

MALAWI GOVERNMENT

(Published 2nd November, 2018)

Act

No. 32 of 2018

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

24th October, 2018

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of s. 2 of Cap. 2:03
3. Replacement of s. 4 of the principal Act
4. Amendment of s. 8 of the principal Act
5. Amendment of s. 12 of the principal Act
6. Insertion of new ss. 21A, 21B, 21C, 21D and 21E
7. Amendment of s. 23 of the principal Act

An Act to amend the Electoral Commission Act

ENACTED by the Parliament of Malawi as follows—

1. This Act may be cited as the Electoral Commission (Amendment) Act, 2017. Short title
2. The Electoral Commission Act (hereinafter referred to as the “principal Act”), is amended in section 2, by inserting therein, in the correct alphabetical order, the following new definitions—
 ““Chairman” means the Chairman of the Commission;
 “Commission” means the Electoral Commission established under section 75(1) of the Constitution; and
3. Section 4 of the principal Act is hereby repealed and replaced as follows— Amendment of s. 2 of Cap. 2:03
Replacement of s.4 of the principal Act
- 4.—(1) The President shall, subject to section (75) of the Constitution and in accordance with subsections (2), (3) and (4), appoint suitably qualified persons to be

“Appointment of members of the Commission

members of the Commission on such terms and conditions as the Public Appointments Committee of Parliament shall determine.

(2) Leaders of political parties represented in the National Assembly which secured more than one tenth of the national vote in election to that Parliament, shall submit to the President a maximum of three persons as the political parties nominees as members of the Commission provided that where the President notes that all nominees used for such adequate number as is required under subsection (3), are not qualified under the Constitution for this Act to hold office as a Commissioner, the President shall return the names to nominating political parties within a reasonable time and in any event before appointing the members of the Commission and the nominating political party shall resubmit a final list of nominees within seven days of receipt of such notification.

(3) Upon receipt of the nominees, as provided under subsection (2), the President shall appoint members of the Commission from the nominees in proportion to the nominating political parties representation in the National Assembly as determined by the previous General Elections.

(4) In the event a vacancy in the membership of the Commission before the expiry of the term of a commissioner, the President shall notify the political party that nominated the commissioner whose office has fallen vacant to submit a minimum of three names within 14 days of the notification and the President shall appoint a Commissioner from those names within a reasonable time, provided that provision to subsection (2), shall apply to this subsection *mutatis mutandis*.

(5) The remuneration and any allowance of a member of a Commission, may not be reduced during his period of office without his consent, and may be increased at such intervals as the Public Appointments Committee of Parliament may determine.

(6) Subject to the Constitution, a member of the Commission may be removed from office on the following grounds—

(a) incompetence;

(b) incapacity;

(c) bankruptcy; and

(d) where the member is so compromised to the extent that his or her ability to impartially exercise the duties of his or her office is seriously in question.”.

4. Section 8 of the principal Act is amended, in subsection (1)—

Amendment
of s. 8 of the
principal Act

(a) in paragraph (a), by inserting the words “or wards” immediately after the word “constituencies”;

(b) in paragraph (b)—

(i) by deleting the word “supervise”; and

(ii) by adding immediately after the words “constituencies” the words “and wards”;

(c) by deleting paragraph (c), and substituting therefor the following new paragraph (c)—

“(c) any ward created in accordance with section 8 (1) (c) repealed by this Act, shall continue to be in force, until re-demarcated in accordance with this section”; and

(d) by inserting the following new proviso—

“Provided that the Commission shall, when undertaking the demarcation of wards, ensure that ward boundaries do not cross into local authority boundaries.”.

5. Section 12 of the principal Act is amended—

Amendment
of s. 12 of the
principal Act

(a) by deleting the proviso to subsection (1), and substituting therefor the following new subsection (1)—

“(1) The Commission shall appoint a suitably qualified person with relevant experience to be the Chief Elections Officer through an open, transparent and competitive process upon such terms and conditions as the Commission may determine;

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

“(3) The Chief Elections Officer shall be the Chief Executive Officer and Controlling Officer of the Commission and, subject to the general and specific directions of the Commission, be responsible for the day to day management of the Commission and, in that regard be responsible and answerable only to the Commission.”.

Insertion of
new ss. 21A,
21B, 21C,
21D and 21E
into the
principal Act

6. The principal Act is amended by inserting therein immediately after section 21 the following new sections as sections 21A, 21B, 21C, 21D and 21E—

“Provision of
voter
education

21 A. The Commission shall establish mechanisms for the provision of continuous voter education, and cause to be prepared a voter education curriculum.

Accreditation
by the
Commission

21 B. A person shall not conduct voter education without being accredited by the Commission in accordance with this Act.

Accreditation
to provide
voter
education

21 C. Any person, other than a registered political party, may apply to the Commission in the prescribed manner for accreditation to provide voter education to the general public for or in respect of any election.

Code of
conduct for
accredited
voter
education
providers

21 D. The Commission shall, in consultation with the Minister, by notice, publish in the *Gazette*, a code of conduct for persons accredited to provide voter education for or in respect of an election.

Failure to
comply with
the code etc.

21 E. Where a person accredited to provide voter education fails to comply with the conditions of accreditation or the code of conduct specified in section 21C, the Commission may, after having given the person the opportunity to be heard, cancel the accreditation concerned or suspend the accreditation until the conditions are met.”

7. Section 23 of the principal Act is amended by deleting subsection (1) and substituting therefore the following new subsection—

“Savings

23.—(1) Notwithstanding anything contained in this Act, any person who, at the commencement of this Act, is a member of the Commission shall continue as such member until the expiry of his term of office, or termination of his appointment, respectively.”

Passed in Parliament this twenty-fifth day of June, two thousand and eighteen.

FIONA KALEMBA
Clerk of Parliament