

**IN THE FOURTH SESSION OF THE SIXTH
PARLIAMENT OF
THE FOURTH REPUBLIC OF GHANA**



**REPORT OF THE COMMITTEE ON SUBSIDIARY
LEGISLATION**

ON THE

**PUBLIC ELECTIONS REGULATIONS, 2016
(C.I.94)**

4TH AUGUST, 2016

**IN THE FOURTH SESSION OF THE SIXTH PARLIAMENT OF
THE FOURTH REPUBLIC OF GHANA**

**REPORT OF THE COMMITTEE ON SUBSIDIARY LEGISLATION
ON THE PUBLIC ELECTIONS REGULATIONS, 2016 (C.I 94)**

1.0. INTRODUCTION

The Public Elections Regulations, 2016 (C.I 94) was laid before Parliament by the Hon. Deputy Majority Leader, Mr. Alfred Kwame Agbesi on Wednesday, 8th July, 2016 in accordance with Article 11(7) of the Constitution. Pursuant to orders 77 and 166 of the Standing Orders of Parliament, the Instrument was referred to the Committee on Subsidiary Legislation for consideration and report.

The Committee held sittings from 4th to 5th July, 2016 on the Instrument with Officials from the Electoral Commission and the Attorney General's Department. The Committee is grateful for their attendance and inputs.

2.0. REFERENCE DOCUMENTS

The Committee made reference to the under-listed documents during the deliberations:

- i. Constitution of the Republic of Ghana
- ii. Standing Orders of the Parliament of Ghana
- iii. Public Elections Regulations, 2012 (C.I.75)
- iv. Representation of the People Act, 1992 (PNDCL 284)
- v. Public Elections Regulations, 2016, (C.I. 94)

3.0. BACKGROUND INFORMATION

Article 45 of the Constitution mandates the Electoral Commission to conduct and supervise all public elections and referenda, among other functions.

Article 49 of the Constitution provides for voting, counting, collation and the declaration of results by the presiding officer before communicating to the returning officer.

Article 50 of the Constitution also provides for the nomination and election of candidates and procedures and processes for further nominating candidates when a candidate dies.

Article 51 of the Constitution further provides that the Electoral Commission shall, by Constitutional instrument, make regulations for the effective performance of its functions under the Constitution or any other law and in particular for the conduct of public elections and referenda including provision for voting by proxy.

In exercise of the powers conferred on the Electoral Commission by Article 51 of the Constitution, the Public Elections Regulations, 2016 (C.I. 94) have been made to apply to presidential and parliamentary elections and with the necessary modifications to other public elections.

4.0. OBSERVATIONS

The Committee observed that the Electoral Commission has decided, by Constitutional Instrument, to make new regulations on the conduct of public elections instead of amending the existing Public Elections Regulations, 2012 (C.I.75).

The Public Elections Regulations, 2016 (C.I 94) is divided into:

- a. General Provisions
- b. The Poll
- c. After the Poll
- d. Offences and Miscellaneous Provisions

4.1. General Provisions

- i. The Committee observed that, the Regulations under General Provisions provide for the appointment and duties of a returning officer, which include assembling the results from the polling stations and publicly declaring as elected in a parliamentary election, the candidate who had the highest vote. It also includes collating and forwarding to the Commission, the endorsed writ and collated provisional results of the total number of votes cast for each candidate in respect of presidential elections and posting copy at the Constituency Collation Centre.
- ii. The Regulations provide, under regulations 3 to 6, the nomination of candidates for parliamentary and presidential elections as stipulated under Article 63 of the Constitution in respect of election of a president and under Article 94 of the Constitution regarding the qualifications and eligibility of a Member of Parliament.

- ii. The Constitutional Instrument, 94 has provisions on the designation of polling stations and the establishment of additional polling stations which shall not be established within sixty days to an election and which requires the returning officer to inform political party executives and any interested parties in the constituency of the newly created polling stations.
- iii. Other significant provisions in the Regulations deal with transferred voters, special voters and voting by proxy. With regard to such categories, an application shall be made not less than forty - two days before the polling day in the constituency of the applicant, among other requirements.

4.2. The Poll

- i. The Committee observed that various issues regarding the poll have been addressed in the Regulations. One significant issue is the identification and verification of voters under Regulation 32. The Electoral Commission is proposing to adopt biometric and manual verification of voters. The Commission states that where the biometric verification device fails to verify a registered voter, a verification form shall be completed by the presiding officer in the presence of the party's candidate or agent to confirm that the voter was qualified to vote but could not be verified with the biometric verification device.

“The verification officer shall draw a horizontal line across the voter's barcode in the register to indicate that the voter has been manually verified”.
- ii. Another issue worthy of note is the provision on interruption or obstruction of poll. Regulation 36 provides that where the proceedings at the polling station are interrupted or obstructed by riot or open violence, storm, flood or other natural catastrophe or the breakdown of an equipment, proceedings shall be adjourned subject to the approval of the Commission.
- iii. Where a poll is adjourned, the ballot papers provided to the station shall be taken, recorded and certified by the presiding officer in accordance with the relevant form and the ballot box with the materials shall be kept at the nearest police station for voting to continue on the adjourned date.

4.3. After the Poll

- i. It is useful to observe that events after ballots are cast are as crucial as the casting of the ballots. The Regulations provide for the appointment of counting agents and counting of votes, the counting of ballots, the recording of valid votes and rejected ballot papers as well as the declaration and publication of parliamentary and presidential results. In a parliamentary election, the returning officer is required to publicly declare as elected the candidate who had the highest votes.
- ii. In a presidential election in which the chairperson of the Electoral Commission is the returning officer, the candidate who receives more than fifty percent of the valid votes cast shall be declared elected as President. The returning officer is required to collate and forward to the Commission, the endorsed writ and collated provisional results of the total number of votes cast for each candidate in respect of the presidential elections as set out in Form One of the Schedule and post a copy at the constituency collation centre; (Regulation 3(1) (m) of C.I. 94).
- iii. It is further provided under Regulation 43 and as stated in Article 63(4) that where at a presidential election there are more than two candidates and no candidate obtains the number of percentage of votes required, a second election shall be held within twenty-one days after the previous election and the two candidates shall, subject to any withdrawal, contest until a President is elected.

4.4. Offences and Miscellaneous Provisions

- i. The Regulations indicate that the provisions in relation to election officers specified in the Representation of the People Act, 1992 (PNDCL 284) apply and that an election officer who is required to perform a function under the Regulations commits an offence if such officer fails to perform the said functions and is liable to a fine or a term of imprisonment or both.
- ii. The interpretation provision under Regulation 49 specifies who can be special voters. A voter is defined as a person whose name appears on the certified voters register. A schedule has been provided exhibiting relevant forms for the conduct of the elections.

5.0 CONCLUSION


The Committee has carefully examined the Public Elections Regulations, 2016 (C.I.94) and is of the considered view that the Constitutional Instrument does not contravene the provisions of the Constitution and Order 166(3) of the Standing Orders of Parliament which served as reference to the Committee.

The Committee accordingly recommends to the House that the Public Elections Regulations, 2016 (C.I.94) should come into force at the expiration of twenty-one sitting days as provided for under Article 11(7) (C) of the 1992 Constitution

Respectfully submitted



.....
HON. O.B AMOAH
CHAIRMAN, COMMITTEE ON
SUBSIDIARY LEGISLATION



.....
JOANA A.S. ADJEI (MRS)
CLERK TO THE COMMITTEE

4TH AUGUST, 2016

