

ELECTORAL AMENDMENT BILL, 2003

MEMORANDUM

This Bill will amend the Electoral Act [*Chapter 2:01*] (“the principal Act”) in certain respects in the manner described under the individual clauses below:

Clause 1

This clause sets out the Bill’s short title.

Clause 2

This clause inserts some additional definitions in section 3 of the principal Act.

Clause 3

This clause will allow the Minister to assign to the Commission any person in the employment of the State to perform secretarial and administrative functions for the Commission.

Clause 4

This clause will permit any member of the public to inspect the voters roll and make any written notes of anything therein contained.

Clause 5

This clause seeks to insert a new Part in the principal Act which deals with voter education. The clause will empower the Electoral Supervisory Commission with the function of supervising voter education. It further sets out who shall conduct voter education.

Clauses 6 and 7

These clauses seek to amend sections 20 and 21 of the principal Act by empowering the Registrar-General or any constituency registrar to demand from any voter who is registered on the voters roll or from any claimant for registration as a voter proof of identity or residence as defined in the new subsection (a1) of section 20.

Clause 8

This clause will permit the Registrar-General and constituency registrars to effect transfers of applicants seeking transfer to a constituency in which they are either resident or non-resident upon satisfying the Registrar-General or the constituency registrars concerned that they are entitled to such transfer.

Clause 9

This clause will permit the Registrar-General to strike a voter’s name off the voters roll or reject his claim for registration without prior notice to him if such notice, stating that he has ceased to be a citizen of Zimbabwe in terms of Schedule 3 of the Constitution, has already been published in the *Gazette* or in any newspaper circulating in the area concerned.

Clause 10

This clause seeks to simplify the procedure with respect to objections by voters to the retention of any name on the voters roll. If the constituency registrar upholds the objection, the constituency registrar is not (subject to giving notice to any third party affected by the objection) required to set the objection down for hearing before a magistrate.

Clause 11

This clause seeks to insert an additional section in the principal Act to empower the Registrar-General to correct errors or change names or addresses of voters where this becomes necessary to do so, whether on the application of a voter or not, but subject to notice of the fact being published in the *Gazette* by the Registrar-General. Constituency registrars will be given similar powers.

Clause 12

This clause seeks to create an additional offence of forgery of signatures of nominators and disqualifies a candidate who commits that offence from contesting in that election.

Clause 13

This clause will enable the Registrar-General to approve the type or size of seals used by candidates and election agents to seal ballot boxes, and will additionally allow candidates and election agents to affix their signatures or thumb-prints upon the presiding officer's ballot-box seal.

Clause 14 and 15

Clause 14 will restrict the classes of persons who may apply for postal ballots to those away on duty in the military or diplomatic service of the State or on duty as electoral officers, and to the spouses of those persons. Clause 14 and 15 also modify the procedure concerning the application for and issue of postal ballot papers.

Clauses 16 and 17

These clauses seek to make minor amendments to the qualifications and disqualifications of a candidate for election as a councillor and mayor respectively.

Clause 18

This clause seeks to insert an additional subsection to section 103M of the principal Act which will provide that a clearance certificate obtained from the Zimbabwe Republic Police or the relevant council should be lodged together with the nomination papers of a candidate. The clause further creates the offence of forgery and disqualifies a candidate who commits that offence from contesting in that election.

Clause 19

This clause seeks to make provision for expenses of elections to be paid out of the Consolidated Revenue Fund where the council concerned fails to meet such expenses and for the recovery of such moneys from the council concerned.

Clause 20

This clause seeks to create the new offence of defacing property for political purposes.

Clause 21 and Schedule to Bill

Certain minor amendments to the principal Act are effected in a Schedule to this Bill.

BILL

To amend the Electoral Act [*Chapter 2:01*].

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Electoral Amendment Act, 2003.

2 Amendment of section 3 of Cap. 2:01

Section 3 of the Electoral Act [*Chapter 2:01*] (hereinafter called “the principal Act”) is amended by the insertion in subsection (1) of the following definitions—

““Commission” means the Electoral Supervisory Commission appointed in terms of section 61 of the Constitution;

“counting centre” means any place notified by a constituency registrar in terms of section *seventy-three* as a place where the counting of votes will take place;

“electoral officer” means the Registrar-General, a constituency registrar, presiding officer, polling officer or counting officer;

“monitor” means a person appointed and accredited as a monitor in terms of section *fourteen B*;

“observer” means a person accredited as an observer in terms of section *fourteen C*;”;

3 Amendment of section 11 of Cap. 2:01

Section 11 of the principal Act is amended in subsection (1) by the deletion of “members of the Public Service employed in the Ministry” and the substitution of “persons in the employment of the State”.

4 Amendment of section 18 of Cap. 2:01

Section 18 of the principal Act is amended—

- (a) by the insertion after “during office hours” of “, and any member of the public may, without removing the voters roll, make any written notes of anything contained therein”;
- (b) by the repeal of subsections (2) and (3).

5 New Part inserted after Part IV of Cap. 2:01

The principal Act is amended by the insertion after Part IV of the following Part—

“PART IVA

VOTER EDUCATION

19A Interpretation in Part IVA

In this Part—

“foreign contribution or donation” means a contribution or donation made by—

- (a) a person who is not a permanent resident or citizen of Zimbabwe domiciled in Zimbabwe; or
- (b) a company which is not incorporated in Zimbabwe or, if so incorporated, does not carry on business in Zimbabwe; or
- (c) any association of persons, whether incorporated or unincorporated, that does not consist exclusively of permanent residents or citizens of Zimbabwe, domiciled in Zimbabwe;

“local contribution or donation” means a contribution or donation that is not a foreign contribution or donation;

“voter education” means any course or programme of instruction on electoral law and procedure aimed at voters generally and not offered as part of a course in law, civics or other subject for students at an educational institution;

“voter education materials” means printed, aural, visual or audio-visual materials intended for use in voter education.

19B Functions of Commission with respect to voter education

(1) The Commission shall have the following functions with respect to voter education—

- (a) to provide adequate, accurate and unbiased voter education for the purpose of any election; and
- (b) to ensure that voter education provided by persons other than political parties is adequate and not misleading or biased in favour of any political party; and
- (c) to ensure compliance otherwise by persons referred to in paragraph (b)

with the provisions of subsection (1) of section *nineteen C*.

(2) The Commission shall produce its own voter education materials or course or programme of instruction for use in voter education.

(3) The Commission may appoint any person to assist it in providing voter education.

19C Voter education by persons other than the Commission or political parties

(1) No person, other than the Commission, or a person appointed in terms of subsection (3) of section *nineteen B*, or a political party, shall provide voter education unless such person—

(a) is a citizen or permanent resident of Zimbabwe domiciled in Zimbabwe, or an association of persons, whether incorporated or unincorporated, consisting exclusively of citizens or permanent residents of Zimbabwe, domiciled in Zimbabwe; and

(b) is, in the case of—

(i) an association of persons, whether incorporated or unincorporated; or

(ii) a lawfully constituted trust, whether or not registered in terms of any law;

registered as a private voluntary organisation in terms of the Private Voluntary Organisations Act [*Chapter 17:05*], and the constitution of such organisation or the deed of trust, as the case may be, specifically mandates it to provide voter education; and

(c) such person employs individuals who are citizens or permanent residents of Zimbabwe to conduct any voter education; and

(d) such person conducts voter education in accordance with a course or programme of instruction furnished or approved by the Commission; and

(e) the proposed voter education activities of such person are, subject to section *nineteen D*, funded solely by local contributions or donations; and

(f) the voter education materials proposed to be used by the person and the course or programme of instruction in accordance with which the voter education will be conducted are adequate and not misleading or biased in favour of any political party; and

(g) no fee or charge is levied for the provision of voter education or voter education materials.

(2) The Commission may in writing require any person, other than a political party, providing or proposing to provide voter education, to—

(a) furnish the Commission with copies of all the voter education materials proposed to be used and particulars of the course or programme of

instruction in accordance with which the voter education will be conducted; and

- (b) furnish the Commission with all the names, addresses, citizenship or residence status and qualifications of the individuals who will conduct voter education; and
- (c) disclose the manner and sources of funding of its proposed voter education activities; and
- (d) satisfy the Commission that it is not otherwise disqualified in terms of subsection (1) from providing voter education.

(3) Any person who contravenes subsection (1) or who fails to comply with a requirement by the Commission in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

19D Foreign contributions or donations for the purposes of voter education

No foreign contribution or donation for the purposes of voter education shall be made except to the Commission, which may allocate such contribution or donation to any person referred to in subsection (3) of section *nineteen B* or subsection (1) of section *nineteen C*.”.

6 Amendment of section 20 of Cap. 2:01

Section 20 of the principal Act is amended—

- (a) by the insertion before subsection (1) of the following subsection—

“(a1) In this section and section *twenty-one*—

“proof of identity” means a valid Zimbabwe passport or identity document issued in terms of section 7 of the National Registration Act [*Chapter 10:17*];

“proof of residence”, in relation to a constituency, means proof by way of—

- (a) a receipt or demand for payment of any rate in terms of the Urban Councils Act [*Chapter 29:15*], rate or levy in terms Rural District Councils Act [*Chapter 29:13*], or charge for the provision of electricity, in the name of the owner of the property concerned or (in the case of an occupier other than the owner, such a receipt or demand in the name of the owner accompanied by a sworn statement of the owner confirming the occupation of the property by the occupier); or
- (b) a sworn statement by the employer of the voter or claimant confirming the voter’s or claimant’s place of residence; or
- (c) a bank statement, hospital bill or envelope with a post marking, bearing the name of the voter or claimant and the voter’s or claimant’s place of residence; or
- (d) a sworn oral or written statement by the chief, headman or village head of

the area and village where the voter or claimant resides, confirming that the voter or claimant resides in the area and village concerned; or

(g) such other proof of residence as may be prescribed.”;

(b) by the insertion after subsection (3) of the following subsection—

“(4) The Registrar-General or any constituency registrar may demand from any voter who is registered on the voters roll for a constituency proof of identity or proof of residence in that constituency or both of the foregoing.”.

7 Amendment of section 21 of Cap. 2:01

Section 21 of the principal Act is amended—

(a) by the repeal of subsection (1) and the substitution of—

“(1) Any person who wishes to be registered as a voter on the voters roll for any constituency shall complete the appropriate prescribed claim form and lodge it in person with, or despatch it by registered post to, the constituency registrar for that constituency or such other person as the Registrar-General may, by notice in the *Gazette*, designate:

Provided that a claimant who, in accordance with the proviso to subsection (1) of section *twenty*, seeks registration in a constituency in which he or she is not resident shall lodge his or her claim form with the Registrar-General.”;

(b) by the insertion after subsection (6) of the following subsection—

“(7) The Registrar-General or any constituency registrar may demand from any claimant proof of identity or proof of residence in a constituency or both of the foregoing.”.

8 Amendment of section 22 of Cap. 2:01

Section 22 of the principal Act is amended—

(a) by the repeal of subsection (4) and the substitution of—

“(4) If, on receipt of an application in terms of subsection (1) in which the applicant seeks transfer to a constituency in which he or she is resident, the constituency registrar is satisfied that the applicant is entitled to the transfer, the constituency registrar shall effect the transfer.”;

(b) by the repeal of subsection (6) and the substitution of—

“(6) If, on receipt of an application in terms of subsection (1) in which the applicant seeks transfer to a constituency in which he or she is not resident, the Registrar-General is satisfied that it is appropriate for the applicant to be registered in that constituency, the Registrar-General shall direct the constituency registrars concerned to effect such transfer.”;

9 Amendment of section 25 of Cap. 2:01

Section 25 of the principal Act is amended—

(a) in subsection (1) by the deletion of “If” and the substitution of “Subject to subsection

- (7), if”;
- (b) in subsection (3) in paragraph (b) by the insertion in subparagraph (ii) after “the notice of appeal” of “from the constituency registrar”;
- (c) in subsection (5) by the deletion of “the sum of fifty dollars as a deposit” and the substitution of “the prescribed fee”;
- (d) in subsection (6) by the repeal of paragraph (b);
- (e) by the insertion after subsection (6) of the following subsection—

“(7) Notwithstanding this section, where a claimant or voter has ceased to be a citizen of Zimbabwe in terms of subparagraph (3) of paragraph 3 of Schedule 3 of the Constitution, it shall not be necessary to send a notice of objection to a claimant or voter before rejecting his or her claim for registration or striking his or her name off the voters roll, as the case may be, if notice of such fact is published in the *Gazette* or in a newspaper circulating in the area of the constituency concerned:

Provided that, in the absence of such publication, the constituency registrar may (instead of sending a notice of objection to a claimant or voter whom the registrar believes on reasonable grounds to have ceased to be a citizen of Zimbabwe) give written notice to the claimant or voter concerned that he or she has ceased to be a citizen of Zimbabwe or of the fact that his or her claim for registration has been rejected or his or her name has been struck off from the voters roll, as the case may be.”.

10 Amendment of section 26 of Cap. 2:01

Section 26 of the principal Act is amended—

- (a) in subsection (2) by the deletion of “the prescribed deposit” and the substitution of “the prescribed fee”;
- (b) by the repeal of subsection (3) and the substitution of—

“(3) If an objection in terms of subsection (1) is lodged and—

- (a) the constituency registrar upholds the objection, he or she shall give written notice accordingly to—
 - (i) the voter who has objected; and
 - (ii) the person to whom the objection relates, where the effect of upholding the objection is to strike his or her name off the voters roll or to place it on another voters roll:

Provided that if the voter who has objected submits to the constituency registrar a written notice to the effect that he or she wishes the objection to be heard (notwithstanding that the objection is upheld), or if the person to whom the objection relates submits to the constituency registrar written notice to the effect that he or she wishes the objection to be heard, paragraph (b) shall apply as if the constituency registrar did not uphold the objection;

- (b) the constituency registrar does not uphold the objection, he shall—
 - (i) forthwith set down the objection for hearing before a designated magistrate of the province in which the person to whom the objection

relates resides; and

- (ii) the designated magistrate shall appoint a day and place for the hearing, the day so appointed being not more than thirty days after the date when the objection was set down.”;
- (c) in subsection (6) and by the repeal of paragraph (b).”.

11 New section substituted for section 34 of Cap. 2:01

Section 34 of the principal Act is repealed and the following is substituted—

“34 Additional powers to alter voters rolls

(1) In addition to other powers of alteration conferred by this Part, a voters roll may be altered—

- (a) by the Registrar-General at any time to correct any error or omission or to change (whether on the oral or written application of a voter or not) the original name or address of the voter to an altered name or address;
- (b) by the constituency registrar at any time by correcting any obvious mistake or omission, or by changing, on the written application of a voter, the original name or address of the voter to an altered name or address;
- (c) by the constituency registrar at any time except during the period between the issue of a proclamation referred to in section *thirty-eight* or *thirty-nine* and the close of polling at the election fixed by any such proclamation, by striking out the name of any person, on proof that he or she has become qualified for and has secured registration on another voters roll.

(2) In the case of an alteration in terms of paragraph (a) of subsection (1) made otherwise than on the oral or written application of a voter, or paragraph (b) of subsection (1), a notice of the fact shall be published in the *Gazette* by the Registrar-General or constituency registrar, as the case may be.”.

12 Amendment of section 46 of Cap. 2:01

Section 46 of the principal Act is amended by the insertion of the following subsection after subsection (19)—

“(20) Any person who—

- (a) as a candidate or otherwise, forges any signature purporting to be that of a nominator; or
- (b) as a candidate or otherwise, lodges a nomination paper knowing that any signature therein purporting to be that of a nominator is forged; or
- (c) being a candidate, permits the lodging of a nomination paper on his or her own behalf knowing that any signature therein purporting to be that of a nominator is forged;

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment and, in the case of a candidate, shall be disqualified from being

nominated as a candidate for, or from election as, a member of Parliament.”.

13 Amendment of section 60 of Cap. 2:01

Section 60 of the principal Act is amended in subsection (2) by the repeal of paragraph (a) and the substitution of—

- “(a) close and seal the aperture in the ballot box and affix his or her seal thereto and permit any such candidates and election agents to affix their signatures or thumb-prints upon the presiding officer’s seal or to affix their seals to the aperture of the ballot box:

Provided that any seal of a candidate or election agent shall be of the type or size prescribed, or approved by the Registrar-General;”;

14 Amendment of section 61 of Cap. 2:01

Section 61 of the principal Act is amended—

- (a) by the repeal of subsection (2) and the substitution of—

“(2) When an election is to take place in a constituency, a voter ordinarily resident in Zimbabwe who is resident in that constituency or was, within twelve months of the polling day or first polling day, as the case may be, fixed in relation to that constituency, resident therein, may apply to the Registrar-General for a postal ballot paper if he or she has good reason to believe that he or she will be absent from the constituency or unable to attend at the polling station by reason of being—

- (a) on duty as a member of a disciplined force or as a constituency registrar, presiding officer, polling officer or counting officer; or
- (b) absent from Zimbabwe in the diplomatic service of the Government of Zimbabwe; or
- (c) a spouse of a person referred to in paragraph (a) or (b):

Provided that applications for postal ballot papers by members of a disciplined force may be made to the Registrar-General through their commanding officers.”;

- (b) in subsection (3) by the deletion in paragraph (c) of “reach the constituency registrar concerned not later than noon on the day before the polling day or first polling day” and the substitution of “reach the Registrar-General not later than noon on the tenth day before the polling day or first polling day”;
- (c) in subsection (6) by the deletion of “constituency registrar” wherever it occurs and the substitution of “Registrar-General”.

15 Amendment of section 62 of Cap. 2:01

Section 62 of the principal Act is amended in subsection (1) by the deletion of “If the constituency registrar is satisfied, in regard to an application received by him not later than noon on the day before the polling day or first polling day” and the substitution of “If the Registrar-General is satisfied, in regard to an application received by him or her not later than noon on the tenth day before the polling day or first polling day”.

16 Amendment of section 103G of Cap. 2:01

Section 103G of the principal Act is amended in subsection (2) by the deletion from paragraph (e) of “in connection with any funds or other property of the council concerned or

any other local authority”.

17 Amendment of section 103H of Cap. 2:01

Section 103H of the principal Act is amended in subsection (1) in paragraph (d)—

- (a) by the insertion in subparagraph (i) after “at Ordinary Level” of “, or any post-Ordinary Level certificate or qualification”;
- (b) by the repeal of subparagraph (ii).

18 Amendment of section 103M of Cap. 2:01

Section 103M of the principal Act is amended—

- (a) by the insertion of the following subsection after subsection (2)—

“(2a) There shall be lodged together with the nomination papers in terms of subsection (2) a written certificate of clearance obtained from—

- (a) the Zimbabwe Republic Police, as evidence that the candidate concerned is not disqualified in terms of paragraph (d) or (e); and
- (b) the relevant council, as evidence that the candidate concerned is not disqualified in terms of paragraph (h);

of subsection (2) of section *one hundred and three G*.”;

- (b) by the insertion of the following subsection after subsection (3)—

“(4) Any person who—

- (a) as a candidate or otherwise, forges any signature purporting to be that of a nominator; or
- (b) as a candidate or otherwise, lodges a nomination paper knowing that any signature therein purporting to be that of a nominator is forged; or
- (c) being a candidate—
 - (i) permits the lodging of a nomination paper on his or her own behalf knowing that any signature therein purporting to be that of a nominator is forged; or
 - (ii) fails to disclose any previous conviction as required in terms of paragraph (d) or (e) of subsection (2) of section *one hundred and three G*;

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment and, in the case of a candidate, shall be disqualified from being nominated as a candidate for, or from election as, a councillor.

19 Amendment of section 103S of Cap. 2:01

Section 103S of the principal Act is amended by the insertion after “paid out of the funds of the council concerned” of “ or, where the council fails to meet any such expenses, from the Consolidated Revenue Fund (which is hereby appropriated for that purpose), but any moneys so paid shall be recovered in due course from the council”.

20 New section inserted after section 116 of Cap. 2:01

The principal Act is amended by the insertion after section 116 of the following section—

“116A Defacing property for political purposes

(1) Any person who, with the object of supporting or opposing any political party, political cause or candidate, whether or not in reference to any election, places any bill, placard, poster, pamphlet, circular or other document, writing or painting on, or otherwise defaces, any house, building, wall, fence, lamp-post, gate or elevator without the consent of the owner or occupier thereof, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Subject to Part XIX of the Criminal Procedure and Evidence Act [*Chapter 9:07*], a court which has convicted a person of any offence in terms of subsection (1) shall forthwith award compensation, including the costs of restoring the property to its former condition, to any person whose right or interest in property of any description has been lost or diminished as a direct result of the offence.”.

21 Minor amendments to Cap. 2:01

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent specified opposite thereto in the second column of the Schedule.

SCHEDULE (Section 21)

MINOR AMENDMENTS

<i>Provision</i>	<i>Extent of amendment</i>
Section 6	By the repeal of the definition of “Commission”.
Section 11 (1)	By the insertion after “Minister” of “or any other Minister”.
Section 23 (title)	By the deletion of “Voter registration cards” and the substitution of “Certificates of registration as a voter”.
Sections 22 (1) and 23 (1) and (3)	By the deletion of “voters registration card” and the substitution of “certificate of registration as a voter”.
Section 23 (2)	By the deletion of “voters registration card by the constituency registrar of the constituency to which he has been transferred” and the substitution of “certificate of registration as a voter”.

Section 56 (3)	By the deletion of “voters registration card” and (wherever it occurs) “card” and the substitution of “certificate of registration as a voter” and “certificate” respectively.
Section 59 (1)	By the insertion after “presiding officer” wherever it occurs of “, in the presence of a monitor and a police officer on duty at the polling station,”.
Section 62 (3) and (4), 63 and 64 (2)	By the deletion of “constituency registrar” and the substitution of “Registrar-General”.
Section 62 (5)	By the deletion of “constituency registrar” wherever it occurs and the substitution of “Registrar-General”.
Section 70 (1)	By the insertion after “seal in a packet” of “or container”.