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law/MLT/1447/001/eng
(constitution of 1957)
w/1963 amendments

PART VIII ELECTIONS

§113. (1) There shall be an Election Commission, to be constituted in accordance with Article 114, which, subject to the provisions of federal law, shall conduct elections to the House of Representatives and the Legislative Assemblies of the States and prepare and revise electoral rolls for such elections. Conduct of Elections.

§(2) (i) Subject to paragraph (ii), the Election Commission shall, from time to time, as they deem necessary, review the division of the Federation and the

States into constituencies and recommend such changes therein as they may think necessary in order to comply with the provisions contained in the Thirteenth Schedule; and the reviews of constituencies for the purpose of elections to the Legislative Assemblies shall be undertaken at the same time as the reviews of constituencies for the purpose of elections to the House of Representatives.

(ii) There shall be an interval of not less than eight years between the date of completion of one review, and the date of commencement of the next review, under this Clause.

(iii) A review under paragraph (i) shall be completed within a period of not more than two years from the date of its commencement.

§(3) If the Election Commission are of opinion that in consequence of a law made under Article 2 it is necessary to undertake the reviews mentioned in Clause (2), they shall do so, whether or not eight years have elapsed since the last review under the Clause.

§(3A) (i) Where the number of elected members of the House of Representatives is altered in consequence of any amendment to Article 46, or the number of elected members of the Legislative Assembly of a State is altered in consequence of a law enacted by the Legislature of a State, the Election Commission shall undertake a review of the division into federal or State constituencies, as the case may be, of the area which is affected by the alteration, and such review shall be completed within a period of not more than two years from the date of the coming into force of the law making the alteration.

(ii) A review under paragraph (i) shall not affect the interval provided under paragraph (ii) of Clause (2) in respect of a review under paragraph (i) of that Clause.

(iii) The provisions of the Thirteenth Schedule shall apply to a review under this Clause, but subject to such modifications as may be considered necessary by the Election Commission.

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NOTES

Art. 113 (1):

1. The words "and delimit constituencies" which appeared after "Legislative Assemblies of the States" were deleted by Act 14/1962, s. 20 (a), in force from 21-6-1962.
2. See Art. 115 (2).
3. See Elections Act 1958 (Act 19).

Art. 113 (2):

1. This Clause as originally in force commenced as follows:
"After the first delimitation of constituencies in accordance with Articles 116 and 117 the Election Commission"
Act 14/1962, s. 20 (b), in force from 21-6-1962, substituted the words "Article 171" for "Articles 116 and 117" and section 20 (c) substituted the words "and recommend such changes therein as they may think necessary in order to comply with the provisions contained in the Thirteenth Schedule" for "and make such changes therein as they may think necessary in order to comply with the provisions of those Articles". Act 26/1963, s. 10 (2), in force 16-9-1963, deleted the words "After the first delimitation of constituencies in accordance with Article 171" which then appeared at the commencement.
2. The present Clause was inserted by Act A585, s. 25 (a), in force from 14-4-1984 and replaced the earlier Clause which read as follows:
"(2) The Election Commission shall, at intervals of not more than ten nor, subject to Clause (3), less than eight years, review the division of the Federation and the States into constituencies and recommend such changes therein as they may think necessary in order to comply with the provisions contained in the Thirteenth Schedule; and the reviews of constituencies for the purpose of elections to the Legislative Assemblies shall be undertaken at the same time as the reviews of constituencies for the purpose of elections to the House of Representatives."
3. See 13th Sch. s. 4.

Art. 113 (3):

The words "or 46" which appeared after "Article 2" were deleted by act 14/1962, Sch. s. 6, in force from 21-6-1962.

Art. 113 (3a):

Added by Act A585, s. 25 (b), in force from 14-4-1984.

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Art. 113 (4):

1. The present Clause was inserted by Act 14/1962, Sch. s. 6, in force from 21-6-1962 and replaced the original Clause which read as follows:

“(4) The Election Commission shall also conduct elections to the municipal council of the federal capital, and State law may authorise the Commission to conduct any other election.”,

2. See Local Government Elections Act 1960 (No. 11 of 1960).

Art. 113 (5):

See Constitution (Election Commission) Rules, 1960—L.N. 110/1960.

Art. 113 (6):

1. Added by Act 26/1963, s. 10 (2), in force from 16-9-1963. The word “and” which appears after “States of Malaya” was inserted and the words “and for the State of Singapore” which appeared after “Borneo States” were deleted by Act 59/1966, s. 2, in force from 9-8-1965.

2. The words “States of Sabah and Sarawak” substituted for “Borneo States” by Act A514, s. 19, in force from 27-8-1976.

3. The words, and the expression “States of Malaya” shall include the Federal Territory of Kuala Lumpur and the Federal Territory of Labuan were inserted after the words “the State” by Act A585, s. 15, in force from 16-4-1984.

Art. 113 (7):

Added by Act 26/1963, s. 10 (2), in force from 16-9-1963.

Art. 113 (8):

Added by Act A206, s. 13, in force from 23-8-1973.

Art. 113 (9) and (10):

Added by Act A585, s. 25 (c), in force from 14-4-1984.

Notes:

1. Upon the commencement of Act A585 (i.e. 16-4-1984) the area which constitutes the Federal Territory of Labuan shall cease to form part of a State constituency.

2. Until the dissolution of the Legislative Assembly of the State of Sabah, next following the commencement of Act A585 the member of the said assembly elected from such constituency shall, notwithstanding the exclusion of the said area from the said constituency, continue to be a member of the said Assembly.

For the dissolution of the Legislative Assembly of the State of Sabah see Sabah G.N. No. 141/1985.

3. Until the dissolution of Parliament next following the commencement of that Act, the federal constituency which includes the area which constitutes the Federal Territory of Labuan shall continue to exist and the member elected from the said constituency shall continue to be a member of Parliament.

§(4) Federal or State law may authorise the Election Commission to conduct election other than those referred to in Clause (1).

§(5) So far as may be necessary for the purposes of its functions under this Article the Election Commission may make rules, but any such rules shall have effect subject to the provisions of federal law.

§(6) There shall be separate reviews under Clause (2) for the States of Malaya and for each of the States of Sabah and Sarawak, and for the purposes of this Part the expression "unit of review" shall mean, for federal constituencies, the area under review and, for State constituencies, the State and the expression "States of Malaya" shall include the Federal Territory of Kuala Lumpur and the Federal Territory of Labuan.

§(7) Subject to Clause (3), the period for the first reviews under Clause (2) for any unit of review shall be calculated from the first delimitation of constituencies for that unit under this Constitution or under the Malaysia Act.

Act 26/63.

§(8) Notwithstanding Clause (7) of this Article the period for reviews under Clause (2) for the unit of review of the States of Malaya undertaken after the passing of the Constitution (Amendment) (No. 2) Act 1973 shall be calculated from the first delimitation of constituencies for that unit immediately following the passing of that Act.

Act A206.

§(9) The date of the commencement of a review under Clause (2) or Clause (3A), as the case may be, shall be the date of the publication in the *Gazette* of the notice referred to in section 4 of the Thirteenth Schedule.

§(10) The date of the completion of a review under Clause (2) or Clause (3A), as the case may be, shall be the date of the submission of the report to the Prime Minister under section 8 of the Thirteenth Schedule, and a notice of such date shall be published by the Election Commission in the *Gazette*.

Constitution
of Election
Commission.

114. §(1) The Election Commission shall be appointed by the Yang di-Pertuan Agong after consultation with the Conference of Rulers, and shall consist of a chairman, a deputy chairman and three other members.

(2) In appointing members of the Election Commission the Yang di-Pertuan Agong shall have regard to the importance of securing an Election Commission which enjoys public confidence.

§(3) A member of the Election Commission shall cease to hold office on attaining the age of sixty-five years or on becoming disqualified under Clause (4) and may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong, but shall not be removed from office except on the like grounds and in the like manner as a judge of the Supreme Court.

§(4) Notwithstanding anything in Clause (3), the Yang di-Pertuan Agong shall by order remove from office any member of the Election Commission if such member—

- (a) is an undischarged bankrupt; or
- (b) engages in any paid office or employment outside the duties of his office; or
- (c) is a member of either House of Parliament or of the Legislative Assembly of a State.

§(4A) In addition to any disqualification provided under Clause (4), the chairman of the Election Commission shall be disqualified from holding such office if after three months of his appointment to such office or at any time thereafter he is or becomes a member of any board of directors or board of management, or an officer or employee, or engages in the affairs or business, of any organization or body, whether corporate or otherwise, or of any commercial, industrial or other undertaking, whether or not he

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Art. 114 (1):

1. The words "three other members" which appear at the end were substituted for "two other members" by Act 26/1963, s. 10 (1), in force from 16-9-1963.
2. The words", a deputy chairman" were inserted after "Chairman" by Act A514, s. 8, in force from 15-5-1981.

Art. 114 (3):

The words "Federal Court" which appear at the end were substituted for "Supreme Court" by Act 26/1963, s. 70, in force from 16-9-1963. Subsequently s. 18 (2) of Act A566 provides that a reference to the Federal Court shall now be construed as a reference to the Supreme Court.

Art. 114 (4):

1. The present Clause was inserted by Act 10/1960, s. 13, in force from 31-8-1957, and replaced the original Clause which read as follows:
"(4) A person is disqualified for appointment as a member of the Election Commission if he holds any other office of profit or is a member of either House of Parliament or of the Legislative Assembly of any State."
2. This amendment of the Article has effect notwithstanding anything in Clause (6) of the Article—see Act 14/1962, s. 21 (2).
3. The word "shall" substituted for "may" by Act A514, s. 8, in force from 15-5-1981.

Art. 114 (4) (b):

1. Act A514, s. 8, in force from 15-5-1981 replaced the earlier paragraph which read as follows:
"(b) engages in any paid office or employment outside the duties of his office; or" with the following—
"(b) is or becomes a member of any board of directors or board of management, or an officer or employee, or engages in the affairs or business, of any organisation or body, whether corporate or otherwise, or of any commercial, industrial or other undertaking, whether or not he receives any remuneration, reward, profit or benefit from it; or"
2. This is again substituted by the present paragraph as it appears by virtue of Act A566, s. 14 (1) (a), in force from 16-12-1983.

Art. 114 (4A):

1. The present Clause was substituted by Act A566, s. 14 (1) (b), in force from 16-2-1983. The earlier Clause which read as follows was added by Act A514, s. 8 (d), in force from 15-5-1981:
"(4A) The disqualification in paragraph (b) of Clause (4) shall not apply where such organisation or body carries out any welfare or voluntary work or objective beneficial to the community or any part thereof, or any other work or objective of a charitable or social nature, and the member does not receive any remuneration, reward, profit or benefit from it."
2. See Election Commission Act 1957 (Act 31).

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Art. 114 (5):

See Election Commission Act 1957 (Act 31).

Art. 114 (5a):

1. Added by Act 14/1962, s. 21 (1), in force from 21-6-1962.
2. *See* Election Commission Act 1957 (Act 31).

Art. 114 (7):

1. Added by Act A354, s. 25, in force from 27-8-1976.

2. The words "the deputy chairman shall discharge the functions of the chairman during that period, and if the deputy chairman is also absent or unable to discharge such functions," inserted after "to discharge his functions," by Act A514, s. 8, in force from 15-5-1981.

Note— The amendments made to Article 114 by Act A566 shall apply only to a person who is appointed a member of the Election Commission on or after 16-12-1983.

receives any remuneration, reward, profit or benefit from it:

Provided that such disqualification shall not apply where such organisation or body carries out any welfare or voluntary work or objective beneficial to the community or any part thereof, or any other work or objective of a charitable or social nature, and the member does not receive any remuneration, reward, profit or benefit from it.

§(5) Parliament shall by law* provide for the remuneration of members of the Election Commission, and the remuneration so provided shall be charged on the Consolidated Fund.

§(5A) Subject to the provisions of this Article, Parliament may by law provide for the terms of office of members of the Election Commission other than their remuneration.

(6) The remuneration and other terms of office of a member of the Election Commission shall not be altered to his disadvantage after his appointment.

§(7) Where, during any period, the chairman of the Election Commission has been granted leave of absence by the Yang di-Pertuan Agong or is unable, owing to his absence from the Federation, illness or any other cause, to discharge his functions, the deputy chairman shall discharge the functions of the chairman during that period, and if the deputy chairman is also absent or unable to discharge such functions, a member of the Election Commission may be appointed by the Yang di-Pertuan Agong to discharge the functions of the chairman during that period.

115. (1) The Election Commission may employ such number of persons, on such terms and subject to such conditions, as the Commission may with the approval of the Yang di-Pertuan Agong determine.

Assistance
to Election
Commission.

* See Election Commission Act 1957 (Act 31).

§(2) All public authorities shall on the request of the Commission give the Commission such assistance in the discharge of its duties as may be practicable; and in exercising its functions of making recommendations for the delimitation of constituencies for the elections mentioned in article 113 (1) the Commission shall seek the advice of two officers of the Federal Government with special knowledge of the topography of, and the distribution of the population in, the unit of review for federal elections, and those officers shall be selected for that purpose by the Yang di-Pertuan Agong.

Federal
constituen-
cies.

§116. (1) For the election of members to the House of Representatives a unit of review shall be divided into constituencies in accordance with the provisions contained in the Thirteenth Schedule.

§(2) The total number of constituencies shall be equal to the number of members, so that one member shall be elected for each constituency, and of that total in the States of Malaya a number determined in accordance with the provisions contained in Article 46 and the Thirteenth Schedule shall be allocated to each State.

§(3) *(Repealed)*.

§(4) *(Repealed)*.

§(5) *(Repealed)*.

State consti-
tuencies.

§117. For the election of members to the Legislative Assembly of a State the State shall be divided into as many constituencies as there are elected members, so that one member shall be elected for each constituency; and the division shall be made in accordance with the provisions contained in the Thirteenth Schedule.

Method of
challenging
election.

§118. No election to the House of Representatives or to the Legislative Assembly of a State shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.

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Art. 115 (2):

The words "making recommendations for the delimitation of constituencies" were substituted for "delimiting constituencies" by Act 14/1962, Sch. s. 7, in force from 21-6-1962. The words "unit of review for federal elections, and those officers" were substituted for "Federation, who" by Act 26/1963, s. 70, in force from 16-9-1963.

Art. 116:

See 8th Sch. s. 4 (2); 13th Sch. s. 2.

Clause (1): The words "provisions contained in the Thirteenth Schedule" which appear at the end were substituted for "following provisions of this Article" by Act 14/1962, s. 22 (a), in force from 21-6-1962. The words "a unit of review" which appear after "House of Representatives" were substituted for "the Federation" by Act 26/1963, s. 70, in force from 16-9-1963.

Clause (2): (a) The words "the provisions contained in the Thirteenth Schedule" were substituted for "Clause (3)" by Act 14/1962, s. 22 (b), in force from 21-6-1962. The words "in the States of Malaya" were inserted by Act 26/1963, s. 70, in force from 16-9-1963.

(b) The words "Article 46 and the Thirteenth Schedule" substituted for "the Thirteenth Schedule" by Act A206, s. 14, in force from 23-8-1976.

Clauses (3), (4) and (5): These Clauses which read as follows were repealed by Act 14/1962, s. 22 (c), in force from 21-6-1962:

"(3) Constituencies shall be allocated to the several States in such manner that the electoral quota of each State is as nearly equal to the electoral quota of the Federation as it can be without causing undue disparity between the population quota of that State and the population quota of the Federation.

(4) Each State shall be divided into constituencies in such manner that each constituency contains a number of electors as nearly equal to the electoral quota of the State as may be after making due allowance for the distribution of the different communities and for differences in density of population and the means of communication; but the allowance so made shall not increase or reduce the number of electors in any constituency to a number differing from the electoral quota by more than fifteen per cent.

(5) In this Article—

(a) "electoral quota" means the number obtained by dividing the number of electors in the Federation or a State by the total number of constituencies or, as the case may be, the number of constituencies in that State;

(b) "population quota" means the number obtained by dividing the population of the Federation or of a State by the total number of constituencies or, as the case may be, the number of constituencies in that State;

and for the purposes of this Article the number of electors shall be taken to be as shown on the current electoral rolls and the population as counted at the most recent census."

Art. 117:

1. The words "in accordance with the provisions contained in the Thirteenth Schedule" which appear at the end were substituted for "in the manner provided by Clause (4) of Article 116" by Act 14/1962, Sch. s. 8, in force from 21-6-1962.

2. See 13th Sch., s. 2.

Art. 118:

1. The words "the House of Representatives" were substituted for "either House of Parliament" by Act 25/1963, s. 3 (2), in force from 29-8-1963 and the

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NOTES

words "the High Court having jurisdiction where the election was held", were substituted for "a judge of the Supreme Court" by Act 26/1963, s. 70, in force from 16-9-1963.

2. *See* Art. 120 (c).

Art. 118A:

1. Added by Act 31/1965, s. 2 (2), in force from 1-7-1965.

2. *See* Art. 120 (c).

Art. 119 (1):

1. This Clause was inserted by Act 10/1960, s. 14 (a), in force from 31-5-1960, and replaced the original Clause which read as follows:

"(1) Every citizen who has attained the age of twenty-one years on the qualifying date and has been resident in a constituency for at least six months immediately preceding the qualifying date is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified under Clause (3) or under any law relating to offences committed in connection with elections, but no person shall in the same election vote in more than one constituency".

2. *See* Art. 120 (c).

§118A. A petition complaining of no return to the House of Representatives shall be deemed to be an election petition and the High Court may make such order thereon as it may think fit for compelling a return to be made, but the failure to make a return within any period specified by Article 54 or 55 shall not be a ground for declaring that a member has not been duly elected.

Method of
questioning
election
petition of
no return.

§119. (1) Every citizen who—

Qualifica-
tions of
electors.

(a) has attained the age of twenty-one years on the qualifying date; and

(b) is resident in a constituency on such qualifying date or, if not so resident, is an absent voter,

is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified under Clause (3) or under any law relating to offences committed in connection with elections; but no person shall in the same election vote in more than one constituency.

(2) If a person is in a constituency by reason only of being a patient in an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or of being detained in custody he shall for the purpose of Clause (1) be deemed not to be resident in that constituency.

(3) A person is disqualified for being an elector in any election to the House of Representatives or the Legislative Assembly if—

(a) on the qualifying date he is detained as a person of unsound mind or is serving a sentence of imprisonment; or

(b) having before the qualifying date been convicted in any part of the Commonwealth of an offence and sentenced to death or imprisonment for a term exceeding twelve months, he remains liable on the qualifying date to suffer any punishment for that offence.

§(4) In this Article “qualifying date” means the date by reference to which the electoral rolls are prepared or revised, and “absent voter” means in relation to any constituency any citizen who is registered as an absent voter in respect of that constituency under the provisions of any law relating to elections.

Direct
elections to
the Senate.

120. Where in accordance with Article 45 (4) provision is made by Parliament for the election of Senators by the direct vote of electors—

- (a) the whole of a State shall form a single constituency and each elector shall have as many votes at any election to the Senate as there are seats to be filled in that election; and
- (b) the electoral rolls for elections to the House of Representatives shall also be the electoral rolls for elections to the Senate; and
- §(c) Articles 118, 118A and 119 shall apply in relation to elections to the Senate as they apply in relation to elections to the House of Representatives.