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**PARLIAMENTARY AND PRESIDENTIAL ELECTIONS  
(AMENDMENT) BILL, 1997**

**ARRANGEMENT OF SECTIONS**

**SECTION**

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20. Replacement of s. 121 of the principal Act

**A B I L L**

*entitled*

**An Act to amend the Parliamentary and Presidential Elections  
Act, 1993**

ENACTED by the Parliament of Malawi as follows—

**B. No. 29**

(Published 31st December, 1993)

Act

No. 31 of 1993

I assent

H. KAMUZU BANDA

PRESIDENT

13th December, 1993

### ARRANGEMENT OF SECTIONS

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**An Act to make provision with respect to the conduct of elections for the election of members of Parliament and for the election of the President of the Republic and for matters ancillary thereto or connected therewith**

ENACTED by the Parliament of Malawi as follows—

- |             |   |
|-------------|---|
| Short title | 1. This Act may be cited as the Parliamentary and Presidential Elections Act, 1993.                               |
| Application | 2. This Act shall apply to the election of members of Parliament and the election to the office of the President. |

*Constitution (Amendment)*

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The Bill also seeks to repeal the disqualification, in section 75 (2) of the Constitution, of a public officer from being appointed a member of the Electoral Commission thereby allowing a person holding a public office to be appointed a member of the Electoral Commission.

DR. C. CHILUMPHA, SC  
*Attorney General*

- Short title and commencement
1. This Act may be cited as the Parliamentary and Presidential Elections (Amendment) Act, 1997, and shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.
- Amendment of s. 3 of Act No. 31 of 1993
2. The Parliamentary and Presidential Elections Act (hereinafter referred to as the "principal Act") is amended, in section 3—
- (a) by deleting the definition of "Chief Elections Officer";
- (b) by deleting from the definition of "Commission", the words "and appointed in accordance with section 4 of this Act";
- (c) by deleting from the definition of "constituency" the words "section 5 (a) of this Act" and substituting therefor the words "section 8 (1) (a) and (b) of the Electoral Commission Act, 1997";
- (d) by deleting the definition of "election officer";
- (e) by deleting from the definition of "registration" the words "in an election"; and
- (f) by inserting, in the appropriate alphabetical order, the following new definition—
- "returning officer" means a returning officer appointed under section 34 (1)."
- Repeal of Part II of the principal Act
3. Part II of the principal Act is repealed.
- Amendment of s. 24 of the principal Act
4. Section 24 of the principal Act is amended by adding there- to the following new subsections—
- "(3) A person to whom a voter's registration certificate has been issued shall be personally responsible at all times for its safekeeping and shall not place or cause it to be placed in the custody of any other person or allow any other person to use it to vote in an election.
- (4) No person shall receive, keep or use, in relation to an election, a voter's registration certificate that has not been issued to him in accordance with this section.
- (5) Any person who contravenes subsection (3) or (4), or who aid, abets or counsels, or conspires with, any person to contravene subsection (3) or (4), shall be guilty of an offence and shall be liable to a fine of K50,000 and to imprisonment for seven years."



5. Section 27 of the principal Act is amended by adding there-  
to the following new subsection—
- Amendment  
of s. 27 of the  
principal Act
- “(4) Section 89 shall apply *mutatis mutandis* with respect to the registration of voters.”.
6. Section 32 of the principal Act is amended, in subsection (2),  
by deleting the words “a new constituency is created.”.
- Amendment  
of s. 32 of the  
principal Act
7. Section 38 of the principal Act is amended, in subsection (1)  
(c), by deleting the words “in the constituency” and substituting  
therefor the words “in any constituency”.
- Amendment  
of s. 38 of the  
principal Act
8. Section 46 of the principal Act is amended by adding there-  
to the following new subsections—
- Amendment  
of s. 46 of the  
principal Act
- “(5) A withdrawal of a candidate under this section shall be  
voluntary and shall be under oath sworn by the candidate before  
a commissioner of oaths.
- (6) Any person who, in any way induces or influences a can-  
didate to withdraw from an election shall be guilty of an  
offence.”.
9. Section 67 of the principal Act is amended by—
- Amendment  
of s. 67 of the  
principal Act
- (a) renumbering subsection (3) as subsection (4); and
- (b) inserting the following new subsection—
- “(3) Notwithstanding subsection (2) (a), the Commission  
may establish polling stations at any military unit or police  
station for purposes of enabling members of the Defence  
Forces of Malawi, the Malawi Police Force and members of  
their families to vote in the last two days prior to the polling  
day.”.
10. Section 70 of the principal Act is amended by—
- Amendment  
of s. 70 of the  
principal Act
- (a) deleting subparagraph (g); and
- (b) renumbering subparagraphs (h) and (i) as subparagraphs (g)  
and (h), respectively.
11. The principal Act is amended by deleting section 76 and  
substituting therefor the following new section—
- Replacement  
of s. 76 of the  
principal Act
- “Ballot papers      76. The Commission shall arrange for the printing  
of sufficient quantities of ballot papers—
- (a) for candidates for election as member of  
Parliament; and
- (b) for candidates for election as President,

on which shall be printed clearly and legibly, in respect of each candidate, his name or abbreviation thereof and his election symbol or the election symbol of his political party, and such other particulars as the Commission may determine to identify him distinctly from other candidates.”.

Amendment  
of s. 77 of the  
principal Act

12. Section 77 of the principal Act is amended by deleting the words “and discarding”.

Amendment  
of s. 86 of the  
principal Act

13. Section 86 of the principal Act is amended—

(a) in subsection (2), by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) dip the right finger of the voter in indelible ink provided for the purpose to the polling station officers after which the presiding officer or other polling station officer authorized in that behalf shall hand to the voter a ballot paper for candidates in the constituency for election as member of Parliament for use by the voter in accordance with subsection (3), and direct the voter to the voting booth for the poll for election of a member of Parliament;”;

(b) by deleting subsection (3) and substituting therefor the following new subsection—

“(3) The voter shall then proceed to cast his vote in such manner as the Commission may determine.”.

(c) by deleting subsection (4) and substituting therefor the following new subsection—

“(4) After a voter has cast his vote in accordance with subsection (3) with respect to the election of a member of Parliament, he shall immediately be led to the next desk of polling station officers who, on verifying that the voter has had his right index finger dipped in indelible ink, shall dip the voter’s left index finger in indelible ink and hand to him a ballot paper for candidates for election to the office of President for use by the voter in accordance with subsection (5) and then direct the voter to the voting booth for the poll for election to the office of President.”; and

(d) by deleting subsection (5) and substituting therefor the following new subsection—

“(5) The voter shall then proceed to cast his vote in such manner as the Commission may determine.”.

Amendment  
of s. 88 of the  
principal Act

14. Section 88 of the principal Act is amended, in subsection (1), by deleting paragraph (c).

15. Section 92 of the principal Act is amended by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment  
of s. 92 of the  
principal Act

“(a) picking out of the ballot box one ballot paper and displaying the ballot paper to all present and announcing aloud the classification of the vote as specified in section 91;”.

16. Section 95 of the principal Act is amended—

Amendment  
of s. 95 of the  
principal Act

(a) in subsection (1), by deleting the words “District Commissioner” where they first appear and substituting therefor the words “returning officer”;

(b) in subsection (3), by deleting the words “District Commissioner” and substituting therefor the words “returning officer”;

(c) in subsection (4), by deleting the words “District Commissioner” and substituting therefor the words “returning officer”; and

(d) in subsection (5), by deleting the words “District Commissioner” and substituting therefor the words “returning officer”.

17. Section 96 is amended, in subsection (3), by deleting therefrom the words “twenty-four hours” and substituting therefor the words “seventy-two hours”.

Amendment  
of s. 96 of the  
principal Act

18. Section 114 of the principal Act is amended by adding thereto the following new subsections—

Amendment  
of s. 114 of  
the principal  
Act

“(6) No application shall be made to the High Court for an injunction or for an order restraining the holding of an election within fourteen days immediately preceding the date of the election.

(7) Notwithstanding subsection (6), the High Court shall have power, subsequent to the holding of an election, to declare void the election if, upon hearing the petition referred to in subsection (1), the High Court is satisfied that there are good and sufficient grounds for declaring void the election.”.

19. Section 115 of the principal Act is amended, in paragraph (b)—

Amendment  
of s. 115 of  
the principal  
Act

(a) by renumbering subparagraphs (iii), (iv), (v), (vi) and (vii) as subparagraphs (iv), (v), (vi), (vii) and (viii), respectively;

(b) by inserting immediately after subparagraph (ii), the following new subparagraph—

“(iii) campaigns or causes another person to campaign within forty-eight hours before opening of the poll on the first polling day contrary to section 57;”.

20. Section 121 of the principal Act is deleted and replaced by the following new section—

Replacement  
of s. 121 of  
the principal  
Act

"Regulations 121. The Minister may, on the recommendation of the Commission, make regulations for the better carrying out of the provisions of this Act."

#### OBJECTS AND REASONS

The object of this Bill is to align the provisions of section 38 (1) (c) of the Parliamentary and Presidential Elections Act (No. 31 of 1993) ("the Act") and of section 51 (1) (c) of the Constitution and, therefore, making it clear that a candidate for an election is free to register as a voter in *any* constituency and not necessarily in the constituency where he intends to stand as a candidate.

The Bill also makes provision for the introduction of a single ballot voting system. The Bill further makes provision prohibiting any person from making, and the High Court from entertaining, applications for injunctions or orders restraining the holding of an election within fourteen days immediately preceding the date of the elections. However, the Bill preserves the jurisdiction of the High Court to declare void any election subsequent thereto where there are good and sufficient grounds for so doing.

The Bill finally introduces into the Act various minor amendments aimed at enhancing and promoting the holding of free and fair elections and at enhancing the independence of the Electoral Commission.

DR. C. CHILUMPHA, SC  
*Attorney General*