at the reconciliation and sealing of papers and sealing of ballot boxes, mentioned in the preceding subsections of this section, to affix their own personal seals to the packages containing the papers and to the ballot boxes and shall, subject to the provision of the following subsections of the section, be granted facilities to watch and accompany the transportation of the ballot boxes from the polling place up to their delivery to the Commission.

(6) (a) No more than one party agent from each political party may be present in each polling booth at any one time during the procedure for the sealing of ballot boxes;

(b) The Assistant Commissioner shall ensure that candidates, candidates' agents, party agents or party delegates as may be present shall be called in prior to their starting the procedures outlined in the previous subsections of this section for the sealing of ballot boxes and packets and reconciliation;

(c) The candidates, candidates' agents, party agents and party delegates that may be present shall be granted all reasonable facilities to oversee, record and request recounts of all the operations undertaken by the Assistant Commissioners in terms of the previous subsections of this section and without prejudice to the generality of the above

(i) to reconcile the number of persons who have voted as stated in the ballot paper account with the number of persons which the Assistant Commissioners have struck off the list referred to in section 64 of this Act and the number of voting documents received by the Assistant Commissioners;

(ii) to reconcile the names of the voters which the Assistant Commissioners have struck off the list referred to in section 64 of this Act with the names or the voting documents received by them;

(iii) to record the names and, or, the particulars of the persons who have not voted;

(d) After all the procedures indicated in the previous subsection of this subsection have been completed, the Assistant Commissioners shall keep the ballot box and all documents and packets in the polling booth until such time as the vehicle designated by the Commission for the transfer of the ballot boxes arrives at the polling place. Any candidate, candidate's agent or party agent or party delegate as may be present shall also have the right to remain at such polling booth;

(e) During the transportation from the polling place to the place designated by the Commission for the delivery of ballot boxes in terms of subsection (3) of section 45 no more than one representative from each of the political parties may board the vehicle designated by the Commission for transportation;

(f) The representatives mentioned in the previous paragraph of this subsection shall be designated by the political parties and shall be duly

authorised by the Commission and shall bear identification similar to that required by subsection (1) of section 63 and shall have these names publicised in terms of subsection (2) of section 63;

(g) The refusal by any Assistant Commissioner to sign any declaration or document shall not of itself invalidate the contents thereof.

**79.** The Assistant Commissioners shall keep order in the polling place under their charge and shall be responsible for any irregularity in the voting in that place in so far as such irregularity could have been prevented by them.

## **PART XII**

### **Voting in Retirement Homes**

**80.** For the purposes of this Part, 'a retirement home' means such place or places principally used for the care of elderly persons in which at least fifty voters reside:

Provided that the provisions of paragraph (a) of subsection (3) of section 81, of paragraph (b) of subsection (1) of section 82 and of section 83 shall not apply to retirement homes not run or administered by the Government.

**81. (1)** Within twenty-four hours of the publication of the Writ for the election of members to the House, the Commission shall form a sub-committee consisting of a Commissioner, who shall act as chairperson, and a representative of each of political parties and shall delegate to the sub-committee the running of the election in all retirement homes.

(2) The sub-committee shall have the duty to ensure that no undue pressure is brought to bear on voters in old age homes, that proper and adequate facilities are given to all political parties to canvass such voters, that adequate arrangements for voting are made in view of the special needs of such voters and that no political party enjoys any unfair advantage.

(3) Without prejudice to the generality of the above provisions, the sub-committee shall ensure that --

(a) immediate steps are taken to temporarily remove and substitute members of staff gravely suspected to have attempted to influence voters;

(b) arrangements are made for the receipt and proper delivery of propaganda material and for canvassing during visiting hours by candidates and political parties contesting that electoral division;

(c) complaints by political parties and or candidates are speedily investigated and rectified when found to be justified.

**82. (1)** Within three days of the publication of the Writ the person responsible for the administration of a retirement home shall send to the sub-committee

(a) a list of all persons resident at such retirement home, indicating the name identity card number, last known address, age, ward number, name and address of next of kin and whether registered as a voter in the home address or otherwise;

(b) a list of all staff at the retirement home indicating the name, identity card number, address, grade and working hours up to the day following the day fixed for voting.

(2) On receipt thereof the sub-committee shall immediately provide the political parties with copies of such lists.

(3) The administrator of every retirement home shall keep such lists updated and shall immediately send to the sub-committee any amendments thereto and the sub-committee shall immediately inform the political parties of such amendments.

(4) Members of the staff in retirement homes are expressly prohibited from engaging in propaganda for any political party or candidate and any employee contravening this section shall be guilty of an offence and shall on conviction be liable to the penalty of general interdiction for a period of ten years and the provisions of the Probation of Offenders Act and of section 22 of the Criminal Code shall not apply.

**83.** (1) The voting documents of voters registered in retirement homes shall be delivered to the voters personally. The voter may opt to deliver the voting document to the Chairperson of the Sub-Committee for safekeeping, and such Chairperson shall return the same to the voter on the day fixed for voting or on such earlier day as may be requested by the voter.

(2) Voters in retirement homes shall have the option to proceed to the polling place --

(a) without the assistance of any person;

(b) with the assistance of members of the staff;

(c) with the assistance of members of their families;

and it shall be the responsibility of the sub-committee to ascertain the option chosen by each voter.

The sub-committee shall ascertain the option chosen by each voter as soon as possible after the delivery of the voting documents to the voters and shall inform in writing the party delegates of the option chosen by each voter.

(3) A medical consultant having in his care any voter resident at a hospital or retirement home may, by issuing a medical certificate to that effect, draw the attention of the Commission to any dangers inherent to the health of his patient should he be moved for the purposes of being taken to vote. Such certificate will, however, in no way effect the right of that voter, or his next of kin where applicable, to ignore the medical warning and decide to cast his vote.

(4) Voters opting to be assisted by members of the staff shall be accompanied by members of the staff chosen from a pool thereof nominated in equal numbers by all the political parties. Political parties shall have the right to demand, and the Commission shall have the duty to ensure, that if the ordinary staff at such homes is not sufficient for the purposes of this section other persons are transferred to such homes for such purpose.

(5) Voters opting to be assisted by members of the staff or by members of their families shall, notwithstanding any other provision of this Act be so accompanied up to the door

of the relative polling booth.

(6)

(a) During the day fixed for the voting no person shall without the authority of the Commission be allowed to enter retirement homes.

(b) The provisions of paragraph (a) of this subsection shall not apply to members of the subcommittee members of the staff and relatives of patients who have been previously authorised to accompany voters to vote:

Provided that such relatives shall at all times wear proper identification tags issued to them by the Commission for the purpose.

(7) Except with the special authorisation of the sub-committee, no voter in a retirement home who has chosen the option to vote on his own or to be accompanied by members of his family may be taken to vote by members of the staff.

**84.** The sub-committee appointed in terms of section 81 of this Act shall function under the general direction of the Commission and shall be bound to implement the decisions of the Commission.

## **PART XIII**

### **Counting of Ballot papers**

**85.** The counting of ballot papers shall take place at the place and time specified in notice referred to in paragraph (d) of section 45 of this Act and shall be conducted in accordance with the provisions of this Act. The sorting of ballot papers shall not commence until all the procedures set down in Part XIII and XIV of this Act have been completed and the Commission declares that it is satisfied that there has been no tampering. The sorting of all ballot papers shall commence at the same time in all electoral districts.

**86. (1)** Political parties contesting the election shall have the right to nominate a sufficient number of agents, to be determined by the Commission, to oversee at all times the receipt of the ballot boxes, documents and packets, by the Commission from the Assistant Commissioners and the storage of the said ballot boxes, documents and packets after the receipt thereof. These agents shall henceforth in this Act be referred to as 'delivery agents'.

(2) Party delegates, candidates and their agents as well as delivery agents shall have the right to monitor the receipt of the ballot boxes by the Electoral Commission from the Assistant Commissioners and to make representations thereon.

(3) If any of the Commissioners or any party delegate, candidate or delivery agent claims that any ballot box or package is received in a state that it gives rise to suspicion that it may have been tampered with, the Commission shall order such box or packet to be dealt with separately from the other boxes or packets, and shall immediately call a meeting of the Commission and at such meeting the Commission shall have the power to hear such evidence under oath as it deems necessary.

(4) Where the Commission decides that there is no evidence that justifies the suspicion that the box or packet has been tampered with, its decision shall be final and no appeal

shall lie therefrom.

(5) Any claim as is referred to in the previous subsections of this section shall be made as soon as the ballot box or packet is delivered by the Assistant Commissioners to the Commission and for this purpose the Commission shall ensure that the party delegates, candidates or delivery agents are given adequate facilities to attentively inspect the ballot boxes' documents or packets.

(6) It shall be the duty of the Commission to ensure the mathematical accuracy of the ballot paper account and that this tallies with the declared number of voting documents returned by the Assistant Commissioners. Political parties shall have the right to demand that the Commission shall for this purpose open all packets containing voting documents relative to not more than ten per cent of all ballot boxes in order to physically check the accuracy of such returns.

(7) Political parties shall select the ballot boxes in relation to which the packets containing voting documents are to be opened during delivery of the ballot boxes to the Commission and prior to the storage of the ballot boxes.

(8) As each ballot box is received and cleared by the Commission in terms of this section it shall be transferred to the room designated by the Commissioner for the storage of all ballot boxes in terms of section 45 of this Act. Ballot boxes shall be transferred from this room to the counting area as soon as practicable for the purpose of undertaking the Ballot Paper Account Reconciliation process mentioned in the following Part of this Act.

(9) As soon as practicable after all ballot boxes have been received and cleared in terms of this section and prior to the start of the sorting process the Electoral Commission shall publicly declare the total number of ballot papers declared to be cast in accordance with the ballot paper accounts delivered by the Assistant Commissioners as well as the number of ballot papers in each ballot box as resulting from the same account.

(10) The Commission shall preserve until the publication of the official results of the next following election all papers delivered to them by the Assistant Commissioners, as well as the unused ballot papers and the voting documents, in separate sealed packets indicating on each packet the nature of the documents contained therein, and the electoral division to which they appertain.

(11) On every packet as is referred to in the preceding subsection there shall be affixed the seal of the Electoral Commission and the signature of at least two Commissioners, and of any party delegate, candidate or delivery agent who may wish to sign it.

**87. (1)** The Commission shall appoint a number of persons to act as counters, supervisors and calculators to assist it in the counting and transfer of ballot papers which shall be effected under the direct supervision of the Commission.

(2) The provisions of subsection (1) of section 58 of this Act shall *mutatis mutandis* apply to the office of the counter, supervisor and calculator as it applies to the office of Assistant Commissioner.

(3) A list of the persons appointed as counters' supervisors and calculators shall be published by the Commission in the Gazette, together with the list of persons appointed as Assistant Commissioners and the procedure established for the nomination by political parties and for objections to Assistant Commissioners shall *mutatis mutandis* apply to supervisors and counters.

(4) All counters, supervisors and calculators shall be issued with identity documents specifying the details provided for candidates' and party agents. The identity documents shall be worn at all times by the counters, supervisors and agents whilst in the precincts of the building where the counting of ballot papers is held.

(5) The calculators shall perform all mathematical calculations connected with the counting of ballot papers and the Commission shall ensure that the persons so chosen are proficient in mathematical calculations.

(6) Supervisors shall be responsible for a number of counters and shall oversee the opening of ballot boxes, and the sorting out of and counting of ballot papers for every electoral division. The Electoral Commission shall ensure that at all times during the counting of ballot papers there are no less than two supervisors for each electoral divisor and that the political parties are adequately represented in the choice of persons to act as supervisor for each electoral division.

(7) Counters shall work under the direction of the supervisors; they shall physically sort and count the ballot papers. The Electoral Commission shall ensure that there are a sufficient number of counters in every electoral division to ensure ~ quick and efficient counting process and that the political parties are adequately represented at all times during the counting of ballot papers in the choice of persons to act as counters in each electoral division.

**88.** (1) The Commission may authorise any one or more of its members or any other person or persons appointed by it to do anything on its behalf in connection with the receipt and storage of ballot boxes and the counting and transfer of ballot papers and anything done by virtue of such authority shall be deemed to have been done by the Commission.

(2) The Commissioners or any one or more of them shall administer to every person authorised to act for the Commission under the provisions of this section, an oath for the faithful discharge of the duties assigned to him.

**89.** (1) Unless this Act otherwise provides, candidates and candidates' agents shall have free access to the building where the counting of ballot papers will take place, and to the counting hall, at all times.

(2) Every political party shall moreover have the right to nominate a number of agents equal to ten more than the number of candidates presented by it to contest the election and such agent shall at all times have access to the said building and to the counting hall at all times. These agents shall henceforth in this Act be referred to as 'counting agents'.

The list of such agents shall be presented to the commission at least twenty one days prior to the start of the poll, the Commission shall inform the political parties of all the agents so nominated so that the said political parties may have an opportunity to make representations to the Commission before the same accepts or rejects them; the agents so nominated are to be of good character and acceptable to the Commission and once nominated and accepted by the Commission, may not, for any reason' be changed by the political party nominating them.

The list of such agents shall, at least, seven days prior to the start of the poll, be published by the Commission in the Government Gazette indicating the name, address and identity card number of each agent and the party nominating him.

(3) The party delegate, candidates, candidates' agents and counting agents shall be issued with an identity document indicating the details required for candidates' agents and such identity document is to be worn at all times on entry into and inside the building or complex wherein the ballot papers are counted.

**90.** With respect to the building designated by the Commission for the counting of ballot papers the Commission shall ensure that

(a) all roads of access at least within 500 metres of the said building are closed and patrolled by the Police who shall permit entry only to authorised persons and only after scrupulously having ascertained their identity;

(b) entry into the actual building or perimeter shall be checked by both the Police, the Commission and representatives of the political parties;

(c) a number of rooms as may be necessary either in or as near as possible to the building wherein the counting hall is situated shall be provided to ensure full press and broadcasting coverage of the counting and transfer of ballot papers:

Provided that the entrance to such room shall at all times be guarded by the Police who shall only allow entry to bona fide broadcasting personnel and newspaper reporters who shall have been previously accredited by the Commission; the Commission having the right and the duty to ensure that all the broadcasting personnel and newspaper reporters so accredited by it, carry out only those functions directly related to their professions, failing which such an accreditation is to be cancelled by the Commission. The Commission is further bound to give the political parties, not later than five days prior to the date of the poll, a detailed list of all those persons accredited by it to carry out any functions at the counting hall during the counting process.

(d) an area adjacent and communicating with the counting hall shall be provided for the storage of the ballot boxes and that during the time the boxes are stored in such area they shall at all times be visible from all parts of the counting hall and the party delegates and their sub-delegates shall have the right of free access thereto at all times;

(e) a number of rooms as near as possible to the counting hall shall be provided for every political party contesting the election and shall be equipped with such facilities as the Commission, after consulting the political parties, think fit;

(f) in the counting hall itself counters shall be separated from the candidates and agents by a wall of unbreakable transparent material on similar sturdy transparent material except for some means, including any appropriate electronic device, of clear communication for the purpose of speaking through and except in the cases expressly provided for in this Act, access to the area designated by the Commission for the counting of ballot papers shall only be allowed to candidates and agents with the express consent of the Commission:

Provided that the party delegates and six substitutes thereof, previously nominated by such delegates, shall have free access to the counting area at

all times;

(g) the disposition of the counting area shall be such that as far as possible all the counting process can be closely viewed by candidates, agents and representatives of political parties;

(h) all rooms and corridors which are not being used for a purpose designated by the Commission shall be barred and all areas leading thereto closed;

(j) adequate back-up facilities for services failure are provided especially with respect to lighting;

(j) there is strict security at all times in and around the building, that entry is restricted to authorised persons only and that no lethal instruments or instruments which may be rendered lethal are introduced in the building;

(k) at least thirty days before the start of voting the Commissioner shall show the party delegates how they propose to allocate and separate the different areas of the said building and shall consider suggestions made by the said delegates in this regard;

(l) notwithstanding anything else contained in this Act, the party delegates and their substitutes, shall at all times have access to any part of the building for the purpose of ensuring that the provisions of this Act are being enforced.

**91.** The Commission shall ensure that as far as practicable full and constant broadcasting coverage is given of the counting and transfer of ballot papers and for such purpose shall allow entry into the building to bona fide broadcasting personnel and apparatus.

**92.(1)** The Commission shall appoint such persons as it considers appropriate to ensure the proper running and maintenance of the building designated for the storage of ballot boxes and the counting of votes and a list of such persons shall be sent to the political parties at least six days prior to the poll.

**(2)** In extraordinary circumstances, the Commission shall allow entry to the building designated for the storage of ballot boxes and the counting of votes to such other persons as it considers necessary provided that in no case shall it allow entry to the public generally.

**(3)** All persons, except for police officers and members of the Armed Forces of Malta, allowed entry into the building designated for the storage of the ballot boxes and the counting of votes shall be issued by the Commission with identity cards specifying the details required for counting agents and shall wear such identification at all times when they are within the said building or the precincts thereof..

**93.** Notwithstanding anything else contained in this Act, candidates, candidates' agents and the counting agents shall at all times have access to the Commissioners for the purpose of making representations on their own behalf or on behalf of the candidate or party represented by them.

**94.** The Commission shall have the sole direction of the building designated for the counting and transfer of ballot papers and shall have the right to give such orders as are



necessary for the maintenance of order and security within the building.

## **PART XIV**

### **Ballot Paper Account Reconciliation**

**95.** As soon as practical after ballot boxes start being deposited in the room designated by the Commission to hold the ballot boxes in terms of section 45 of this Act, the Commission shall proceed to reconcile the Ballot Paper Account of each box delivered by the Assistant Commissioners with the actual number of votes in that box and for this purpose shall release from the said room (as soon as possible after they are received therein ensuring that no confusion is created on the counting tables) the ballot boxes to the counting tables of each appropriate electoral division for the purpose of effecting such reconciliation..

**96.** (1) Prior to the removal of each ballot box from the room designated by the Commission to hold all the ballot boxes in terms of section 45 of this Act, the party delegates or their substitutes shall have the right to examine the seals affixed to each ballot box.

(2) Any objection raised by the party delegates or their substitutes as to the integrity of such seals shall be examined by the Commission whose decision thereon shall be final and not subject to appeal.

**97.** The Commission may order any number of ballot boxes to be opened simultaneously in each electoral division provided that adequate precautions are taken to ensure that the ballot papers from different ballot boxes are kept separate and prior to the opening of each ballot box the Commission shall cause the ballot paper account for that ballot box to be affixed in such a manner that it may be clearly seen by the candidates and agents and shall show the candidates and agents the seals on the ballot box in order that they may ascertain that such seals are intact.

**98.** Any party delegate, candidate or agent may, prior to the opening of the ballot box, make representations claiming that the seals of the box, have been tampered with. Where such an objection is made the box shall not be opened until the Commission, after consulting the party delegates or their substitutes, shall have given such directions and taken such measures as it may consider necessary.

**99.** Where no objections are made and where the Electoral Commission in terms of the previous section of this Act so directs, the ballot box shall be opened and the number of ballot papers contained therein shall be counted, face downwards, to ascertain that the number of votes in that ballot box corresponds to the ballot paper account.

**100.** Where the ballot papers in the ballot box do not tally with the ballot paper account the attention of the Commission shall be drawn to the fact and the Commission, after consultation with the party delegates, or their substitutes shall give such directions as it may deem fit and such decision shall be final.

**101.** Where the ballot papers in the ballot box and the ballot paper account tally, the votes shall be put together and placed in a pigeon hole indicating the number of the ballot box. The pigeon hole and ballot papers must at all times be clearly visible by parties, candidates and agents. The ballot papers in each pigeon hole shall be put in parcels of fifty ballot papers each with any remainder being put at the bottom of the pile and the supervisor shall ensure that each parcel is counted for accuracy by more than one counter.

**102.** The process described in sections 95 to 101 of this Act shall be repeated until all ballot boxes have been opened to ascertain that the ballot papers in each box tally with the ballot paper account relative to it.

**103.** Ballot papers belonging to a division other than that to which the ballot box pertains shall be treated in the manner established in section 99 and shall be retained at the counting table of the division where the relative ballot box from which they originated was placed and shall not, at this stage, be transferred to the appropriate division.

**104. (1)** After all ballot boxes in all electoral divisions have been opened and reconciled with the relative ballot paper account the Electoral Commission shall prior to proceeding to the sorting of votes declare the total number of votes cast and their distribution by ballot box and electoral division.

**(2)** The Electoral Commission shall cause the papers held in each electoral division and belonging to other divisions to be transferred to the divisions to which they properly belong.

**(3)** The Electoral Commission shall declare the total number of votes which each electoral division will be transferring subdivided according to the electoral division it will be transferring them to.

**(4)** The physical transportation of the papers from one division to another shall be performed either by the Commissioners or by the supervisors and in such a manner as not to create confusion.

## **PART XV**

### **Sorting of Votes, Casual Elections and Co-options**

**105. (1)** Ballot papers shall be sorted in accordance with such regulations which the Prime Minister may make from time to time.

**(2)** Regulations made in accordance with this section shall also regulate casual elections and co-option of members to fill vacancies among the membership of the House.

**(3)** Regulations made in accordance with subsection (1) of this section shall not come into force unless and until the House so resolves by resolution. Notice of the approval of such resolution shall be published in the Gazette by the Clerk of the House.

**(4)** The regulations contained in the Thirteenth Schedule to this Act shall, until such time as regulations are made in accordance with subsections (1) to (3) of this section, regulate the sorting of ballot papers, casual elections and co-option of members to fill vacancies among the membership of the House.

## **PART XVI**

### **Publication of Results**

**106. (1)** The Commission shall, not later than on the working day following that on which the result of the counting of the votes has been ascertained, publish a declaration containing the names of the candidates elected and such other particulars as the Commission may consider necessary.

(2) The Commission shall deposit the declaration aforesaid with the Clerk of the House and shall cause a copy of such declaration to be published without delay in the Gazette.

(3) Every candidate whose name is published in the Gazette in accordance with the provisions of subsection (1) of section 54 or who is declared elected in accordance with the provisions of this section shall be considered to be a Member of the House of Representatives.

(4) The Commission shall publish in the Gazette not later than seven days after the end of counting a declaration of the results of the election which declaration shall include a record of the total votes cast, both on a national level and subdivided by polling booth the total valid and invalid votes, the total votes credited to each political party, the quota for each electoral division, the record and result in all stages of any transfer of votes between political parties, the first preference credited, to each candidate, any transfer of votes made, and of the total number of votes credited to each candidate after any such transfer, and any such other information as the Electoral Commission may consider necessary. Such declaration shall be in such form as the Electoral Commission may determine as likely to impart easily all the information likely to be required by the public.

(5) Within three months of the publication of the official results of the election the Election Commission shall publish a report explaining in detail what steps were taken by them to perform the various duties imposed on them by this Act, to give all relevant statistics connected with the election including the publication of all statistics regarding eligible voters, printing and distribution of voting documents and ballot papers, voters per polling place, returns submitted by Assistant Commissioners and the like, and to make such suggestions as they consider necessary.

**107.** (1) The Commission shall preserve until the publication of the official results of the next following election all used ballot papers for each electoral division in separate sealed packets, as follows --

(a) the spoilt ballot papers;

(b) the invalid ballot papers;

(c) the papers at the completion of the counting in the parcel of each elected candidate and of each non-elected candidate whose papers have not been transferred;

(d) all the non-transferable papers not retained in the parcel of an elected candidate.

(2) The Commissioners shall endorse on each packet a description of its contents, the date of the election and the number of the electoral division to which they relate.

(3) The Commission shall further preserve for the same period for each electoral division a copy of the declaration of the result of the count and of any document showing the operations of the transfer of each surplus.

(4) Party delegates, candidates, candidates' agents and counting agents shall have the right to affix their seals and signatures to such packets.

**108.** It shall be lawful for the Constitutional Court before which any question is brought as to the right of any person to be or to remain an elected Member of the House and for any Court before which any proceedings are commenced in accordance with the provisions of this Act to order the opening of the packets referred to in subsection (1) of section 78 and in section 107 and the production of one or more of the documents therein contained under such conditions and precautions as may be necessary to maintain the secrecy of the voting consistently with the due administration of justice.

**109.** (1) If at an election any person is returned as a member of two divisions, such person shall, by a writing under his hand delivered to the Clerk of the House on or before appearing to take the oath or to make the affirmation prescribed by section 68 of the Constitution declare which of the two divisions he elects to represent.

(2) As soon as a person who is returned for two divisions declares which of the two divisions he elects to represent, he shall be deemed to have vacated his seat in the other division.

## **PART XVII**

### **Penal Provisions**

**110.** Any person who knowingly makes or subscribes to a false declaration or otherwise gives false information in connection with the registration, transfer or cancellation of any voter shall be guilty of an offence against this Act and shall on conviction be liable to imprisonment for a term not exceeding one month or to a fine (multa) not exceeding fifty liri or to both such imprisonment and fine.

**111.** Every person who misconducts himself in any polling place or contravenes any of the provisions of section 66 or 67 of this Act or takes part in any public meeting or public demonstration held in contravention of any of the provisions of this Act, or fails to obey the lawful order of the Assistant Commissioners or other lawful authority in relation to an election, shall on conviction be liable to a fine (multa) not exceeding fifty liri.

**112.** (1) Every person who --

(a) forges or fraudulently defaces or fraudulently destroys any nomination paper or delivers to the Commission any nomination paper knowing the same to be forged; or

(b) forges or counterfeits or fraudulently defaces or fraudulently destroys any voting document or ballot paper or the official mark on any ballot paper; or

(c) without due authority supplies any voting document or ballot paper to any person; or

(d) forges or counterfeits or is in unlawful possession of any stamp or seal used by the Chief Electoral Commission or the Election Commissions or the Assistant Commissioners; or

(e) is in unlawful possession of any voting document or ballot paper; or

(f) fraudulently puts into any ballot box anything other than the ballot paper which he is authorised by law to put in; or

(g) fraudulently takes out of the polling place any ballot paper; or

(h) without due authority, destroys, takes, opens or otherwise interfere with any ballot box or packet of ballot papers then in use for the purpose of the election; or,

(i) accepts a voting document, whether belonging to him or to any other person, when he is aware that he or such other person to whom the voting document refers has lost his right to vote.

shall be guilty of an offence and shall be liable, on conviction, to a fine (multa) not exceeding five hundred liri or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) Every person who aids or abets the commission of an offence under this section or attempts to commit any such offence shall be liable, on conviction, to the punishment provided for the offence.

**113.** Every Assistant Commissioner who shall reveal the manner of voting of any voter when such manner of voting shall have come to his knowledge in the course of the exercise of his functions under this Act shall be guilty of an offence, and shall, on conviction, be liable to a fine (multa) not exceeding one hundred liri or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

**114. (1)** During the day on which an election of Members of the House is held and during the day immediately preceding such an election, no person shall address any public meeting or any other gathering whatsoever in any place or building accessible to the public, or on the broadcasting media, on any matter intended or likely to influence voters in the exercise of the franchise, or publish or cause to be published any newspaper, printed matter or other means of communication to the public containing any matter aforesaid, or issue or cause to be issued any statement or declaration on any matter aforesaid or knowingly distributes any newspaper, printed matter, or other means of communication or any statement or declaration as aforesaid, and any person acting in contravention of any of the provisions of this section shall be liable on conviction to a fine (multa) not exceeding five hundred liri or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) Every person who aids or abets the commission of an offence under this section or attempts to commit any such offence, shall be liable on conviction to the punishment provided for the offence.

**115. (1)** All questions regarding the right of any person to be or remain a Member of the House shall be referred to and decided by the Constitutional Court.

(2) Any criminal proceedings for offences under this Act shall be brought before the Courts of Magistrates and subject to the following provisions of this section, the provisions of the Criminal Code shall apply to any such proceedings.

(3) Notwithstanding anything contained in the Probation of Offenders Act, a person who commits any offence under this Act shall be convicted and sentenced in respect of that

offence and may not be placed on probation or discharged under that Act.

(4) Every decision of the Courts of Magistrates in respect of an offence under this Act, may, in all cases, be appealed against by the Attorney General and by the party convicted.

**116.** (1) Except as provided in subsection (2) of this section it shall not be lawful for any person, at any time in contemplation or in anticipation of an election, to display or cause to be displayed in a public place' or in a place accessible to the public or visible from any public place, any bill, poster or other advertisement intended or likely to influence voters in the exercise of the franchise, or to write or make or cause to be written or made on any wall or other place visible from a public place any word or sign intended or likely to influence voters in the exercise of the franchise.

(2) The provisions of subsection 91 of this section shall not apply to any bill, poster or other advertisement which

(a) is worn or carried by a person; or

(b) which is displayed on the inside of a private building even though it may be visible from a public place;

(c) is displayed on a duly authorised billboard; and

(d) is displayed on a duly authorised streamer.

(3) Any person acting in contravention of any of the foregoing provisions of this section shall be liable on conviction in respect of each offence to a fine (multa) not exceeding five hundred liri or to imprisonment for a period of not more than six months, and in respect of any second or subsequent offence to both such fine and imprisonment.

(4) It shall be the duty of the Police to remove or otherwise cancel or delete anything displayed, written or made in contravention of any of the provisions of subsection (1) of this section.

## **PART XVIII**

### **Saving and Repeal**

**117.** Notwithstanding any other provisions contained in this Act, whereby the decision of the Commission is declared as final and/or not subject to appeal such provision shall not exclude recourse to Constitution Court by any person on an action to invalidate the election, whether in any or in all divisions.

**118.** Subject to the provisions of section 12 of the Interpretation Act, the Electoral (Franchise, Method of Election and Registration of Voters) Ordinance, and the Electoral Polling) Ordinance, except for sections 41 to 62 thereof, which sections are reproduced in the Fourteenth Schedule to this Act, are hereby repealed.

**119.** The Electoral Register published in terms of the Electoral (Franchise, Method of Election and Registration of Voters) Ordinance and in force immediately before the coming into force of this Act, shall continue in force and be deemed to have been published under Part VI of this Act.

## **PART XIX**

### **Saving as to Right of Political Parties**

**120.** The non-exercise by any political party, delegate, candidate, agent or any person nominated for appointment by a political party, of any right, power or privilege granted by this Act shall not of itself invalidate any action or procedure in respect of which the right, power or privilege has been granted by this Act.

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