

PUBLIC ELECTIONS REGULATIONS, 1996

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IN exercise of the powers conferred on the Electoral Commission by Article 51 of the Constitution, these Regulations are made this 4th day of July, 1996.

PART I—GENERAL PROVISIONS

Regulation 1—Appointment of Returning Officer.

(1) For the purpose of holding a public election, the Electoral Commission, referred to in these Regulations as "the Commission", shall appoint a returning officer for each constituency in which the election is to be held and such other assistants as the Commission may determine.

(2) A returning officer or his assistant shall perform his duties under the general supervision of the District Electoral Officer of the Commission.

(3) A person appointed as a returning officer or assistant shall swear in the presence of a Judge or a judicial officer that he will faithfully and impartially fulfill the duties of his office and shall abide by the laws and regulations governing the conduct of elections

Regulation 2—Writ of Election.

(1) For the purpose of a public election, the Commission shall issue a writ of election to the returning officer.

(2) The writ shall be in such form as the Commission may determine and shall specify—

(a) The period and place for the nomination of candidates; and

(b) The day on which the poll is to be taken.

(3) The day on which the poll is to be taken shall—

(a) not be less than thirty days or more than ninety days after the last day appointed for the nomination of candidates, in the case of a general election; and

(b) not be less than ten days and not more than fourteen days after the nomination of candidates in the case of a by election.

(4) As soon as a writ has been issued, the Commission shall publish a notice in the Gazette stating that the writ has been issued and specifying the constituency to which it relates, the day and place for the nomination of candidates and the day on which the poll is to be taken.

Regulation 3—Notice of Election.

(1) On receipt of a writ of an election, the returning officer shall publish notice of the election throughout the constituency in such manner as the Commission shall direct.

(2) Every notice of an election under these Regulations shall be in such form as the Commission may direct and shall specify the day, the place and the time for the nomination of candidates and the day when the poll is to be taken.

Regulation 4—Nomination of Candidates for Parliamentary Election.

(1) A candidate for election to Parliament shall be nominated by a separate nomination paper in such form as the Commission shall determine which shall be delivered in quadruplicate by the candidate himself or the person who proposes or seconds his nomination to the returning officer of the constituency for which the candidate seeks election on the day and at the place specified in the writ between the hours of nine in the morning and twelve noon and the hours of two and five in the afternoon.

(2) The nomination paper for each candidate in an election to Parliament shall be—

(a) Witnessed by the signature or mark of two electors as proposer and seconder and supported by eighteen other electors as assenting to the nomination; and

(b) Endorsed with the candidate's consent to nomination

(3) No candidate shall be nominated:

(a) In the case of a general election to Parliament, for more than one constituency; or

(b) In the case of a by-election to Parliament, if he or she is a Member of Parliament (4) No person shall nominate more than one candidate for election to Parliament.

Regulation 5—Nomination of Candidates in Presidential Elections.

(1) A candidate for election as President shall be nominated by a separate nomination paper in such form as the Commission shall determine.

(2) The nomination paper for each candidate in an election for President shall—

(a) Be signed by the candidate;

(b) Be signed by not less than two persons who are registered voters resident in the area of authority of each district assembly; and

(c) Designate a person to serve as Vice President; and

(d) Be delivered to the Commission on or before the day appointed as nomination day in relation to the election;

(3) The nomination form shall be in quadruplicate and shall be delivered by the presidential candidate himself or the person who proposes or seconds his nomination between the hours of nine in the morning and twelve noon and the hours of two and five in the afternoon on or before the nomination day.

(4) No person shall nominate more than one candidate in a presidential election.

(5) The Chairman of the Commission shall be the returning officer for the purpose of election of President.

Regulation 6—Statutory Declaration and Deposit by Presidential and Parliamentary Candidates.

(1) A candidate for President or Parliament shall, at the time of his nomination—

(a) deliver or cause to be delivered to the returning officer a statutory declaration in such form as the Commission may determine, stating that he is qualified to be and is not disqualified from being elected President or a member of Parliament;

(b) deposit or cause to be deposited such sum as the Commission shall determine; and

(c) deliver or cause to be delivered to the returning officer two post card size copies of his recent photograph (bust).

(2) The statutory declaration shall be made before a Judge, a judicial officer, notary public, commissioner of oaths, or any person authorized by law to administer an oath who shall certify it under his signature.

(3) The Statutory declaration provided for under paragraph (a) of sub-regulation (1) shall also be made by a person designated as vice-president for the election.

Regulation 7—Nominated Candidate.

(1) Whenever the nomination paper and the statutory declaration of a candidate are delivered and the deposit is paid in accordance with these Regulations, the candidate shall be considered to stand nominated, unless proof is given to the satisfaction of the returning officer of the candidate's death, withdrawal, or disqualification.

(2) The returning officer shall inform a candidate that his nomination is invalid where—

(a) The particulars of the candidate or the persons subscribing to the nomination paper are not as required by law; or

(b) The nomination paper is not subscribed to as required by law, and allow the candidate an opportunity to make any amendment or alteration that the candidate considers necessary.

(3) Where the returning officer decides that a nomination paper is invalid, after complying with sub-regulation (2) of this regulation, he shall endorse and sign on the nomination paper the fact and the reasons for his decision, and inform the Commission accordingly and the Commission shall refer the matter with its observations on it to the Attorney-General.

(4) Nothing in this regulation shall prevent the validity of a nomination being questioned on an election petition.

(5) Before the close of nominations on the nomination day, the returning officer, the candidate, if present, or such of the persons who have nominated the candidate as are present shall sign a

declaration to the effect that, at the close of nominations, the nomination of the candidate was presented and received by the returning officer, who shall state in the declaration the time at which each nomination was received by him and the time at which he accepted the nomination.

Regulation 8—Withdrawal of Nomination and Exhibition of Names of Nominated Candidates.

(1) Nomination of candidates shall be submitted and concluded by close of the last day for nominations and a list of the nominated candidates as at close of nomination day shall be prepared and signed by the returning officer.

(2) On the next day following the last day for nomination, the returning officer shall post at the constituency centre, and at such other places as the Commission may direct, a notice providing the names of the candidates nominated and a list of the persons who have sponsored each candidate.

(3) Subject to sub-regulation (2) of regulation 11, a duly nominated candidate may withdraw his candidature at any time prior to the day before election day except that, where a duly nominated candidate whose name appears on the nominated list exhibited under this regulation withdraws his candidature after the printing of ballot papers and related election notices, the ballot papers and related notices may continue to include his name and other particulars and there shall not be refunded to such latter candidate the deposit paid by him for his nomination.

Regulation 9—Where no Candidate Nominated.

(1) Where at the expiration of the time allowed for delivery of nomination papers no candidate stands nominated, the returning officer shall certify the fact by endorsing that on the writ and forwarding the writ to the Commission.

(2) Within thirty days after the receipt by the Commission of a writ endorsed as provided under sub-regulation (1) of this regulation in respect of any constituency, a fresh writ shall be issued for an election in that constituency.

Regulation 10—Unopposed Candidate.

Where at the expiration of the time allowed for the delivery of nomination papers and on the day before the election only one candidate stands nominated, that candidate shall be declared elected.

Regulation 11—Contested Election and Death of a Candidate.

(1) Where at the expiration of the time allowed for the delivery of nomination papers and on the day before the election two or more candidates stand nominated, a poll shall be taken in the manner provided by these Regulations and in accordance with any existing applicable law.

(2) Where for the purpose of a public election two or more candidates are duly nominated at the close of the nominations but before the day of the election only one candidate stands nominated, a further period of ten days shall be allowed for nomination of other candidates, and it shall not be lawful for any person nominated within that period of ten days to withdraw his nomination.

(3) Where at the close of nominations and after the expiry of the further period of ten days under sub-regulation (2) of this regulation only one candidate stands nominated, there shall be no election and that candidate shall be declared elected.

(4) Where at the close of nominations, but before the election, one of the candidates dies, a further period of ten days shall be allowed for nominations; and where the death occurs at any time within twenty-five days before the election, the election in that constituency shall be postponed for not less than twenty-one days.

Regulation 12—Allocation of Symbols and Colours.

(1) Where an election is contested, the Commission shall, as soon as practicable after the nomination day—

(a) Allocate to each candidate the symbol of his party in the case of a candidate sponsored by a registered political party; or

(b) Allocate to a candidate who is not sponsored by a political party a symbol or colour chosen by him; or

(c) In any other case, allocate such symbols or colours as the Commission considers appropriate.

(2) A symbol or colour shall be chosen or assigned for the purpose of this regulation from among symbols and colours approved by the Commission for the purposes of election.

(3) No person shall be allocated a symbol which is connected with or is attached to the name, status or dignity of a chief or a symbol or a colour which is connected with any religious or racial association within the meaning of the Avoidance of Discrimination Act, 1957 (No. 38).

Regulation 13—Notice of Poll.

Whenever an election is to be held, the Commission shall, as soon as practicable after the allocation of symbols or colours, publish notice of the election in the Gazette and in such places in a constituency as it may direct and the notice shall state—

(a) The day on which and the time at which the poll is to be taken; and

(b) The full names and photographs or symbols or colours of

Regulation 14—Adjournment of Poll.

(1) The Commission may, at any time between the issue of a writ and the day specified in the writ as polling day, by notice in the Gazette adjourn the taking of the poll to a day not more than thirty days after the day specified earlier.

(2) Where a notice in the Gazette is issued under subregulation (1) of this regulation, the writ for the constituency to which the notice relates shall be considered as amended by the substitution of the day to which the taking of the poll is adjourned for the day specified in the writ as polling day.

Regulation 15—Death of Candidate.

(1) Where an election is to be held and proof of the death of a candidate is given to the returning officer before the poll is commenced, the returning officer shall inform the Commission and all proceedings in relation to the election shall, subject to sub-regulation (2) of this regulation, be started afresh.

(2) Where proceedings are started afresh, the Commission shall appoint—

(a) a fresh nomination day, which shall be not less than fourteen days and not more than twenty-one days after the day on which proof of the candidate's death was given to the returning officer; and

(b) a fresh polling day, which shall not be more than fourteen days after the nomination day appointed under paragraph (a) of this sub-regulation.

Regulation 16—Provision of Polling Stations.

(1) For the purpose of taking the poll the existing polling stations prescribed by the Commission shall be used as polling stations.

(2) The Commission may direct a returning officer to establish additional polling stations for any polling division.

(3) Any convenient building, except a dwelling-house or a building or class of buildings exempted by the Commission, may be established by the returning officer as a polling station and used without charge for that purpose.

(4) The government shall repair out of public funds any damage done to a building as a result of its being used as a polling station.

(5) Where two or more polling stations are established for a polling division, the returning officer shall—

(a) assign to each of the stations such number of the voters registered in the division as the Commission considers appropriate; and

(b) Give notice in the polling division, in such manner as the Commission may direct, of the polling stations to which the voters registered in the division have been assigned.

Regulation 17— Presiding Officers and Polling Assistants.

(1) The Commission shall appoint a presiding officer to preside at each polling station and such number of polling assistants as it considers necessary to assist the presiding officer in carrying out his duties.

(2) A polling assistant may act as the presiding officer of a polling station during the absence or incapacity of the presiding officer.

(3) A person appointed as a presiding officer or polling assistant shall swear, before a member or senior officer of the Commission, upon penalty of perjury that he will abide by the laws and regulations governing the conduct of elections and will faithfully carry out his duties in a fair and impartial manner

Regulation 18—Equipment for Polling Stations.

(1) The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as the Commission may direct.

(2) Each ballot box shall be so constructed that a ballot paper can be put into it by the person voting but cannot be withdrawn by him.

(3) The returning officer shall provide each polling station with—

(a) Materials for voting;

(b) Instruments for perforating or stamping the ballot papers with the official mark;

(c) instruments for marking the means of identification of the voter in accordance with sub-regulations (1) and (2) of regulation 31 of these Regulations; and

(d) a copy of the divisional register, the transferred voters list, the proxy voters list, the election officers list and the absent voters list relating to the polling station.

(4) A notice given directions for the guidance of the voters in the voting shall be exhibited in each polling division in as many languages as the Commission may direct for the benefit of the voters.

Regulation 19—Polling Agents.

(1) A candidate may appoint one polling agent to attend at each polling station in the constituency for which he is seeking election or, in the case of a candidate for President, in every polling station nationwide, for the purpose of detecting impersonation and multiple voting and certifying that the poll was conducted in accordance with the laws and regulations governing the conduct of elections.

(2) Every candidate shall submit in duplicate to the returning officer in charge of the constituency in which he seeks election letters of appointment stating the name and address of each polling agent and the polling station to which each is to be assigned.

(3) On a date set by the returning officer, the polling agent shall appear before the returning officer to be sworn upon penalty of perjury that he shall abide by the laws and regulations governing the conduct of elections.

(4) Upon the taking of the oath by the polling agent, the returning officer shall sign both the original and duplicate copies of the appointment letter and issue to the polling agent the duplicate copy which shall be presented to the presiding officer of the polling station to which the agent is assigned on the day of the poll.

(5) If a polling agent dies or becomes incapacitated from acting as such, the candidate who appointed him may, in accordance with sub-regulations (2) and (3) of this regulation, appoint another polling agent in his place.

Regulation 20—Transferred Voters List.

(1) A registered voter who at any time before a general election is resident for not less than two months in a constituency other than that in which he is registered, may apply to the returning officer of the constituency where he is resident for his name to be entered on the transferred voters list of the constituency.

(2) An application under sub-regulation (1) of this regulation shall be made—

(a) Not less than twenty-one days before the last day of nomination to the constituency where the applicant is resident, where the application relates to a nomination; or

(b) Not less than twenty-one days before Election Day to the constituency where the applicant is resident, where the application relates to voting.

(3) A returning officer to whom an application is made under this regulation shall enter the applicant's name in the transferred voters list for the assigned polling station in his constituency if he is satisfied that the applicant has met the residency requirement established in sub-regulation (1) of this regulation and is registered in another constituency.

(4) Whenever a returning officer enters the name of any person on the transferred voters list, he shall—

(a) Assign that person to a polling station in his constituency; and

(b) Send a copy of the entry to the returning officer of the constituency where the person whose name has been entered is registered.

(5) A person whose name is entered on the transferred voters list is entitled to vote at the election in the polling station to which he is assigned as if it were the polling station where he is registered, and the provisions of Regulation 31 of these Regulations shall have effect accordingly.

Regulation 21—Special Voters List.

(1) A voter who because of his duties on polling day will be unable to be present at the polling station where he is registered, may apply to the returning officer of the constituency in which he is registered to be entered as special voter.

(2) An application under sub-regulation (1) of this regulation shall be made not later than seven days before the polling day in the constituency of the applicant and, except in the case of an applicant who is a returning officer, shall be accompanied by a certificate from the applicant's superior stating that—

(a) The applicant is registered at a polling station in the constituency of the returning officer to whom the application is made; and

(b) The applicant's duties will prevent him from being present on polling day at the polling station where he is registered.

(3) A returning officer to whom an application is made under subregulation (2) shall, where the applicant is a person whose duties are related to the elections, ascertain from the applicant where he will be working on election day and—

(a) If the applicant will be working in the same constituency where he is registered but at a polling station other than where he is registered—

(i) Enter the name and voter ID number of the applicant on the election officers list for the polling station;

(ii) issue the applicant a certificate that entitles him to vote on election day in the polling station at which he is working; and

(iii) Enter the name and voter ID number of the applicant on the absent voters list of the polling station in which the applicant is registered;

(b) If the applicant will be working in a constituency other than where he is registered—

(i) Issue the applicant a certificate that entitles him to vote on a day set aside for special voters;

(ii) Enter the name and voter ID number of the applicant on the special voters list;

(iii) Enter the name and ID number of the applicant on the absent voters list of the polling station in which the applicant is registered; and

(iv) Inform the applicant of the date and time set aside for special voting.

(4) Where an application is made to a returning officer under subregulation (1) and the applicant is a person other than an election officer the returning officer shall—

(a) Enter the name and voter ID number of the applicant on the special voters list for the constituency;

(b) Enter the name and voter ID number of the applicant on the absent voters list of the polling station in which the applicant is registered;

(c) Inform the applicant of the date and time set aside for special voting.

(5) A person whose name is entered on the special voters list is entitled to vote at a polling station specified by the Commission and on a day which is not more than seven days before the polling day appointed by the returning officer and advertised in such manner as the Commission may direct;

(6) A person who is entitled to vote as a special voter shall not be entitled to vote otherwise at the election.

(7) No person shall vote at a polling station as a special voter unless his name is on the special voters list for that polling station.

(8) Subject to subregulation (9) of this regulation voting at a polling station for special voters shall be conducted in the same manner as voting on polling day.

(9) The returning officer shall in relation to special voting—

(a) Cause the ballot boxes to be kept in safe custody after the poll has closed and the boxes have been sealed; and

(b) arrange for the ballot boxes to be opened at the time of the counting of the votes cast on the polling day and the ballot papers shall be counted in the same manner as those contained in the ballot boxes used on polling day.

Regulation 22—Absent Voters List.

(1) Each returning officer shall, before polling day, prepare for each polling station in his constituency an absent voters list containing the names of any persons registered in the station whose names have been entered on the transferred voters list for another constituency, the election officers list, or on the special voters list for his constituency.

(2) A person whose name is entered on the absent voters list for a polling station shall not be entitled to vote in that station and the provisions of Regulation 31 of these Regulations shall have effect accordingly.

Regulation 23—Voting by Proxy.

(1) A registered voter who, because of ill-health or absence from his constituency, will be unable to present himself to vote on polling day may, not less than fourteen days before the poll in the constituency where he is registered, apply to the returning officer of the constituency where he is registered or to any representative of the Commission for his name to be entered on the proxy list.

(2) The applicant shall complete a proxy form in such manner as the Commission may direct.

(3) The application form shall be endorsed by the returning officer of the constituency of the applicant or the representative of the Commission to whom the application was made and distributed as follows—

(a) The original to the returning officer of the constituency where the applicant wishes the proxy to vote;

(b) The duplicate copy to the Commission

(c) The triplicate copy to the person appointed as proxy; and

(d) The quadruplicate to the applicant.

(4) The returning officer or any representative of the Commission to whom the application is made shall, if satisfied that the proxy is qualified to be registered as a voter and that the applicant is a registered voter, enter the names and the particulars of the applicant and the proxy on the proxy list and—

(a) Assign the proxy to a polling station in the constituency;

(b) Indicate on the proxy list the polling station to which the proxy is assigned; and

(c) Forward a copy of the list to the presiding officer for the polling station to which the proxy is assigned.

(5) A person appointed as a proxy may vote in the elections at the polling station where he is assigned to vote and the provision relating to voting procedure under these Regulations shall have effect accordingly.

(6) No person shall be entitled to have more than one person at a time appointed as a proxy to vote for him at the election.

(7) A person whose application to vote by proxy is accepted and endorsed by the returning officer of the constituency or the Commission shall not vote at the election in respect of which the application was granted.

(8) The appointment of a proxy shall be canceled by the returning officer or the Commission where an application is made for cancellation by the person who made the application for the appointment of the proxy.

(9) An application for the cancellation of proxy shall be made not less than seven days before the election to which the application relates and shall be made in such form as the Commission may determine.

(10) A proxy whose appointment is cancelled shall cease to have the right to vote for the applicant whether or not he is aware of the cancellation

PART II—THE POLL

Regulation 24—Number of Votes and Place of Voting.

(1) No voter shall cast more than one vote when a poll is taken.

(2) Subject to the provisions relating to transferred voters list, special voters list, election officers list, and absent voters list under Regulations 20, 21 and 22 respectively, a voter shall vote at the polling station allotted to him.

Regulation 25—Poll to be taken by Ballot.

(1) The votes at the poll shall be given by ballot and the result shall be ascertained by counting the votes cast for each candidate.

(2) The candidate who receives the most valid votes cast shall be declared elected in the case of a parliamentary election.

Regulation 26—Ballot Papers.

(1) The ballot of every voter shall consist of a ballot paper.

(2) Each ballot paper shall—

(a) Contain the names and photographs or symbols or colours of all the candidates contesting the election in the constituency;

(b) Be capable of being folded up;

(c) Have a number printed on it; and

(d) Have attached to it a counterfoil with the same number printed on it.

(3) Notwithstanding sub-regulation (2) of this regulation, a ballot paper shall not be void because it does not bear any number if it is certified by the Commission that it is a ballot paper issued by it.

Regulation 27—Polling Hours and Admission to Polling Station.

(1) The poll shall be taken between the hours of seven in the morning and five in the evening.

(2) The presiding officer shall regulate the number of voters to be admitted to the polling station at each time, and shall exclude all other persons except—

(a) The candidates, their spouses and their polling or counting agents

(b) Election officers;

(c) Security officers on duty;

(d) Persons authorized by the Commission; and

(e) Persons accompanying voters who are blind or otherwise physically incapacitated.

Regulation 28—Keeping Order at Polling Station.

(1) It is the duty of the presiding officer to keep order at his polling station.

(2) If a person misconducts himself in a polling station or fails to obey the lawful orders of the presiding officer, he may immediately, by order of presiding officer, be removed from the polling station by security officer; and a person so removed shall not, without the permission of the presiding officer, again enter the polling station on the polling day.

(3) Any person removed under sub-regulation (2) may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a police officer for an offence without a warrant.

(4) The powers conferred by this regulation shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having the opportunity of voting at that station.

Regulation 29—Sealing of Ballot Boxes.

(1) Immediately before the commencement of the poll, the presiding officer shall show the ballot boxes empty to the persons present in the polling station so that they can see that the ballot boxes are empty, and shall then—

(a) close the ballot boxes and place his seal upon them in such manner as to prevent their being opened without breaking the seal; and

(b) Place them in view of the public for the receipt of ballot papers.

(2) Polling agents of candidates may affix their seals on the ballot boxes after the Commission's seals have been affixed.

Regulation 30—Identification of Voters.

(1) A presiding officer may, before delivering a ballot paper to a person applying to vote at the election, require the person—

(a) to produce his or her voter identification card or to furnish such other evidence as may be determined by the Commission to establish that he or she is the registered voter whose name and voter identification number and particulars appear in the register; and

(b) To make a declaration in the prescribed form that he has not already voted anywhere at the election.

Regulation 31—Voting Procedure.

(1) Every voter desiring to record his vote shall present himself at his allotted station and the presiding officer or a polling assistant, after satisfying himself that the voter is registered and has not already voted, and that any other means of identification determined by the Commission in the possession of the voter is valid, shall deliver the ballot paper to the voter.

(2) Immediately before the ballot paper is delivered —

(a) The ballot paper shall be perforated or stamped with an official mark of the Commission;

(b) A mark shall be placed in the copy of the register against the number of the voter to indicate that the ballot paper has been received; and

(c) A mark, which shall, so far as possible, be permanent shall be made on the voter.

(3) The voter on receiving the ballot paper shall immediately proceed to one of the places set aside in the polling station for the marking of the ballot paper, and shall secretly make on the ballot paper an imprint of his thumb in the box and column provided for that purpose directly against the name and symbol of the candidate for whom he wishes to vote.

(4) The voter shall then fold up the ballot paper and in the presence of the presiding officer and the polling agents and in full view of the general public cast his vote by putting the folded ballot paper into the ballot box.

(5) The voter shall vote without undue delay, and shall leave the polling station as soon as he has put his ballot paper into the ballot box.

(6) This provision shall apply subject to the provisions in these Regulations relating to the transferred voters list, special voters list, election officers list, and absent voters list.

Regulation 32—Assistance in Voting.

(1) The presiding officer, on the application of a voter who is incapacitated because of blindness or other physical cause from voting in the manner directed in these Regulations, shall permit the voter to be assisted by a person of his own choice.

(2) When he accedes to the request of a voter under sub-regulation (1), the presiding officer shall record in the register opposite the name of the voter the fact that the voter was assisted and the reason for the assistance.

Regulation 33—Tendered Ballot Papers.

(1) Where a person representing himself to be a particular voter named in the register applies for ballot paper after another person has voted as such voter, the applicant shall, on making a declaration in the prescribed form, be entitled, subject to this regulation, to vote using a tendered ballot paper.

(2) A tendered ballot paper shall—

(a) Be of a different colour from the ballot paper; and

(b) Instead of being put into the ballot box—

(i) Be given to the presiding officer and endorsed by him with the name of the voter and his number in the register; and

(ii) Be set aside by the presiding officer in a separate packet.

(3) The name of any person voting under this regulation and his number in the register shall be entered by the presiding officer on a list of such voters.

Regulation 34—Spoilt Ballot Papers.

A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering it to the presiding officer and proving

to his satisfaction the fact of the inadvertence, obtain another ballot paper in place of the ballot paper delivered and the spoiled ballot paper shall be immediately cancelled and the counterfoil marked accordingly.

Regulation 35—Adjournment of Poll by Presiding Officer in Case of Riot, Flood. Etc.

(1) When the proceedings at any polling station are interrupted or obstructed by riot, open violence, storm, flood, or other natural catastrophe presiding officer shall adjourn the proceedings to the following day and shall immediately file notice to the returning officer.

(2) When the returning officer is satisfied that, because of an interruption or obstruction of the kind mentioned in sub-regulation (1) of this regulation, it is or will be impossible or impracticable for proceedings which have been adjourned to be continued on the day to which they have been adjourned, he may, with the concurrence of the Commission, further adjourn the proceedings for not more than seven days.

(3) Where the poll is adjourned under this regulation, the hours of polling on the day to which it is adjourned shall be the same as on the original polling day.

PART III—AFTER THE POLL

Regulation 36—Counting of Votes and Attendance at the Count, Counting Agents.

(1) Each candidate may appoint one counting agent to attend at the counting of votes at each polling station in the constituency for which he is seeking election or, in the case of a candidate for President, in every polling station nationwide.

(2) Each candidate shall submit in duplicate to the returning officer in charge of the polling station to which he intends to assign the counting agent, a letter of appointment stating the name and address of the counting agent and the polling station to which he is to be assigned.

(3) On a date set by the returning officer, the counting agent shall appear before the returning officer to be sworn by the returning officer upon penalty of perjury that he shall abide by the laws and regulations governing the conduct of elections and that he will sign the declaration of results following the count of the ballots, or state in writing to the presiding officer the reason for failing to do so.

(4) Upon the taking of the oath by the counting agent, the returning officer shall sign both the original and duplicate copies of the appointment letter and issue to the counting agent the duplicate copy.

(5) Unless otherwise directed by the candidate, the polling agent appointed by a candidate shall act as a counting agent at the counting of the votes at the assigned polling station.

(6) The returning officer shall make arrangements for counting the votes at each polling station in his constituency in the presence of the counting agents as soon as practicable after the close of the poll; and shall take such steps as he considers reasonable to give the counting agents notice of the time at which the counting of the votes will commence.

Regulation 37— Result of Elections.

(1) Immediately after the close of the poll, the presiding officer shall, in the presence of the candidates or their representatives and counting agents—

- (a) Open each ballot box, take out all the ballot papers in the box;
- (b) Proceed to count the ballot papers at the polling station; and
- (c) Record the total number of votes cast in favour of each candidate.

(2) The presiding officer, the candidates, their representatives or their counting agents shall then sign a declaration stating—

- (a) The name of the polling station; and
- (b) The total number of persons entitled to vote at that polling station; and
- (c) The number of votes cast in favour of each candidate, and the presiding officer shall there and then announce the results of the voting at that polling station before communicating them to the returning officer and shall provide each candidate, his representative or counting agent with a copy of the declaration of results.

(3) A candidate or his counting agent may, if present when the counting of the votes is completed, require the presiding officer to have the votes recounted or again recounted, but the presiding officer may refuse to perform the second recount if, in his opinion, the request is unreasonable and report such request to the returning officer who shall recount the ballots for that polling station only at the constituency centre.

(4) As soon as practicable after the announcement of the results of the voting at the polling station, the presiding officer shall, in the presence of such of the candidates and their counting agents as are present, make up into separate packets sealed with his own seal and the seals of such counting agents as desire to affix their seals—

- (a) Each ballot box in use at the station, sealed so as to prevent the introduction of additional ballot papers;
- (b) The unused and spoilt ballot papers placed together;
- (c) The tendered ballot papers, the tendered list and any declarations made under sub-regulation (1) of regulation 33 and of sub-regulation (2) of regulation 37 of these Regulations;
- (d) The marked copies of the register and the counterfoils of the used ballot papers; and
- (e) Shall deliver the packets and the ballot boxes to the returning officer.

(5) The packets mentioned in sub-regulation (4) of this regulation shall be accompanied by a statement made by the presiding officer showing the number of ballot papers entrusted to him and accounting for them under the heads of ballot papers in the ballot box and unused, spoilt, and tendered ballot papers.

Regulation 38—Rejected Ballot Papers.

(1) Any ballot paper—

(a) Which does not bear the official mark of the Commission; or

(b) Which is not marked by the voter so as to clearly identify the candidate for whom the vote was cast; or

(c) Which is not marked at all;

(d) Which has on it writing or mark by which the voter could easily be identified; shall subject to sub-regulation (2) of this regulation, be void and not counted.

(2) Before rejecting a ballot paper as void, the presiding officer shall, taking all proper precautions to prevent any person from seeing the number printed on it, show the paper to each candidate or his counting agent, if present, and give him an opportunity to express an opinion on the matter.

(3) The presiding officer shall endorse the word "rejected" on any ballot paper which under this regulation is not to be counted, and shall add to the endorsement the words "rejection objected to" if an objection is made by a candidate or counting agent to his decision.

(4) The presiding officer shall draw up a statement showing the number of ballot papers rejected under the several heads of—

(a) Want of an official mark;

(b) Voting for more than one candidate;

(c) Writing or mark by which a voter could easily be identified;

(d) Unmarked; or

(e) Choice of voter could not be ascertained and any candidate or counting agent may copy the statement.

Regulation 39—Decision on Ballot Papers.

The decision of the returning officer on any question arising in respect of a ballot paper is subject to adjudication or review on an election petition to the High Court.

Regulation 40—Equality of Votes in Parliamentary Elections.

(1) Where after the completion of the counting of the votes including re-count, in a parliamentary election an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer shall certify that fact by endorsing the writ and forwarding the writ so endorsed to the Commission.

(2) Within 30 days after receipt by the Commission of a writ endorsed in the manner provided by this regulation in respect of any constituency, a second election shall be held.

(3) The candidates for election under sub-regulation (2) of this regulation shall be the candidates who obtained the equality of votes at the previous election and the candidate who obtains the most valid votes shall be declared elected.

Regulation 41—Declaration and Publication of Contested Election Results.

(1) Subject to Regulation 40 of these Regulations, immediately after the results of the poll for all the stations in his constituency have been given to him, the returning officer shall, in the presence of the candidates or their representatives or not more than two counting agents appointed by each candidate—

(a) Assemble the results from the polling stations without recounting the ballots in the ballot boxes, except where there is a challenge by a candidate or counting agent in respect of a specific ballot box;

(b) Give public notice of the total number of votes cast for each candidate;

(c) Publicly declare to be elected in a parliamentary election the candidate to whom the most votes have been given;

(d) Endorse on the writ the name of the person elected; and

(e) Forward to the Commission the endorsed writ and a note of the total number of votes cast for each candidate.

(2) On receipt of a writ endorsed in accordance with this regulation, the Commission shall—

(a) in a parliamentary election publish in the Gazette a notice stating the name of the person elected and the total number of votes cast for each candidate; and

(b) Inform the Clerk to Parliament soon after that of the name of the candidate elected.

Regulation 42—Specific Provisions Relating to Presidential Elections.

(1) In a presidential election the candidate who receives more than 50% of the valid votes cast shall be declared elected as President.

(2) Where at a presidential election there are more than two candidates and no candidate obtains the percentage of votes specified in subregulation (1) of this regulation a second election shall be held within twenty-one days after the previous election.

(3) The candidates for a presidential election held under subregulation (2) shall be the two candidates who obtained the two highest numbers of votes at the previous election.

(4) Where at a presidential election three or more candidates obtain the two highest number of votes they shall, subject to any withdrawals, be the candidates in the subsequent election and the same process shall be continued until a President is elected.

(5) A presidential candidate under subregulation (3) or (4) may, by writing under his hand, withdraw his candidature at any time before the election.

(6) If after a second presidential election held under subregulation (2) the two candidates obtained an equality of votes, notwithstanding any withdrawal, an election shall be held within twenty-one days after the election at which the two candidates shall be the only candidates and the same process shall, subject to any withdrawal, be continued until a President is elected.

(7) An instrument which—

(a) Is executed under the hand of the Chairman of the Commission and under the seal of the Commission; and

(b) States that the person named in the instrument was declared elected as the President of Ghana at the election, shall be prima facie evidence that the person named was elected.

PART IV—MISCELLANEOUS PROVISIONS

Regulation 43—Disposal of Deposit.

(1) Subject to this regulation and Regulation 8(3), the deposit made under Regulation 6(1)(b) of these Regulations shall, as soon as practicable after the result of the election is declared, be returned to the person making it or his personal representative or forfeited to the state.

(2) Where a candidate is not shown as standing nominated in the notice mentioned in Regulation 13 of these Regulations or if the poll is made inapplicable by reason of his death, his deposit shall be returned as soon as practicable after the publication of the notice or after his death, to the person making it or his personal representative.

(3) Where a poll is taken and after the completion of the counting of the votes, including any re-count, a candidate is found not to have polled—

(a) in a parliamentary election, more than 12½% of the total valid votes cast within the constituency; or

(b) in a presidential election, more than 25% of the total valid votes cast in the election, his deposit shall be forfeited and paid into the Consolidated Fund.

Regulation 44—Disposal of Documents.

(1) On the completion of the counting at an election, the returning officer shall seal up in separate packets the counted and rejected ballot papers in respect of each candidate and shall then forward to the Commission the following documents:

(a) The sealed packets of counted and rejected ballot papers;

(b) The ballot papers account and the statement of rejected ballot papers;

(c) The tendered voters list and any declarations made under sub-regulation (1) of regulation 33 and of sub-regulation (2) of regulation 37 of these Regulations;

(d) The packets of ballot papers counterfoils; and

(e) the packets containing marked copies of the register; and endorse on each packet a description of its contents, the date of the election to which they relate and the name of the constituency for which the election was held; and prepare a statement in respect of the said documents which may be copied by any candidate or counting agent.

(2) Subject to the provisions of these Regulations, the Commission shall retain for a year all documents forwarded to it under this regulation and shall then, unless otherwise directed by a court, cause them to be destroyed.

(3) Documents relating to an election in respect of which legal proceedings have been started shall not be destroyed until the proceedings have been finally disposed of.

(4) A court trying an offence relating to an election or the High Court hearing an election petition may make an order that any document retained by the Commission under this regulation shall be inspected, copied or produced at a time and place and subject to such conditions as it thinks fit.

(5) No order shall be made under sub-regulation (4) of this regulation unless the court is satisfied that the inspection, copying or production is required for the purpose of instituting, maintaining, defending, or otherwise for the purpose of prosecuting an election petition in respect of the election to which the document relates.

(6) Except as otherwise provided in sub-regulation (4) of this regulation, no person may inspect or copy any document retained by the Commission under this regulation.

Regulation 45— Absence of Candidate or Agent.

Where in these Regulations expressions are used requiring, authorising, or implying that any act or thing is to be done in the presence of the candidates or their polling agents or counting agents, those expressions shall be regarded as reference to the presence of such candidates or agents as may be authorised to attend and have in fact attended at the time and place where the act or thing is being done and the non-attendance of any candidate or agent at that time and place shall not, if any act or thing is otherwise done, invalidate that act or thing.

Regulation 46—Public Notice and the Gazette.

Where any matter is provided in this instrument to be published in the Gazette, it may, in lieu of or in addition to the publication in the Gazette, be published through radio, television, the national newspapers or any other medium of mass communication.

Regulation 47— Application of Regulations.

These Regulations shall apply to presidential and parliamentary elections and with such modifications as may be necessary to such other public elections as the Commission may by constitutional instrument prescribe.

Regulation 48—Interpretation.

(1) In these Regulations unless the context otherwise requires:

"Absent voters list" means the absent voters list prepared under Regulation 22 of these Regulations;

"allotted station" means in relation to the voter the polling station of the polling division in which he is registered or, in the case of a polling division for which two or more stations have been established, the station to which he is assigned;

"Close of the poll" means the close of the poll in all polling divisions of the constituency including any polling division where the poll has been adjourned;

"Commission" means the Electoral Commission;

"Election officer" means a member of the office of the Commission, or any other person authorized by the Commission to be present at a polling station in an official capacity,

"Judicial officer" means a person presiding over a Community Tribunal, the Judicial Secretary or the Registrar of a Superior Court;

"Polling division" means a constituency or an electoral area; "special voter" means a person registered as a voter who is:

- (a) A security officer; or
- (b) An election officer; or
- (c) Certified as such by the Commission

"Special voters list" means the special voters list provided for under Regulation 21 of these Regulations;

"Spoilt ballot paper" means a ballot paper inadvertently dealt with in such a manner that it cannot be conveniently used as a ballot paper;

"Superior officer" means in relation to—

- (a) A member of the Police Service a police officer of that Force of or above the rank of superintendent;
- (b) A member of the Armed Forces of Ghana, the adjutant of his battalion or an officer holding a comparable appointment;
- (c) An election officer, not being a returning officer, the returning officer of the constituency in which the election officer will be on duty;
- (d) Any other person, as the Commission may determine.

"Tendered ballot paper" means a ballot paper marked in accordance with Regulation 33 of these Regulations;

"Transferred voters list" means the transferred voters list provided for under Regulation 20 of these Regulations;

"Voter" means a person whose name appears at the time of a candidate's nomination in the divisional register of candidate's nomination in the divisional register of one of the polling divisions of the constituency for which the candidate seeks election.

(2) Reference in these regulations to a contested election or to an election being contested shall be construed as references to an election in which a poll is taken.

Regulation 49—Revocation.

The following instruments are hereby revoked—

Public Elections (Parliament) Regulations, 1992 (L.I. 1537);

Public Elections (Parliament) (Amendment) Regulations, 1992 (L.I. 1544).

DR. K. AFARI-GYAN

Chairman, Electoral Commission

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