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**BERSIH 2.0 AND TINDAK MALAYSIA:**

**PROPOSED REFORMS TO THE ELECTORAL SYSTEM**

Kuala Lumpur, March 6, 2012 (Tuesday) – Bersih 2.0, a coalition on free and fair elections, and TindakMalaysia, a civil society movement on voter education and polling agent training, submits a memorandum to the Parliamentary Select Committee on Electoral Reforms (PSC). We believe that a fundamental basis of a democracy is that elections must be Free and Fair. The current election laws and regulations have many weaknesses that prevent the achievement of this ideal.

**I. Preamble**

Since the formation of the PSC, BERSIH 2.0 and Tindak Malaysia have attended most of the public hearings and submitted more than 60 proposals at the following locations:

11 & 12 Nov 2011	:	Bilik JawatanKuasa 2, Bangunan Parlimen, Kuala Lumpur
25 & 26 Nov 2011	:	Bilik Kedah, Kompleks Pentadbiran Persekutuan Sabah, Kota Kinabalu
8 & 9 Dec 2011	:	Bilik Gerakan Negeri, Wisma Bapa Malaysia, Petrajaya, Kuching
15 & 16 Dec 2011	:	Dewan Sri Penang, Lebuh Light, Pulau Pinang
12 & 13 Jan 2012	:	Bilik Gerakan Tun Abdul Razak, Bangunan Sultan Ibrahim, Johor Baru

BERSIH 2.0 and Tindak Malaysia note with disappointment at the poor response of the PSC as only three of the BERSIH demands were included in the interim report of the PSC. The Election Commission has even backtracked and only commits itself to only one of the BERSIH 2.0 demands, i.e., the implementation of indelible ink (Gazette PU (A) 43/2012 dated 13<sup>th</sup> Feb 2012) but with a discriminatory condition to exclude postal voters from the use of indelible ink. The PSC has only one month left to complete its mandate and we are deeply concerned that they will be unable to fulfil it and satisfy the legitimate demands of the Rakyat.

**II. Overview:**

The powers and functions of the EC are covered under the Federal Constitution, the Election Laws and Regulations:

**Federal Constitution:**

- Composition of House of Representatives - Membership of Parliament, Articles 46 – 54,
- Summoning, prorogation and dissolution of Parliament, Article 55

#### **Election Offences Act 1954**

- a) Section 2 (1): approved company auditor defined to cater for **professional auditing of election campaign expenses**,
- b) **Section 3 (p): shifting of elector**,
- c) **Section 3 (o): refusal to mark finger with indelible ink**,
- d) Section 4 (g): suspend election officer,
- e) Section 5 (8): communication between EC staff, candidates and agents, etc,
- f) Section 19 (1A): auditing of election campaign expenses,
- g) **Section 24B: police permit not required for election campaign**,
- h) Section 26A: Booth location, equipment, procedures, number of booth observers, technical advisors, etc.
- i) Section 27I: report by public prosecutor to EC and Parliament,
- j) Section 41: power of Returning officer and presiding officer whether or not to reject ballot paper removed.

#### **Election Commission Act 1957**

- a) **Section 5 Certain communications to be privileged: deleted**,
- b) **Section 6 Protection of members: to be afforded on proper and lawful actions**,
- c) **Section 11 Consent of Public Prosecutor to prosecutions: Subject to reporting to EC and Parliament.**

The Prime Minister has apologised for Barisan Nasional's past mistakes. Therefore, the Prime Minister has to rectify one of the most serious mistakes that is the creation of a badly-flawed electoral system. The PSC has an historic opportunity to rectify this mistake and transform our electoral system to the standard expected of a developed nation. We urge the PSC not to let this golden opportunity slip away as millions of Malaysians will be very disappointed if you do.

#### **BERSIH 2.0 and Tindak Malaysia demand that:**

1. The position of the EC Chairman and Deputy Chairman must be accredited and that they should be paid a salary at the same level as a Minister and Deputy Minister respectively.
2. The Election Commission as an institution should be independent and not placed under the Prime Minister's Department.
3. **The Prime Minister must be held responsible to ensure that electoral reforms from the PSC, BERSIH 2.0 and Tindak Malaysia be implemented before the next General Elections.**

#### **BERSIH 2.0**

Dato A. Samad Said  
Co-chairperson

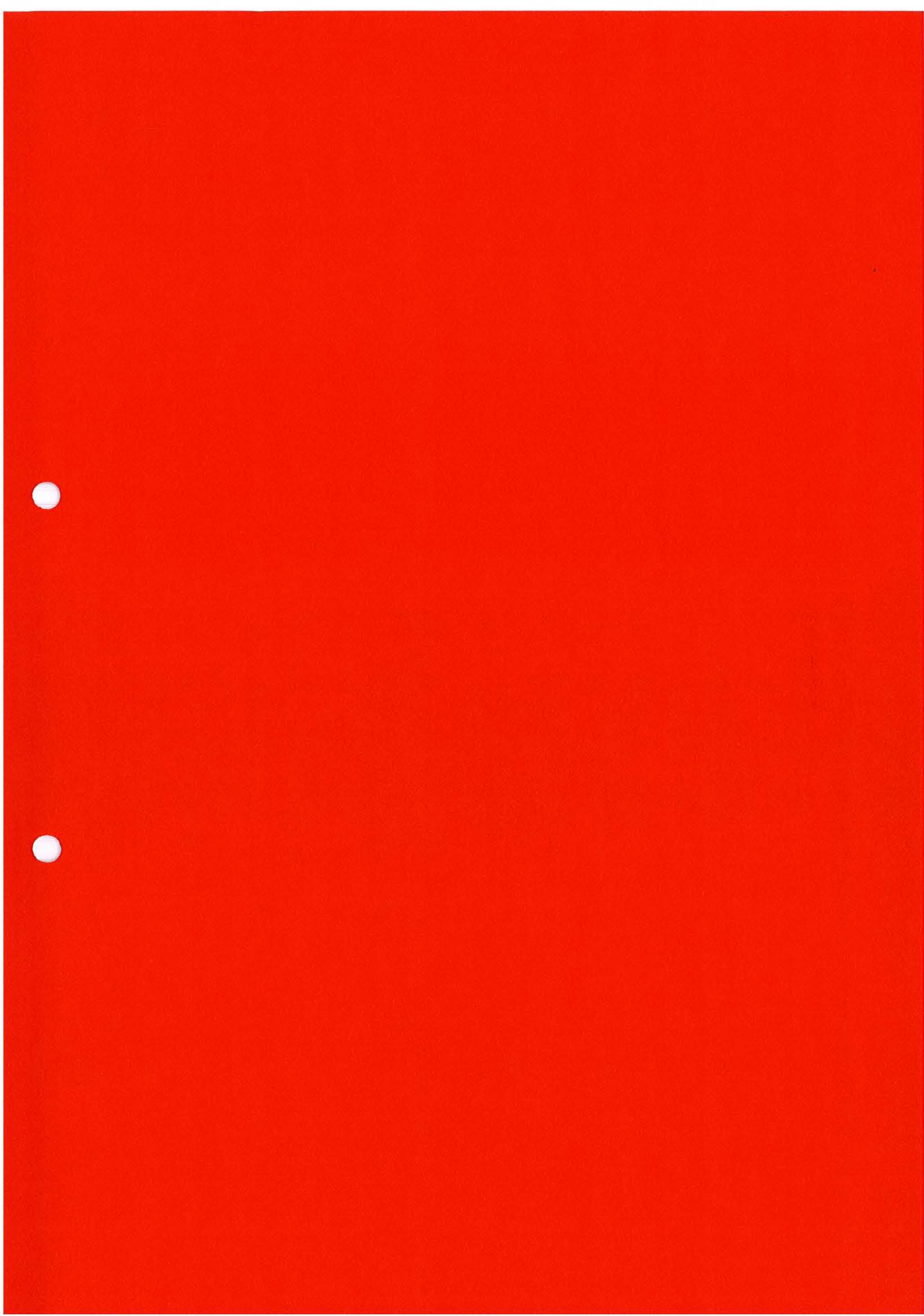
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**ELECTIONS ACT**  
**1958**

**(REVISED 1970)**

**ACT 19**

**ELECTIONS ACT 1958 (REVISED 1970)**

**ACT 19**

**PART I**

***PRELIMINARY***

**1. Short title.**

This Act may be cited as the **Elections Act 1958**.

**2. Interpretation.**

In this Act, unless the context otherwise requires -

"Adjudicating Officer" means the Adjudicating Officer appointed under section 8;

*[Ins. Act A1155]*

"candidate" means a person who is nominated in accordance with any regulations made under this Act as a candidate for an election;

"Chief Registrar", "Deputy Chief Registrar", "Registrar", "Deputy Registrar" and "Assistant Registrar" mean respectively the Chief Registrar of Electors, Deputy Chief Registrar of Electors, Registrar of Electors, Deputy Registrar of Electors and Assistant Registrar of Electors appointed under section 8;

*[Ins. Act A1155]*

"constituency" means a Parliamentary constituency or a State constituency, as the case may be;

"Constitution" means the Federal Constitution;

*[Ins. Act A1155]*

"election" means a Parliamentary election or a State election, as the case may be;

"election officer" means an officer appointed under section 3 or 8 or any officer appointed for the purpose of conducting or assisting in the conduct of any election, or registering or assisting in the registration of electors, under any regulations made under this Act;

"elector" means a citizen who is entitled to vote in an election by virtue of Article 119 of the Constitution;

"electoral roll" means an electoral roll prepared under section 9;



"enforcement officer" means an enforcement officer appointed under section 3 and includes an assistant enforcement officer;

*[Ins. Act A1205]*

"member" means a member of the Dewan Rakyat or of a Legislative Assembly, as the case may be;

"Parliamentary constituency" means a constituency delimited in accordance with Article 116 of the Constitution;

"Parliamentary election" means an election of a member to the Dewan Rakyat;

"Parliamentary elector" means an elector who is entitled to vote in a Parliamentary election;

"polling centre" means any building, structure, vehicle or vessel, at the place appointed under section 7, set apart and equipped for the purpose of polling and counting of votes;

*[Ins. Act A1317]*

"polling district" means a part of a constituency as divided under section 7;

"polling station" means any room or partition which is also known as stream provided by the Election Commission in the polling centre.

*[Subs. Act A1317]*

"prescribed" means prescribed by or under this Act;

"presiding officer" (Deleted);

*[Deleted by Act A1205 - Prior text read - "'presiding officer" means an officer appointed to preside at a polling station in accordance with regulations made under this Act;"]*

"registration area" means the whole area constituting a Parliamentary constituency;

*[Ins. Act A1155]*

"returning officer" means an officer appointed under section 3 and includes an assistant returning officer ;

*[Ins. Act A1155]*

"Secretary" means the Secretary to the Election Commission appointed under section 3;

"State constituency" means a constituency delimited in accordance with Article 117 of the Constitution;

"State election" means an election of a member to a Legislative Assembly;

"State elector" means an elector who is entitled to vote in a State election.

## PART II

### *SUPERVISION OF ELECTIONS*

#### 3. Appointment of officers.

(1) The Election Commission may, subject to Clause (1) of Article 115(1) of the Constitution, appoint -

(a) a Secretary and such number of Deputy Secretaries, Principal Assistant Secretaries and Assistant Secretaries to the Election Commission as the Commission may consider necessary;

*[Am. Act A1155 - Prior text read- "a Secretary and a Deputy Secretary and so many Assistant Secretaries to the Election Commission as the Commission may consider necessary;"]*

(b) a State Elections Officer and so many Deputy State Elections Officers for each State as the Commission may consider necessary;

*[Am. Act A1205]*

(c) a returning officer and so many assistant returning officers for each constituency as the Commission may consider necessary; and

*[Am. Act A1205]*

(d) an enforcement officer and so many assistant enforcement officers as the Commission may consider necessary for each constituency.

*[Ins. Act A1205]*

(2) The appointment of the officers under paragraphs (c) and (d) of subsection (1) shall be made in accordance with the following:

(a) from amongst persons who are not and have not been members of any political parties and who are not members of any of the public services;

Provided that appointments of returning officers and enforcement officers shall be members of professional bodies and independent civil societies who are involved in monitoring of elections or election reforms, who are not and have not been members of any political parties and who have been nominated by their respective professional bodies or independent civil societies who are involved in monitoring of elections or election reforms



(b) prior to but not less than 4 weeks before their appointments, the names and particulars of the officers intended to be appointed shall be displayed at every election office and submitted to all political parties;

(c) objections to the appointments of the persons intended to be appointed may be made by any elector or political party to the Election Commission within 10 days after the date of display and submission stated in sub-section 2(b) above;

(d) upon the Election Commission receiving an objection pursuant to the consultation process, it shall consider the objection and take a decision after giving the elector or the political party lodging the objection and the person intended to be appointed an opportunity to be heard;

(e) the Election Commission shall furnish a full report of the objection and its decision stating the grounds of objection and the reasons for their decision whether to proceed with the nomination or otherwise;

(f) if the Election Commission does not receive an objection within 10 days after the date of display and submission stated in sub-section 2(b) above, it may proceed to confirm the appointment of the officers.

(3) from amongst members of professional bodies and independent civil societies who are involved in monitoring of elections or election reforms, who are not and have not been members of any political parties and who have been nominated by their respective professional bodies or independent civil societies who are involved in monitoring of elections or election reforms;

(4) The appointments under paragraph (c) and (d) subsection (1) shall be automatically revoked by the Election Commission upon the conclusion of the election conducted after the appointments and new appointments may thereafter be made by the Election Commission prior to the next election.

### **3A. General powers and duties of Secretary, Deputy Secretary and Assistant Secretaries.**

(1) The Secretary shall be the chief administrative officer of the Election Commission, subject at all times and in all matters to the supervision, direction and control of the Commission, and shall -

(a) implement the decisions of the Commission;

(b) carry out the day-to-day administration of the offices of the Commission, and exercise supervision, direction and control over all other election officers, and all other officers of the Commission;

(c) carry out such functions as may be given to him by the Commission in or for the exercise of its powers or the performance of its duties in relation to the review or delimitation of constituencies, the registration of electors, the conduct of elections and other matters;

- (d) have power to signify on behalf of the Commission all writs, notices and other documents of the Commission, all subsidiary legislation made by the Commission, and all other acts of the commission; and
  - (e) have such other powers and duties as may be provided under this Act and any other written law.
- (2) Subject to the direction, control and supervision of the Secretary, the Deputy Secretaries shall have and may exercise all the powers and perform all the functions of the Secretary under this Act and any written law, and in the absence of the Secretary, the most senior Deputy Secretary shall act as the Secretary.

*[Am. Act A1155 - Prior text read- "The Deputy Secretary shall, subject to the direction and control of the Secretary, have all the powers and may perform all the duties of the Secretary under this Act and any written law and shall, in the absence of the Secretary, act as the Secretary."]*

- (3) Subject to the direction, control and supervision of the Secretary and Deputy Secretaries, the Principal Assistant Secretaries and Assistant Secretaries shall assist the Secretary and Deputy Secretaries in the exercise of their powers and the performance of their functions.

*[Am. Act A1155 - Prior text read- "An Assistant Secretary shall, subject to the direction and control of the Secretary and Deputy Secretary, assist the Secretary and Deputy Secretary in the exercise of their powers and the performance of their duties."]*

#### **4. Powers of officers.**

- (1) A State Elections Officer shall, subject to the direction and control of the Election Commission, have all the powers and may perform all the duties of the Commission in relation to the conduct of elections in the State for which he is appointed.
- (2) A Deputy State Elections Officer shall, subject to the direction and control of the State Elections Officer, have all the powers and perform all the duties of the State Elections Officer in the State for which he is appointed.
- (2A) A returning officer shall, in common with other election officers, be subject to the control, supervision and direction of the Election Commission as provided in section (5) (1)(a) and (b).
- (3) An assistant returning officer shall, subject to the direction and control of the returning officer whom he is appointed to assist, have all the powers and may perform all the duties of the returning officer.
- (4) (a) If any returning officer is by sickness or other cause prevented or disabled from performing any of his duties under this Act and there is no time for any other person to be appointed by the Election Commission the returning officer may appoint an assistant returning officer to act for him.

*[Am. Act A889]*



- (b) Every appointment under paragraph (a) shall as soon as possible be reported to the Election Commission and may be revoked by the Commission but without prejudice to the validity of anything already done by any assistant returning officer so appointed.

*[Am. Act A889]*

- (5) An enforcement officer shall, subject to the direction and control of the State Elections Officer, have all the powers of and perform all the duties given to him for the enforcement of laws relating to the conduct of elections in the constituency for which he is appointed.

*[Ins. Act A1205]*

**5. General powers and duties of Election Commission.**

- (1) The Election Commission shall -

- (a) exercise control and supervision over the conduct of elections and the registration of electors on the electoral rolls, and shall enforce on the part of all election officers fairness, impartiality and compliance with Part VIII of the Constitution and this Act and any regulations made thereunder;
- (b) have powers to issue to election officers such directions as may be deemed necessary by the Commission to ensure effective execution of Part VIII of the Constitution and this Act and any regulations made thereunder;
- (c) have power to administer any oath required to be taken under this Act and any regulations made thereunder; and
- (d) execute and perform all other powers and duties which are conferred or imposed upon it by this Act and any regulations made thereunder.

- (2) The Election Commission may delegate, subject to such conditions and restrictions as the Commission may consider necessary, any of the powers and duties conferred or imposed upon the Commission by this Act or any regulations made thereunder, to such person or officer as it may think fit:

Provided that -

- (a) nothing in this subsection shall apply to any power to make regulations under this Act; and
- (b) no such delegation shall affect the exercise of such powers or the performance of such duties by the Commission.

**6. (Repealed by Act 14 of 1962).**

*(Repealed by Act 14 of 1962).*

## PART III

### CONSTITUENCIES

#### 7. Polling districts and polling centres.

*[Am. Act A1317]*

(1) As soon as may be after the delimitation of a constituency in accordance with the Constitution, and thereafter when any constituency is altered or a new constituency is created, the Election Commission shall -

- (a) divide each constituency into polling districts;
- (b) assign to each polling district a distinguishing letter or letters or number or both;
- (c) appoint a place or places at which a polling centre or centres for the district shall be established; and

*[Am. Act A1317]*

(d) publish in the *Gazette* a notice specifying -

- (i) the polling districts into which the constituency has been divided;
- (ii) the distinguishing letter or letters or number or both assigned to each polling district; and
- (iii) the place or places appointed for the establishment of a polling centre or centres for each polling district.

*[Am. Act A1317]*

(2) The division of a constituency into polling districts under subsection (1) may be altered by the Election Commission as occasion may require, and upon any such alteration being made, the Commission shall publish in the *Gazette* a notice specifying in relation to that constituency the particulars mentioned in subsection (1)(d).

*[Am. Act A1155 - Prior text read- "The division of a constituency into polling districts under subsection (1) may be altered by the Election Commission as occasion may require, and upon any such alteration being made, the Commission shall publish in the Gazette a notice specifying in relation to that constituency the particulars mentioned in subsection (1)(d); and any such alteration shall come into effect at the next revision of the electoral roll for that constituency and not earlier."]*

(3) Unless the Election Commission considers it necessary or expedient in the special circumstances of any case to provide otherwise there shall be, for each polling district, one polling centre.



- (4) The Election Commission may, at any time as it considers necessary or as occasion may require, replace any place appointed for the establishment of a polling centre under subsection (1) by appointing any other place at which a new polling centre may be established, and the Commission shall publish in the Gazette a notice specifying the particulars of the new polling centre.

*[Ins. Act A1155; Am. Act A1317]*

## **PART IV**

### ***REGISTRATION OF ELECTORS***

#### **8. Appointment of officers.**

- (1) The Election Commission may, subject to Clause (1) of Article 115 of the Constitution, appoint-

- (a) a Chief Registrar of Electors for Malaysia;
- (b) a Deputy Chief Registrar of Electors for Malaysia;
- (c) a Registrar of Electors for each state;
- (d) a Deputy Registrar of Electors for each State;
- (e) such number of Assistant Registrars of Electors as it may consider necessary; and
- (f) an Adjudicating Officer for each registration area.

*[Subs. Act A1317]*

- (2) Subject to the direction and control of the Election Commission, the Chief Registrar shall exercise general control and supervision over all matters relating to-

- (a) the registration of electors; and
- (b) the preparation, publication and revision of an electoral roll,

under this Act or any regulations made under this Act.

- (3) Subject to the direction, control and supervision of the Chief Registrar, a Deputy Chief Registrar shall have and may exercise all the powers and perform all the functions of the Chief Registrar.

*[Am. Act A1317]*

- (4) Subject to the direction, control and supervision of the Deputy Chief Registrar, the Registrar shall have and may exercise all the powers and perform all the functions of the Chief Registrar relating to the registration of electors under this Act or any regulations made under this Act in the State for which he is appointed.

*[Subs. Act A1317]*

- (4A) Subject to the direction, control and supervision of the Registrar, the Deputy Registrar shall have and may exercise all the powers and perform all the functions of the Chief Registrar relating to the registration of electors under this Act or any regulations made under this Act in the State for which he is appointed;

*[Ins. Act A1317]*

- (5) Subject to the direction, control and supervision of the Deputy Registrar, an Assistant Registrar shall assist the Registrar and Deputy Registrar in the exercise of their powers and the performance of their functions.

*[Subs. Act A1317]*

- (6) An Adjudicating Officer shall hear any appeal arising from any claim or objection with regard to an electoral roll as provided in any regulations made under this Act relating to the registration of electors.

*[Subs. Act A1155 - Prior text read- "(1) The Election Commission may, subject to Article 115 (1) of the Constitution, appoint a Chief Registering Officer for Malaysia, a Deputy Chief Registering Officer for each State, a registering officer and a revising officer for each constituency, and in addition thereto, if necessary, a deputy registering officer for each constituency.*

*(2) The Chief Registering Officer shall, subject to the direction and control of the Election Commission, exercise control and supervision over all matters relating to the registration of electors.*

*(3) A Deputy Chief Registering Officer shall, subject to the direction and supervision of the Chief Registering Officer have and exercise all the powers of the Chief Registering Officer in the State for which he is appointed.*

*(3A) A registering officer shall, in common with other election officers, be subject to the control, supervision and direction of the Election Commission as provided in section (5)(1)(a) and (b).*

*(4) A deputy registering officer shall, subject to the direction and supervision of the registering officer, have and exercise all the powers of the registering officer in the constituency for which he is appointed."*

**9. Preparation, publication and revision of electoral rolls.**

- (1) Each Registrar shall prepare, publish and revise in the prescribed manner the prescribed electoral rolls for the registration area for which he is appointed.

*[Am. Act A1155 - Prior text read- "Each registering officer shall prepare, publish and revise in the prescribed manner an electoral roll for the constituency for which he is appointed."]*

- (2) The electoral rolls for Parliamentary electors and State electors shall, unless the Election Commission shall otherwise direct, be combined in a single register.

**9A. Certified or re-certified electoral roll shall be deemed to be final.**

After an electoral roll has been certified or re-certified, as the case may be, and notice of the certification or recertification has been published in the *Gazette* as prescribed by regulations made under this Act, the electoral roll shall be deemed to be final for the purposes of elections, provided however that in the event of the election being challenged before an Election Judge, the electoral roll may be subject to scrutiny by the Election Judge who shall make such orders as he deems necessary

*[Ins. Act A1155]*

**10. Registration in one constituency only.**

No person shall be entitled to be entered on the electoral rolls as an elector in more than one constituency for the purposes of any election.

**11. (Deleted)**

*[Deleted by Act A1155 - Prior text read- "Qualifying date.*

*For the purposes of Article 119 of the Constitution the qualifying date, that is to say, the date by reference to which the electoral rolls are prepared or revised, shall be the date immediately preceding the commencement of the period, determined in accordance with regulations made under this Act, during which application may be made for registration on the electoral roll as a Parliamentary or State elector, or such other date as the Election Commission may by notification in the Gazette appoint."]*

**PART V**

**CONDUCT OF ELECTIONS**

**12. Writs of election.**

- (1) For the purposes of every general election and of any by-election, the Election Commission shall issue writs addressed to the returning officer of each constituency for which a member is to be elected.



- (2) Every writ issued under subsection (1) shall be in the prescribed form and shall be returned to the Election Commission in the prescribed manner.
- (3) In relation to a vacancy which is to be filled at a by-election, a writ shall be issued not earlier than four days and not later than ten days from the date on which it is established by the Election Commission that there is a vacancy.

*[Am. Act A1155 - Prior text read- "In relation to a vacancy which is to be filled at a by-election, a writ shall be issued not earlier than ten days and not later than thirty days from the date on which it is established by the Election Commission that there is a vacancy."]*

- (4) Upon receipt of a writ issued under subsection (1), the returning officer shall proceed to hold an election in the prescribed manner.

### **13. Election of candidates.**

- (1) Subject to the Election Offences Act 1954 *[Act 5]*, the candidate for a constituency who polls the greatest number of valid votes cast by the electors of the constituency shall be deemed to be the elected member for that constituency:

Provided that -

- (a) whenever only one candidate stands nominated in any constituency the nominated candidate shall be deemed to be elected member for that constituency; and
  - (b) when an equality of votes is found to exist between any candidates for a constituency, and the addition of a vote would entitle one of the candidates to be elected, the determination of the candidate to whom the one additional vote shall be deemed to have been given shall be made by lot in the presence of the returning officer in such manner as he shall determine.
- (2) Every person voting at an election shall cast his vote by means of a ballot paper to be marked by him so as to indicate his vote, and inserted by him in a secure ballot box, provided for the purpose, in such manner that the vote shall be secret:

*[Am. Act A1155 - Prior text read- "Every person voting at an election shall cast his vote by means of a ballot paper to be marked by him so as to indicate his vote, and inserted by him in a sealed ballot box, provided for the purpose, in such manner that the vote shall be secret:"]*

Provided that if any person voting is blind or unable to read, his vote may be given in such manner as may be prescribed.

### **14. Use of schools, and public buildings and premises as polling centres.**

*[Am. Act A1317]*

- (1) The Election Commission may use free of charge as a polling centre any school or any portion of a school in receipt of a grant, or in respect of which a grant is made, out of monies provided by any Government in Malaysia, or any other public building or premises or any portion thereof.
- (2) The Election Commission shall make good any damage done to, and defray any expenses incurred by the persons having control over, any such school, building or premises or portion thereof by reason of its being used as a polling centre.

*[Am. Act A1317]*

## **PART VI**

### **REGULATIONS**

#### **15. Power to make regulations relating to the registration of electors.**

- (1) The Election Commission may with the approval of the Yang di- Pertuan Agong make regulations for the registration of electors and for all matters incidental thereto.
- (2) Without prejudice to the generality of the foregoing powers the regulations may -

(a) prescribe the keeping and maintenance of electoral rolls in any constituency and the type and form of the electoral rolls;

*[Am. Act A1155 - Prior text read- "prescribe the keeping and maintenance of electoral rolls in any constituency and the form of the electoral rolls;"]*

(b) prescribe the procedure to be followed in the preparation and publication of electoral rolls;

(c) prescribe the time at which any electoral roll shall be prepared or revised and the procedure to be followed in making the revision;

(d) prescribe the procedure to be followed in the preparation and publication of new electoral rolls of any constituency where the boundaries of the constituency have been prescribed or altered after the preparation of the electoral rolls;

(e) prescribe the procedure to be followed in the making and determination of claims to have any name inserted on an electoral roll or on a new or revised electoral roll and of objections to the insertion or inclusion of any name therein;

(f) provide for the payment of compensation, not exceeding one thousand ringgit, to any person aggrieved by the making without reasonable cause of an objection to the insertion or inclusion of his name on any electoral roll by the person who makes the objection;

*[Am. Act A1155 - Prior text read- "provide for the payment of compensation, not exceeding two hundred ringgit, to any person aggrieved by the making without reasonable cause of an objection to the insertion or inclusion of his name on any electoral roll;"]*

(g) prescribe any form of application, notice or other document which it may be necessary or desirable to use in connection with any of the matters dealt with in this section;

(h) authorize any Registrar or Adjudicating Officer, for the purpose of considering or determining any application, claim, objection or appeal which he is required to consider or determine under any regulations made under this section, to summon any person to appear before him and to give evidence on oath or affirmation and to administer any such oath or affirmation for the purpose and to order the production of any document relevant to any issue which the officer is required to consider and determine;

*[Am. Act A1155 - Prior text read- "authorize any registering officer or revising officer, for the purpose of considering or determining any application, claim, objection or appeal which he is required to consider or determine under any regulations made under this section, to summon any person to appear before him and to give evidence on oath or affirmation and to administer any such oath or affirmation for the purpose and to order the production of any document relevant to any issue which the officer is required to consider and determine;"]*

(i) prescribe the fees to be paid upon any application, notice, claim or objection and the manner in which the fees shall be disposed of;

(j) prescribe the manner in which any electoral roll or new or revised electoral roll shall be certified;

(k) provide for the correction of clerical errors in any electoral roll;

(l) authorize or require a Registrar to supply to any such persons as may be prescribed copies of any electoral roll or part thereof, whether free of charge or on payment of such fee as may be prescribed therein;

*[Am. Act A1155 - Prior text read- "authorize or require a registering officer to supply to any such persons as may be prescribed copies of any electoral roll or part thereof, whether free of charge or on payment of such fee as may be prescribed therein;"]*

(m) *[Deleted by Act A1155]*

*[Deleted by Act A1155 - Prior text read- "(m) provide for the appointment by a Deputy Chief Registering Officer of officers to assist registering officers and prescribe the duties and powers of those officers;"]*

(n) provide for the division of constituencies into registration units;



- (o) provide for the creation of offences by persons who cause, assist or abet in the change, shift, transfer or removal of electors in a manner inconsistent with the provisions of this Act or Regulations made thereunder and for the payment of compensation of up to Ringgit Malaysia Ten Thousand to the affected electors by the person responsible.

**16. Power to make regulations relating to the conduct of elections.**

- (1) The Election Commission may with the approval of the Yang di- Pertuan Agong make regulations for the conduct of elections to the Dewan Rakyat and the Legislative Assemblies, and for all matters incidental thereto.

- (2) Without prejudice to the generality of the foregoing powers the regulations may -

- (a) prescribe the manner in which notice of the holding of an election shall be given;
- (b) prescribe the procedure for the nomination of candidates and for the making of and decision on, objections to any nomination;
- (bb) provide for the procedure in the granting of approval by the Election Commission of any symbol to be used in any election:

Provided that the Election Commission shall not approve any symbol connected with any religion or sect thereof or which is otherwise incompatible with good order or morality;

- (c) provide for the publication of notice of the date on which in the case of a contested election a poll will be taken;
- (d) prescribe the amount of any deposit, not exceeding twenty thousand ringgit in each case, to be made by or on behalf of candidates, and the circumstances in which the deposit may be forfeited;

*[Am. Act A1155 - Prior text read- "prescribe the amount of any deposit, not exceeding five thousand ringgit in each case, to be made by or on behalf of candidates, and the circumstances in which the deposit may be forfeited;"]*

- (e) prescribe the facilities to be provided at polling centres, and the persons who may be admitted to polling centres on the date at which a poll is taken, and provide for the appointment of a presiding officer or presiding officers and other officers or staff in respect of each polling centres;

*[Subs. Act A1317 - Prior text read- "prescribe the facilities to be provided at polling stations, and the persons who may be admitted to polling stations on the date at which a poll is taken, and provide for the appointment of a presiding officer or presiding officers and other officers or staff in respect of each polling station;"]*

- (f) prescribe the place and manner in which votes may be cast and the construction of and manner of ensuring that ballot boxes used in the elections are secure and for the issue of ballot papers to electors;

*[Am. Act A1155 - Prior text read- "prescribe the place and manner in which votes may be cast and the construction and sealing of ballot boxes used in the elections and for the issue of ballot papers to electors;"]*

- (g) provide for the manner in which, and the persons by whom, any question as to the identity of any person claiming to vote shall be determined;

- (h) prescribe the form of any ballot papers and counterfoils to be used in elections;

- (i) prescribe the manner in which ballot boxes, unused or spoiled ballot papers, marked copies of the electoral roll, counterfoils of ballot papers, and other documents shall be dealt with upon the closing of the poll;

- (j) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officer or a presiding officer appointed in accordance with regulations made under paragraph (e) as invalid;

*[Am. Act A1205 - Prior text read - (j) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officer or a presiding officer as invalid;"]*

- (k) provide for the making and publication of returns by the returning officer and of a statement of the poll in regard to any election;

- (l) prescribe any forms as may be necessary or desirable to be used in connection with the matters dealt with in this section or any regulations made thereunder;

- (m) prescribe the conditions for the use of private motor vehicles at elections;

- (n) prescribe the facilities to be provided for voting by post and the persons entitled to vote by post;

- (o) provide that certain acts are to be deemed to be illegal practices for the purposes of the Election Offences Act 1954;

- (p) prescribe codes of conduct and ethics for members of the Election Commission, election officers, candidates and political parties in relation to election.

- (3) Without prejudice to section 2 of the Statutory Declarations Act 1960 [Act 13], where any regulation made under this section requires a person to make a statutory declaration in connection with or for the purpose of the nomination of that person as a candidate, it shall be lawful for -

- (a) the State Elections Officer for the State in which the constituency for which the person seeks election is situated; or

(b) the returning officer for the constituency for which the person seeks election,

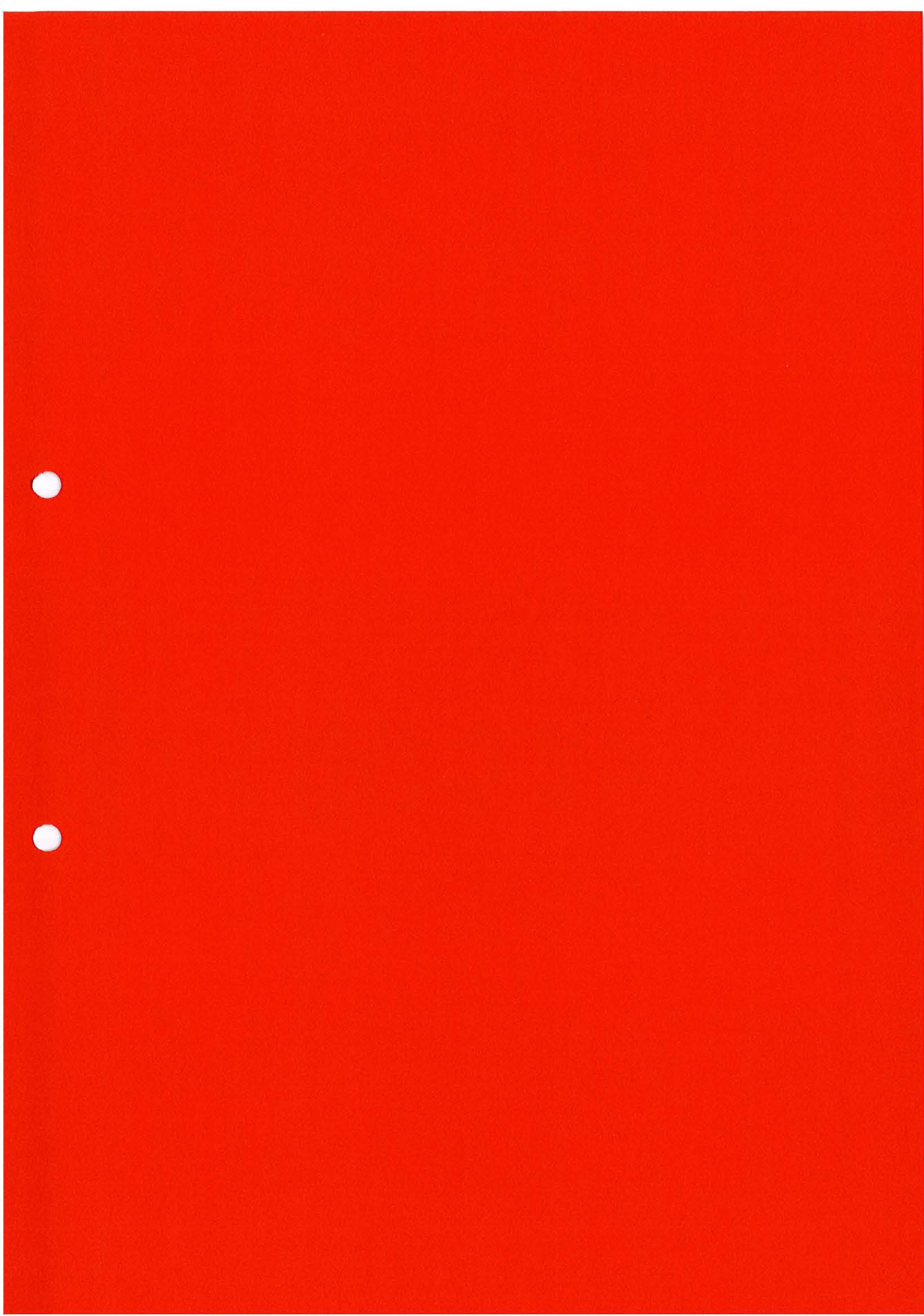
to take and receive the declaration, and a declaration taken and received by any such officer by virtue of this subsection shall be deemed to be a declaration made by virtue of the Statutory Declarations Act 1960.

**17. Regulations to be laid before the Dewan Rakyat.**

All regulations made under this Part shall as soon as possible after the making thereof be laid before the Dewan Rakyat, and if at the next meeting of the Dewan Rakyat after any regulation is laid before it a resolution is passed annulling the regulation or any part thereof, the whole regulation shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of any new regulation.

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**ELECTION  
OFFENCES ACT  
1954  
ACT 5**

# ELECTION OFFENCES ACT 1954

## ACT 5

### PART I

#### *PRELIMINARY AND INTERPRETATION*

#### 1. Short title and application.

This Act may be cited as the **Election Offences Act 1954**, and shall apply throughout Malaysia.

#### 2. Interpretation.

(1) In this Act, unless the context otherwise requires-

"approved company auditor" means a person approved as such by the Minister of Finance under section 8 of the Companies Act 1965 and whose approval has not been so revoked;

"authorized" means authorized by or under any written law relating to an election;

"campaign period" in relation to an election means the period during which any candidate or his election agent is allowed to hold election campaign in the candidate's constituency, being the period commencing from the time the returning officer declares that a poll will be taken in the constituency for which he is appointed and ending on the expiration of the day before polling day;

*[Ins. Act A1177]*

"constituency" means an area prescribed under the provisions of any written law for the purpose of an election;

"election" means an election held in accordance with the provisions of any written law relating to the election of persons to be members of the Dewan Rakyat, a Legislative Assembly or a local authority;

"election agent" means the person appointed under section 12 by a candidate for election to be his agent for such election;

"Election Judge" means the Chief Justice or any Judge nominated by the Chief Justice under section 33;

"enforcement team" means an enforcement team established under section 27B;

*[Ins. Act A1204]*

"entitled" means entitled by or under any written law relating to an election;

"polling day" in relation to an election means the period, which may extend over one or more days, commencing from the commencement of the day on which the taking of polls in that election is scheduled to commence and ending at the time of the declaration by the returning officer of the result of the election;



"polling district" means a part of a constituency as divided under section 7 of the Elections Act 1958;

"proper officer" means the officer or person appointed by or under any written law relating to an election to be in charge, or to have the conduct, thereof;

"returning officer" has the same meaning as in the Elections Act 1958 [*Act 19*];

[*Ins. Act A1177*]

- (2) Any word or expression used in this Act, the meaning of which is defined in any written law relating to any election, shall have the same meaning in this Act, for the purposes of and with reference to such election, as it has in the said written law; and any reference in this Act to any person or official shall be construed, for the purposes of and with reference to any election, as a reference to any equivalent person or official appointed under or by virtue of any written law relating to such election.

## PART II

### *ELECTORAL OFFENCES*

#### 3. Offences by any person.

(1) Any person who-

- (a) knowingly makes any false statement on or in connection with any application to be placed on any register of electors;
- (b) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing the same to be forged;
- (c) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (d) without due authority supplies any ballot paper to any person;
- (e) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
- (f) not being a person entitled to be in possession of any ballot paper which has been marked with any authorized mark has any such ballot paper in his possession;
- (g) puts into any ballot box anything other than the ballot paper which he is authorized by law to put in;
- (h) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (i) without due authority destroys, takes, opens, or otherwise interferes with any ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election;

- (j) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
- (k) for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election;
- (l) votes at any election when he is not entitled to vote thereat;

[Am. Act A1177]

- (m) prints any advertisement, hand-bill, placard or poster which refers to an election and contains a reproduction of a ballot paper, or of what purports to be a ballot paper, to be used or likely to be used at such election;

[Am. Act A1177]

- (n) obstructs or prevents a voter who is otherwise entitled to vote from voting at an election;

[Ins. Act A1177]

- (o) votes in an election at more than one polling station in the same constituency or a different constituency;

- (p) causes, assists or abets in the changing, shifting, transferring or removal of electors in a manner inconsistent with the provisions of the Elections Act 1958 or regulations made thereunder; or

- (q) refuses to have his finger marked with indelible ink or fails to comply with the procedures relating to the use of indelible ink,

[Ins. Act A1177]

shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine and, subject to any provision to the contrary in any written law relating to any election, shall until the expiration of five years from such conviction be incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction:

[Am. Act A1177]

Provided that nothing in paragraph (m) shall be deemed to prohibit, during the campaign period, the printing in any such advertisement, hand-bill, placard or poster of the name or symbol of one candidate only, together with a reproduction of a cross or other mark indicating approval of any such name or symbol.

[Am. Act A1177]



- (2) Any person who has been convicted of an offence under section 4 (1) of the Sedition Act 1948, [Act 15] which is an offence by reason of section 3 (1) (f) of that Act shall, until the expiration of five years from such conviction, be incapable of being elected at any election, and if at that date of such conviction he has been elected at any election, his seat shall be vacated from that date.

#### 4. Offences by election officers.

Any officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election who-

- (a) makes, in any record, return or other document which he is required to keep or make under such written law, any entry which he knows or has reasonable cause to believe to be false, or does not believe to be true;
- (b) permits any person whom he knows or has reasonable cause to believe not to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons;
- (c) refuses to permit any person whom he knows or has reasonable cause to believe to be a blind person or an incapacitated person to vote in the manner provided for blind persons or incapacitated persons;
- (d) wilfully prevents any person from voting at the polling station at which he knows or has reasonable cause to believe such person is entitled to vote;
- (e) wilfully rejects or refuses to count any ballot paper which he knows or has reasonable cause to believe is validly cast for any candidate in accordance with the provisions of such written law;
- (f) wilfully counts any ballot paper as being cast for any candidate, which he knows or has reasonable cause to believe was not validly cast for such candidate; or
- (g) is without reasonable cause guilty of any act or omission in breach of his official duty,

shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine and, subject to any specific provision to the contrary in any written law relating to any election, shall until the expiration of five years from such conviction be incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction.

Provided that nothing in this paragraph shall prevent the Election Commission from suspending the election officer from his duties upon the initiation of investigations into an offence under this section.

[Am. Act A1177]



#### **4A. Offence of promoting feelings of ill-will or hostility.**

- (1) Any person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, does any act or makes any statement with a view or with a tendency to promote feelings of ill-will, discontent or hostility between persons of the same race or different races or of the same class or different classes of the population of Malaysia in order to induce any elector or voter to vote or refrain from voting at an election or to procure or endeavour to procure the election of any person shall be liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both such imprisonment and fine.
- (2) Subject to any specific provision to the contrary in any written law relating to an election, any person who is convicted of an offence under this section shall, until the expiration of five years from such conviction, be incapable of being registered or listed as an elector or of voting at an election or of being elected at an election, and if at that date he has been elected at an election, his seat shall be vacated from the date of such conviction.

*[Ins. Act A1177]*

#### **5. Maintenance of secrecy at elections.**

- (1) Every officer, clerk, interpreter, candidate, agent and any other person (hereinafter in this section referred to as an "authorized person") authorized to attend any proceedings connected with the issue or receipt of postal ballot papers, or at a polling station, or at the counting of the votes, shall, before so attending make an oath of secrecy substantially in Form A in the First Schedule.
- (2) Every officer, clerk, interpreter, candidate, agent and authorized person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, but the total number of voters who have voted at any station at any time before the poll is closed may, in the discretion of the presiding officer, be divulged to a candidate or his agent or a police officer authorized to attend or on duty at the polling station.
- (3) No such officer, clerk, interpreter, candidate, agent, police officer or authorized person and no person whosoever shall attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number of the ballot paper given to any voter at such station.
- (4) Every officer, clerk, interpreter, candidate, agent, police officer and authorized person, in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting, and shall not attempt to communicate any information obtained at such counting as to the candidate for whom any vote is given by any particular ballot paper.
- (5) No person, except a presiding officer acting for a purpose authorized by any written law relating to any election or a person authorized by the presiding officer and acting for such purpose as aforesaid, shall communicate or attempt to communicate with any voter after such voter has received a ballot paper and before he has placed the same in a ballot box.

- (6) Every person attending any proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain, and aid in maintaining, the secrecy of the voting and shall not without lawful excuse-
- (a) communicate, before the poll is closed, to any person any information obtained at those proceedings as to any official perforation, stamp or mark to be used in connection with any ballot paper;
  - (b) communicate to any person at any time any information obtained at those proceedings as to the number of the ballot paper sent to any person;
  - (c) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on any ballot paper; or
  - (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.
- (7) Any person who contravenes any of the provisions of this section shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine.
- (8) Notwithstanding any of the above provisions of this section, every officer, clerk, interpreter, candidate, agent and authorized person in attendance at a polling station, may communicate amongst themselves any information obtained in a polling station, other than information on individual ballot papers, for the purposes of the proper and lawful discharge of their duties.

*[Subs. Act A1177]*

## **6. Offences against this Part.**

- (1) Every person who abets the commission of or attempts to commit an offence specified in this Part shall be liable, on conviction, to the punishment and disqualifications prescribed for that offence.
- [Am. Act A1177]*
- (2) Every offence under this Part shall be a seizable offence within the meaning of the Criminal Procedure Code *[Act 593]*.
- (3) In a prosecution for an offence in relation to a nomination paper, ballot box, ballot paper or marking instrument at an election, the property in such nomination paper, ballot box, ballot paper or marking instrument, as well as the property in the counterfoil of any ballot paper, may be stated to be in the returning officer at that election.
- (4) A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.
- (5) Within eight weeks from the publication of the results of the election, the Public Prosecutor shall prepare and submit a report to the Election Commission, the person or persons lodging the complaints of offences under this Act and all political parties, setting out the list and particulars of complaints of offences under this Act during the course of the election; stating



particulars of the offences for which he has given consent for prosecution and setting out the reasons for those offences which he has not given such consent..

### PART III

#### *CORRUPT PRACTICES*

##### **7. Personation.**

Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation.

##### **8. Treating.**

Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision shall be guilty of the offence of treating.

##### **9. Undue influence.**

(1) Every person who, before, during or after an an election, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right shall be guilty of the offence of undue influence.

*[Am. Act A1177]*

(2) A person shall be deemed to interfere with the free exercise of the electoral right of a person within the meaning of this section who induces or attempts to induce such person to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure.



## 10. Bribery.

The following persons shall be deemed guilty of the offence of bribery:

- (a) every person who, before, during or after an election, who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;

*[Am. Act A1177]*

- (b) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election;

*[Am. Act A1177]*

- (c) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election;

*[Am. Act A1177]*

- (d) every person who, either before, or during an election, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the election of any person, or the vote of any elector or voter at an election;

*[Am. Act A1177]*

- (e) every person who, either before, or during an election, advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;

*[Am. Act A1177]*

- (f) every elector or voter who, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;

(g) every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;

(h) every person who, after an election directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; and

[Am. Act A1177]

(i) every person who, either before, or during an election, directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

[Am. Act A1177]

## 11. Punishment and incapacities for corrupt practice.

(1) Every person who-

(a) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation;

(b) commits the offence of treating, undue influence or bribery;

(c) prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher;

(d) makes or publishes, before or during any election, for the purpose of affecting the return of any candidate, any false statement of fact in relation to the personal character or conduct of such candidate;

(e) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election; or

(f) being a candidate or election agent knowingly makes the declaration as to election expenses required by section 23 falsely,



shall be guilty of a corrupt practice, and shall, on conviction by a Sessions Court, be liable, in the case referred to in paragraphs (a) and (b), to imprisonment for a term not exceeding two years and to a fine of not less than one thousand ringgit and not more than five thousand ringgit, and, in any other case, to imprisonment for a term not exceeding one year and to a fine not exceeding two thousand ringgit. Offences under paragraphs (a) and (b) shall be seizable offences within the meaning of the Criminal Procedure Code.

[Am. Act A1177]

- (2) Every person who is convicted of a corrupt practice shall, subject to any specific provision to the contrary in any written law relating to any election, by conviction become incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction:

Provided that such disability shall cease on the expiry of five years from such conviction.

- (3) A prosecution for a corrupt practice except any corrupt practice as defined in paragraph (d) and (e) of subsection (1) shall not be instituted without the sanction of the Public Prosecutor.
- (4) Within eight weeks from the publication of the results of the election, the Public Prosecutor shall prepare and submit a report to the Election Commission, the person or persons lodging the complaints of offences under this Act and all political parties, setting out the list and particulars of complaints of offences under this Act during the course of the election; stating particulars of the offences for which he has given consent for prosecution and setting out the reasons for those offences which he has not given such consent.

[Am. Act A1177]

#### PART IV

##### *ELECTION AGENT, ELECTION EXPENSES AND ILLEGAL PRACTICES*

#### **12. Nomination of election agent.**

- (1) On or before the day of nomination at an election a person shall be named in writing by or on behalf of each candidate as his agent for such election.
- (2) A candidate may name himself as election agent, and thereupon shall, so far as circumstances admit, be subject to this Act, both as a candidate and as an election agent, and any reference in this Act to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.
- (3) On or before the day of nomination, the name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer, and the returning officer shall forthwith, by affixing a notice in a conspicuous place outside his office, give public notification of the name and address of every election agent so declared.



- (4) One election agent only shall be appointed for each candidate, but the appointment, whether the election agent appointed be the candidate himself or not, may be revoked and in the event of such revocation or of his death, whether such event is before, during or after the election, then forthwith another election agent shall be appointed, and his name and address declared in writing to the returning officer, who shall forthwith give public notice of the same in the manner aforesaid.
- (5) If no person's name and address has been declared as required by subsection (3), the candidate shall be deemed at that time to have named himself as election agent and to have revoked any appointment of another person as his election agent.
- (5A) Until the name and address of another election agent has been declared as required by subsection (4), the candidate shall be deemed, as from the time of the revocation of appointment or death of the election agent concerned, to have appointed himself as election agent.
- (6) Every election agent shall have, within the constituency in which he is an election agent, an office to which all claims, notices, writs, summonses and documents may be sent and the address of such office shall be declared at the same time as the appointment of the agent to the returning officer, and shall be stated in the public notification under subsection (3) with the name of the election agent and his address.
- (6A) Where a candidate is deemed under subsection (5) or (5A) to be his own election agent, his correspondence address, as stated in his nomination paper, shall be deemed for the purposes of subsection (6) to be the address of his office as election agent.

*[Am. Act A1177]*

### **13. Disqualification for appointment as election agent, etc.**

- (1) Subject to section 12 (2), a person is disqualified for being appointed as an election agent, polling agent or counting agent if-
  - (a) he is not a citizen;
  - (b) he is less than twenty-one years of age;
  - (c) he has, within the period of five years immediately preceding the day of nomination at the election, been convicted of any offence involving violence or dishonesty by a court of law in any part of Malaysia and has not received a free pardon;
  - (d) he has, within the period of five years immediately preceding the day of nomination at the election, been convicted of or been released from prison after serving a sentence of imprisonment for any offence under this Act;
  - (e) he is a person whose name is registered under the Prevention of Crime Act 1959 [*Act 297*];
  - (f) he has, within the period of five years immediately preceding the day of nomination at the election, been convicted of an offence under section 52 (3) of the Societies Act 1966 [*Act 335*], or the corresponding provision of any other law relating to societies in force, in the case of an election in Sabah and Sarawak, in any part of Malaysia, and in the case of an election in West Malaysia, in any part of Malaysia or the Republic of Singapore;

(g) he is a person in respect of whom an order has been made under section 66 (4) of the Societies Act 1966, or the corresponding provision of any other law relating to societies in force, in the case of an election in Sabah and Sarawak, in any part of Malaysia, and in the case of an election in West Malaysia, in any part of Malaysia or the Republic of Singapore; or

(h) he is an undischarged bankrupt.

(1A) In subsection (1) (c), (f) and (g), "part of Malaysia" means any place which is, or which at the date of the conviction or order therein mentioned was, a part of Malaysia.

(2) No officer, clerk, interpreter or other person having any duty to perform pursuant to any written law relating to any election shall be appointed as an election agent or act as an agent of a candidate in the conduct or management of any election

#### 14. Making of appointments and contracts through election agent.

(1) The election agent of a candidate shall at an election —

(a) appoint every polling agent, counting agent, technical advisor, clerk and messenger employed, whether for payment or not, on behalf of the candidate;

(b) hire every committee-room hired on behalf of the candidate;

(c) inform the presiding officer at each polling station in writing of the name and address of —

(i) the polling agent or agents appointed to act at that station; and

(ii) the counting agent or agents appointed to attend the counting of votes at that station; and

(d) inform the returning officer of the constituency or electoral ward concerned in writing of the name and address of the counting agent or agents appointed to attend the counting of the votes of postal voters and the official addition of votes.

*[Subs. Act A1177]*

(1A) Every polling agent or counting agent of a candidate appointed under subsection (1) shall act or be present at the polling station or shall attend the counting of votes at the polling station for at least two hours and his replacement shall only be admitted to that polling station on the expiration of the two-hour period.

*[Ins. Act A1177]*

(2) A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate at such election, unless made by the candidate himself or by his election agent:

Provided that inability under this section to enforce such contract against the candidate shall not relieve the candidate from the consequences of any corrupt or illegal practice committed by his agent.



**15. Payment of expenses through election agent.**

- (1) Except as permitted by or in pursuance of this Act, no payment and no advance or deposit shall be made by a candidate at an election, or by any agent on behalf of the candidate, or by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent of the candidate; and all money provided by any person, other than the candidate, for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, shall be paid to the candidate or his election agent and not otherwise:

Provided that this subsection shall not be deemed to apply to any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

- (2) A person who makes any payment, advance, or deposit in contravention of this section or pays in contravention of this section any money so provided as aforesaid shall be guilty of an illegal practice.

**15A. Prohibition of certain expenses during campaign period.**

*[Am. Act A1177]*

- (1) No expenses shall, with a view to promoting or procuring the election of a candidate, be incurred during the campaign period, by any person other than the candidate, his election agent and persons authorized in writing by the election agent on account -

*[Am. Act A1177]*

- (a) of holding, convening or organising any open public meeting, open public rally, open public display or open public entertainment or giving open public address or lecture;

*[Subs. Act A1177]*

- (b) of printing or issuing advertisements, circulars or publications; or

- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing, or disparaging another candidate:

Provided that this paragraph shall not-

- (i) restrict publication in a newspaper or other periodical of any matter relating to the election;
- (ii) apply to expenses incurred by any person in travelling or in living away from home, or to similar personal expenses.
- (2) Where a person incurs any expenses required to be authorized by an election agent under subsection (1), he shall within fourteen days after the date of publication of the result of the election in the *Gazette* send to the election agent a return, accompanied by a declaration made by him (or in the case of an association or body of persons, a director, general manager, secretary or other similar officer thereof) verifying the return and giving particulars of the matters for which the expenses were incurred:



Provided that this subsection shall not apply to any person engaged or employed for payment or promise of payment by the candidate or his election agent.

- (3) The expenses shown in the return referred to in subsection (2) shall be included in the return made by the election agent in accordance with section 23 (1), and the authority received from the election agent shall be annexed to and deemed to form part of such return.
- (4) Any person who incurs any expenses in contravention of this section, or who makes any declaration required by subsection (2) which is false and which he either knows or believes to be false or does not believe to be true, shall be guilty of an illegal practice.

**16. Period for sending in claims and making payments for election expenses.**

- (1) Every payment made by an election agent in respect of any expenses incurred on account of or in respect of the conduct and management of an election shall, except where less than ten ringgit or where, from the nature of the case, such as travel by rail or postage, a receipt is not obtainable, be vouched for by a bill stating the particulars and by a receipt.
- (2) Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election, which is not sent in to the election agent within the time limited by this Act, shall be barred and shall not be paid; and subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of this section shall be guilty of an illegal practice.
- (3) Except as by this Act permitted, the time limited by this Act for sending in claims shall be fourteen days after the date of publication of the result of the election in the *Gazette*.
- (4) All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, shall be paid within the time limited by this Act; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.
- (5) Except as by this Act permitted, the time limited by this Act for the payment of such expenses as aforesaid shall be twenty-eight days after the date of publication of the result of the election in the *Gazette*.
- (6) Where it has been proved to the satisfaction of the Election Judge by a candidate that any payment made by an election agent in contravention of this section was made without the sanction or connivance of such candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.
- (7) If the election agent in the case of any claim sent in to him within the time limited by this Act, disputes it, or refuses or fails to pay it within the said period of twenty-eight days, such claim shall be deemed to be a disputed claim.
- (8) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court; and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by this Act, and to be an exception from the provisions of this Act, requiring claims to be paid by the election agent.

- (9) On cause shown to the satisfaction of a Judge of the High Court, such Judge on application by the claimant or by the candidate or his election agent may, by order, give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims, or although the same was sent in to the candidate and not to the election agent.
- (10) Any sum specified in the order of leave may be paid by the candidate or his election agent; and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Act.

**17. Remuneration of election agent.**

So far as circumstances admit, this Act shall apply to a claim for his remuneration by an election agent and to the payment thereof in like manner as if he were any other creditor, and if any difference arises respecting the amount of such claim, the claim shall be a disputed claim within the meaning of this Act, and be dealt with accordingly.

**18. [Deleted by Act A 5].**

*[Deleted by Act A5]*

**19. Expenses in excess of maximum to be illegal practice.**

- (1) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election or by his election agent or persons authorized in writing by the election agent or by the political party he represents, after the date of publication of the notice of the election in the *Gazette*, during or after an election, on account of or in respect of the conduct or management of such election, in excess of-

(a) six hundred thousand ringgit in the case of an election to the Dewan Rakyat;

*[Am. Act A1177]*

(b) three hundred thousand ringgit in the case of an election to a Legislative Assembly;

*[Am. Act A1177]*

(c) ten thousand ringgit in the case of an election to a local authority other than a local council;

(d) three thousand ringgit in the case of an election to a local council:

Provided that paragraphs (c) and (d) shall have no application in Sabah and Sarawak.

- (1A) All expenses incurred by a candidate at an election or by his election agent or persons authorized in writing by the election agent, or by the political party he represents, shall be audited by an approved company auditor and shall be submitted to the Election Commission within 8 weeks of the publication of the result of the election in which he was a candidate in the *Gazette*.



- (2) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice.

**20. Certain expenditure to be illegal practice.**

- (1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made-
- (a) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles, vessels or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or
  - (b) to or with an elector or voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill or notice.
- (2) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this section, shall also be guilty of an illegal practice.
- (3) A person shall not let, lend, or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of electors or voters to and from the poll he shall be guilty of an illegal practice.
- (4) A person shall not hire, borrow, or use for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he knows the owner thereof is prohibited by subsection (3) to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal practice.
- (5) Nothing in subsection (3) or (4) shall prevent a vehicle, vessel or animal of transport of any kind being let to, or hired, employed, or used by an elector or voter or several electors or voters at their joint cost for the purpose of being conveyed to or from the poll.
- (6) Notwithstanding anything in the preceding provisions of this section-
- (a) where it is the ordinary business of an elector or voter as an advertising agent to exhibit for payment, bills and advertisements, a payment to or contract with such elector or voter, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section;
  - (b) where electors or voters are unable at an election to reach their polling stations from their place or residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying such electors or voters to their polling stations, or to enable them to cross the river in order to reach their polling stations, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by this Act:



Provided always that such means of conveyance shall be made available equally to all such electors or voters who wish to avail themselves thereof.

## **21. Certain employment to be illegal.**

(1) No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for the purpose or in the capacities following:

(a) one election agent and no more;

(b) not more than one polling agent at any one time for each polling area or polling district:

Provided that where more than one polling station is provided in any polling area or polling district, an additional polling agent may be employed in respect of each polling station; and

(c) a reasonable number of clerks and messengers having regard to the area of the constituency or electoral ward and the number of electors on the register or list of electors for such constituency or electoral ward.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of an illegal practice.

## **22. Saving for creditors.**

The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of expenses in excess of a certain maximum, shall not affect the right of any creditor, who when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

## **22A. Exemption from stamp duty.**

Any instrument made on oath or affirmation pursuant to section 5 or 23 in any form specified in the First Schedule shall be exempt from payment of stamp duty under any written law for the time being in force relating to stamp duties.

## **23. Return and declaration respecting election expenses.**

(1) Within thirty-one days after the date of publication of the result of an election in the *Gazette* every candidate at that election or his election agent shall deposit with the State Elections Officer a true return, in this Act referred to as the "return respecting election expenses," in Form B in the First Schedule, containing detailed statements as respects that candidate of-

[Am. Act A1177]

(a) [Deleted by Act A5];

(b) [Deleted by Act A5];

(c) the disputed claims so far as the candidate or his election agent is aware;

[Am. Act A1177]

- (d) all unpaid claims, if any, of which the candidate or his election agent is aware in respect of which application has been made or is about to be made to an Election Judge or Judge of the High Court;

[Am. Act A1177]

- (e) all money, securities and other valuable consideration received by or promised to the candidate or his election agent from or by any other candidate or person for the purpose of expenses incurred or to be incurred on account or in respect of the management of the election, naming every person from whom the sum may have been received or by whom such sum may have been promised, showing as to each sum whether it was received as contribution, loan, deposit or otherwise;

[Am. Act A1177]

- (f) the amount of expenses, if any, incurred by any person authorized by the candidate or his election agent under section 15A (1).

[Am. Act A1177]

- (2) The return respecting election expenses shall be signed by the candidate or his election agent and shall be accompanied by a statement made by the candidate and his election agent, which shall be respectively in Forms C and D in the First Schedule and shall be on oath before the Chairman or a member of the Election Commission, a Magistrate, a Justice of the Peace, a Commissioner for Oaths, or the State Elections Officer:

[Am. Act A1177]

Provided that where the candidate has named himself as election agent under section 12 (2) such statement shall be made only in Form C of the First Schedule.

- (3) If the said return and statements are not transmitted before the expiration of the time limited for the purpose, the candidate shall not after the expiration of such time sit or vote until either such return and statements have been transmitted or until the date of the allowance of such authorized excuse for failure to transmit the same as in this Act mentioned and if he sits or votes in contravention of this Act, he shall be liable on conviction, to a penalty of one thousand ringgit for every day on which he so sits or votes.

[Am. Act A1177]

- (4) If any candidate or election agent fails to comply with the requirements of subsection (1) or (2) he shall be guilty of an illegal practice and this section shall be in addition to and not in derogation of section 11.

#### **24. Publication of deposit of return, etc.**

- (1) When any return respecting election expenses and the statements made in respect thereof have been received by the State Elections Officer, he shall, as soon as may be, cause a notice of the date on which the return and statements in question were received by him and of the time and place at which they can be inspected to be fixed in some conspicuous place in his office and published in the *Gazette*.



- (2) The State Elections Officer shall preserve all such returns and statements with the bills and vouchers relating thereto and at all reasonable times during six months next after the publication in the *Gazette* of the notice mentioned in this section shall permit any person to inspect them and to make extracts therefrom on payment of a fee of ten ringgit and shall, on payment of two ringgit for each folio of one hundred words, supply a copy or copies of any part thereof; and after the expiration of the said period of six months the said documents may be destroyed or returned to the candidate if application for their return is made by the candidate before they are destroyed.

[Am. Act A1177]

**24A. Limitation of political propaganda on nomination day.**

- (1) No person shall, on nomination day or days —
- (a) furnish or supply any musical instrument or loud speaker to any person with intent that it shall be used by any person in any way or used in or upon any vessel, animal, motor car, truck or other vehicle; or
  - (b) use himself or use in or upon any vessel, animal, motor car, truck or other vehicle any such musical instrument or loud speaker, as, or for the purpose of, political propaganda.
- (2) No person shall, on nomination day or days, wait or loiter within a distance of fifty metres from the limit of any place of nomination.
- (3) Any person who contravenes any of the provisions of this section shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine.

[Ins. Act A1177]

**24B. Election campaign and limitation thereof.**

- (1) Subject to the provisions of this Act, a candidate or his election agent may hold election campaign during the campaign period.
- (2) A candidate or his election agent may, during the campaign period, open or establish or maintain offices in the constituency in which the candidate seeks election for purposes of his campaign at an election.
- (3) A candidate or his election agent may, during the campaign period —
- (a) hold, convene or organise any open public meeting, open public rally, open public display or open public entertainment; or
  - (b) give any open public address or open public lecture,
- in the constituency in which the candidate seeks election but only if he has given prior notice in writing to the police officer in charge of the district where the meeting, rally, display or entertainment is to be held or the address or lecture is to be given.



- (4) A candidate or his election agent may, during the campaign period, display, furnish or distribute election campaign materials to members of the public in the constituency in which the candidate seeks election but only if he —
- (a) holds a permit to do so issued to him by the State Elections Officer, subject to such terms and conditions as the State Elections Officer may determine; and
  - (b) has paid to the State Elections Officer a deposit of five thousand ringgit in the case of an election to the Dewan Rakyat and three thousand ringgit in the case of an election to a Legislative Assembly.
- (5) On receipt of a deposit under subsection (4), the State Elections Officer shall deal with the sum so paid in accordance with the current Government financial regulations.
- (6) Subject to the by-laws of any local authority, election campaign materials include any advertisement, leaflet, brochure, flag, ensign, banner, standard, poster, placard, handbill, label or any form of temporary billboard.

*Am. Act A1204 - Prior text read - "(6) Subject to the by-laws of any local authority, election campaign materials include any advertisement, leaflet, brochure, flag, ensign, banner, standard, poster, placard, handbill, label or any form of temporary billboard and the measurement for each*

- (a) leaflet or brochure shall not exceed three hundred square centimetres;*
- (b) flag, ensign, banner, standard, poster, placard, handbill or label shall not exceed three thousand square centimetres; and*
- (c) temporary billboard shall not exceed three metres in width and twelve metres in length."*

- (7) No person shall, during the campaign period, display or affix any election campaign material within a distance of fifty metres from the limits of any polling station.
- (8) Any election campaign material displayed or affixed shall be removed by a candidate or his election agent within fourteen days after polling day and if the candidate or his election agent fails to comply with this subsection —
- (a) the deposit paid pursuant to subsection (4) shall be forfeited and paid to the Federal Consolidated Funds; and
  - (b) the State Elections Officer shall cause all the materials to be removed within a reasonable time and the cost for the removal of such materials shall be paid out of the sum forfeited under paragraph (a).
- (9) Where the cost of removing the materials referred to in subsection (8)(b) exceeds the deposit forfeited under subsection (8)(a), the difference shall be a debt due from the candidate to the Federal Government and may be recovered from the candidate accordingly.
- (10) Any person who contravenes subsection (3), (4) or (7) shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit or to both such imprisonment and fine.

- (11) An offence under this section shall be a seizable offence within the meaning of the Criminal Procedure Code.

[Ins. Act A1177]

**25. Employers to allow employees reasonable period for voting.**

- (1) Every employer shall, on polling day, allow to every elector in his employ a reasonable period for voting, and no employer shall make any deduction from the pay or other remuneration of any such elector or impose upon or exact from him any penalty by reason of his absence during such period.
- (2) This section shall extend to employees of the successor company as defined in section 2 of the Railways (Successor Company) Act 1991 [Act 464] and the Sabah Railway except such as are actually engaged in the running of trains and to whom such time cannot be allowed without interfering with the manning of the trains; and the General Manager, shall, in each case, be deemed to be the employer of such employees.
- (3) Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other manner, interferes with the granting to any elector in his employ, of a reasonable period for voting, as in this section provided, shall on summary conviction be liable to a fine of five thousand ringgit or to imprisonment for one year.

[Am. Act A1177]

- (4) This section shall not extend to such categories of employees as the Election Commission may from time to time by notification in the *Gazette* designate.
- (5) This section shall be binding on the Government of Malaysia and the Government of each State.
- (6) In this section, "employer " has the same meaning as in the Employment Act 1955

[Ins. Act A1177]

**26. Limitation on polling day.**

- (1) No person shall on polling day —
- (a) hold, convene or organise in any place any form of meeting, rally, display or entertainment or give any form of address or lecture whether or not such meeting, rally, display, entertainment, address or lecture is open to or involves members of the public or otherwise;
- (b) furnish or supply any musical instrument or loud speaker to any person with intent that it shall be used by any person in any way or used in or upon any vessel, animal, motor car, truck or other vehicle as, or for the purpose of, political propaganda or use himself or use in or upon any vessel, animal, motorcar, truck or other vehicle any such musical instrument or loud speaker;
- (c) open or establish or maintain an office or a booth within the constituency in which a candidate seeks election for any purpose connected with an election other than the



offices opened or established or maintained pursuant to section 24B(2) or committee-room hired pursuant to section 14(1)(b);

- (d) use any dwelling house, shop house, hut, hall or any premises as an office or a centre of any political party in the constituency;
- (e) within a distance of fifty metres from the limits of any polling station —
  - (i) endeavour to establish the identity of any person entering a polling station;
  - (ii) check on any list the name of any person entering or leaving a polling station;
  - (iii) solicit or persuade or attempt to persuade any person to abstain from voting at the election, or to vote or to abstain from voting for any candidate at the election;
  - (iv) wait or loiter except for the purpose of gaining entry to the polling station to cast his vote but nothing in this paragraph shall prevent the proper officer or any person authorized by the proper officer from carrying out his duties in relation to the conduct of an election;

*[Am. Act A1204]*

- (f) on behalf of any candidate, canvass for the votes of electors in any constituency for or against any candidate or political party at an election by whatever means including visiting electors at their homes or places of work or interviewing members of the public; or

*[Am. Act A1204]*

- (g) within a distance of fifty metres from the limits of any polling station and in a polling station wear, hold or carry any form or type of clothing, head covering, ornament, rosette, water bottle or umbrella on which the name of a candidate or the name, emblem or symbol of any political party is printed or imprinted.

*[Ins. Act A1204]*

- (2) Any person who contravenes any of the provisions of subsection (1) shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine.
- (3) An offence under subsection (1) shall be a seizable offence within the meaning of the Criminal Procedure Code.

*[Subs. Act A1177]*

#### **26A. Booth to be provided by Election Commission.**

- (1) The Election Commission shall, on polling day, provide such number of booths for each polling centre which shall be situated at such places as is necessary for the fair and proper conduct of elections and such booth shall be located at the main entrance of the polling centre for the purpose of assisting electors to ascertain their electoral numbers in the electoral roll. (1A) Each booth shall be equipped with an electronic card

reader which shall be used to validate the electors' identification documents issued by the National Registration Department.

(1B) Every elector at the booth shall produce his identification documents issued by the National Registration Department for inspection and validation at the booth. Any elector producing a temporary identification document issued by the National Registration Department shall be required to complete Form 11 as specified in Elections (Registration of Electors) Regulations 2002 ("Form 11") and also subject himself to have his photograph taken, which shall then be affixed to the completed Form 11 to be thereafter submitted to the presiding officer in the polling station and a copy of the duly completed Form 11 with the attached photograph shall be made available to the polling agent in the polling station.

- (2) The election agent of a candidate shall appoint not more than eight persons to act as booth observers on behalf of the candidate, and shall, before the opening of the poll inform the presiding officer at each polling station in writing of the name and address of the booth observers appointed to be present at the booths in respect of the polling station.
- (3) Every booth observer of a candidate appointed under subsection (2) shall be present at the booth for at least two hours and up three booth observers may be appointed to be present at any one time and his or their replacement shall only be admitted to the booth on the expiration of the two-hour period.

*[Subs. Act A1177]*

- (4) The election agent of a candidate, may appoint not more than four persons to act as technical advisers to furnish technical advisory services on behalf of the candidate, and shall before the opening of the poll inform the presiding officer at each polling station in writing of the name and address of the technical advisors appointed to be present at the booths in respect of the polling station.
- (5) Every booth observer and technical adviser shall be equipped with the necessary facilities for the discharge of their duties.

**26B. (Deleted).**

*[Deleted by Act A1177]*

**27. Punishment for conviction for illegal practice.**

- (1) Every person who commits an illegal practice shall, on conviction by a Sessions Court, be liable to a fine of five thousand ringgit and, subject to any specific provision to the contrary in any written law relating to any election, shall by conviction until the expiration of five years from such conviction become incapable of being registered or listed as an elector or of voting at any election under this Act or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction.



(2) A prosecution for an illegal practice shall not be instituted without the sanction of the Public Prosecution.

(3) Within eight weeks from the publication of the results of the election, the Public Prosecutor shall prepare and submit a report to the Election Commission, the person or persons lodging the complaints of offences under this Act and all political parties, setting out the list and particulars of complaints of offences under this Act during the course of the election; stating particulars of the offences for which he has given consent for prosecution and setting out the reasons for those offences which he has not given such consent..

*[Am. Act A1177]*

## PART IVA

### ENFORCEMENT TEAM

#### **27A. Interpretation in relation to this Part.**

In this Part, unless the context otherwise requires—

"area of control" , in relation to an enforcement team, means the area referred to in section 27D;

"candidate" includes an election agent of a candidate and any person appointed by a candidate or his election agent;

"political party's representative" means the representative of a political party taking part in the election, appointed by the candidate or his election agent to be a member of the enforcement team under section 27C (1)(d) and includes his replacement appointed under section 27F(4).

*[Ins. Act A1204]*

#### **27B. Establishment of enforcement team.**

The Election Commission may, if the Commission considers it necessary, establish an enforcement team or any number of enforcement teams for the purpose of monitoring and controlling the activities of the candidates during the campaign period until the expiration of the polling day.

*[Ins. Act A1204]*

#### **27C. Membership of the enforcement team.**

(1) An enforcement team shall consist of—

(a) an enforcement officer appointed under section 3(d) of the Elections Act 1958;

(b) a representative, who is not below the rank of Inspector, of the Commanding Officer of the police district in the area of control, or if the area of control covers more than one police district, of the Commanding Officer of each of the police districts;

- (c) a representative of the local authority in the area of control, or if the area of control covers more than one local authority area, of each of the local authorities; and
  - (d) political party's representative who is appointed by a candidate or his election agent in writing.
- (2) The enforcement officer referred to in subsection (1)(a) shall be the leader of the enforcement team.

*[Ins. Act A1204]*

**27D. Area of control of the enforcement team.**

An enforcement team shall perform its functions in the Parliamentary constituency for which the team is established, including the State constituencies within the Parliamentary constituency.

*[Ins. Act A1204]*

**27E. Functions of the enforcement team.**

The functions of the enforcement team are—

- (a) to patrol, and to monitor the activities of the candidates, in its area of control to ensure that written laws relating to elections are being complied with;
- (b) to bring down or cause to be brought down immediately any campaign material in its area of control which contravenes or does not comply with any written laws relating to elections;
- (c) to stop or cause to be stopped any open public address or lecture held in its area of control which contravenes or does not comply with any written laws relating to elections, and, if it is necessary to detain any person involved with the open public address or lecture, to request a police officer to detain such person; and
- (d) to control and coordinate the carrying out of any campaign activity specified in any written law relating to elections in its area of control.

*[Ins. Act A1204]*

**27F. Appointment of the representative of the political party.**

- (1) For the purpose of section 27C(d), a candidate or his election agent shall notify in writing the name of the political party's representative appointed by him or his election agent to the returning officer on nomination day.
- (2) Subject to subsection (4), the person appointed as the political party's representative shall remain as such representative throughout the campaign period until the expiration of the polling day.
- (3) The returning officer shall give a written notice to every political party's representative that has been appointed informing him to present himself at such time and such place as



are specified in the notice in order to carry out his duties as a member of the enforcement team.

- (4) If the person appointed to be a political party's representative dies, becomes ill or for any other reason is incapable of carrying out his duties as a member of the enforcement team, the candidate or his election agent may appoint another person to replace the first mentioned person as a political party's representative and shall immediately notify the name of the replacement to the returning officer.
- (5) If a political party's representative does not present himself at the time and place as are specified in the notice given by the returning officer under subsection (3), the enforcement team shall continue to perform its functions without the presence of such representative and any decision made by the members of the enforcement team who are present shall be deemed to have been agreed to by the member who is not present.

*[Ins. Act A1204]*

#### **27G. Decision of the enforcement team.**

- (1) Every decision or action to be taken by the enforcement team in the performance of its functions shall be by mutual agreement between all members of the enforcement team who are present.
- (2) If a mutual agreement between all members of the enforcement team who are present cannot be obtained, the leader of the enforcement team shall have the power to make any decision or to direct any action to be taken by the enforcement team.
- (3) Before making any decision or issuing any direction under subsection (2), the leader of the enforcement team shall previously obtain the advice of the State Elections Officer, or if the State Elections Officer is not available, of the returning officer.
- (4) A decision or direction of the leader of the enforcement team shall be final and binding upon all members of the enforcement team.
- (5) No decision or action to be taken by the enforcement team shall be questioned on the ground of any non-attendance of any member of the enforcement team.

*[Ins. Act A1204]*

#### **27H. Complaint to the returning officer.**

- (1) Subject to subsection (2), any person or political party may make any complaint on the activities of a candidate during the campaign period to the returning officer.
- (2) The returning officer shall direct the enforcement team to patrol the area in respect of which the complaint is made for the purpose of ensuring that written laws relating to elections are being complied with.

*[Ins. Act A1204]*

## PART V

### *EXCUSE FOR CORRUPT OR ILLEGAL PRACTICE*

#### **28. Report exonerating candidate in certain cases of corrupt and illegal practice by agents.**

Where, upon the trial of an election petition respecting an election, the Election Judge reports that a candidate of such election has been guilty by his agents of the offence of treating or undue influence or of any other corrupt or illegal practice in reference to such election, and the Election Judge further reports, after giving the Attorney General, or in the case of an election to the Legislative Assembly in Sabah and Sarawak, the State Attorney General, an opportunity of being heard, that the candidate has proved to the Court-

- (a) that no corrupt or illegal practice was committed at such election by the candidate or his election agent and the offences mentioned in the said report were committed contrary to the orders and without the sanction or connivance of such candidate or his election agent;
- (b) that such candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election;
- (c) that the offences mentioned in the said report were of a trivial, unimportant and limited character; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents,

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

#### **29. Power to except innocent act from being illegal practice, etc.**

Where, on application made, it is shown to an Election Judge or to a Judge of the High Court by such evidence as seems to the Judge sufficient-

- (a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Act, or of being payment, engagement, employment, or contract in contravention of this Act, or of otherwise being in contravention of any of the provisions of this Act, be, but for this section, an illegal practice; and
- (b) that any such act or omission arose from inadvertence or from accidental miscalculations or from some other reasonable cause of a like nature, and, in any case, did not arise from any want of good faith,

and in the circumstances it seems to the Judge, after giving the candidates, the returning officer, and any elector within the constituency or electoral ward an opportunity of being heard, to be just that the candidate in question and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Judge may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent or



person shall not be subject to any of the consequences under this Act of the said act or omission.

**30. Authorized excuse for non-compliance with provisions as to return and declaration respecting election expenses.**

(1) Where the return and statements respecting election expenses of a candidate at an election have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then-

(a) if the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit such return and declarations, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, negligence or misconduct of his election agent or of any clerk or officer of such agent, or by reason of inadvertence or any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or

(b) if the election agent of the candidate applies to an Election Judge or a Judge of the High Court and shows that the failure to transmit the return and statements which he was required to transmit, or any part thereof, or any error or false statement therein, arose by reason of his illness, or of the death, illness, negligence or misconduct of any prior election agent of the candidate, or of the absence, death, illness or misconduct of any clerk, or officer of an election agent of the candidate, or by reason of inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant,

the Judge may, after such notice of the application, and on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as to the Judge seems fit, and after giving the other candidates, the State Elections Officer and any elector within the constituency or electoral ward an opportunity of being heard, make such order for allowing an authorized excuse for the failure to transmit such return and statements, or for an error or false statement in such return and statements, as to the Judge seems just.

(2) Where it appears to the Judge that any person, being or having been election agent, has refused or failed to make such return or supply such particulars as will enable the candidate and his election agent, respectively, to comply with the provisions of this Act as to the return and statements respecting election expenses, the Judge before making an order allowing the excuse as in this section mentioned shall order such person to attend before the Judge, and shall, unless he attends and shows cause to the contrary, order him to make the return and statements, or to deliver a statement of the particulars required to be contained in the return, as to the Judge seems just, and to make or deliver the same within such time and to such person and in such manner as the Judge may direct, or may order him to be examined with respect to such particulars, and, in default of compliance with any such order, such person shall be guilty of an illegal practice.

(3) The order may make the allowance conditional upon the making of the return and statements in a modified form or within an extended time, and upon the compliance with such other terms as to the Judge seems best calculated for carrying into effect the objects of this Act, and an order allowing an authorized excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the Judge that any act or omission of the election agent in relation to the return and statements respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all

reasonable means for preventing such act or omission, the Judge shall relieve the candidate from the consequences of such act or omission on the part of his election agent.

- (4) The date of the order, or, if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

**30A. Period for making application for excuse.**

An application for an authorized excuse under section 30 shall be made before the expiration of the period of thirty-one days that is specified in section 23 and a copy of the application shall be served on the State Elections Officer.

*[Ins. Act A1204]*

**PART VI**

**GROUNDS FOR AVOIDING ELECTIONS**

**31. Avoidance by conviction of candidate.**

- (1) The election of a candidate at any election is avoided by his conviction for any corrupt or illegal practice at such election.

*[Am. Act A1177]*

- (2) Within fourteen days of the conviction by a Sessions Court of a candidate for any corrupt or illegal practice at an election, the Sessions Court Judge or the Registrar of the Sessions Court shall certify the Court's determination —

(a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, a local authority under the jurisdiction of the Federal Government or of any other election that the Election Commission may be authorized to conduct; or

(b) in the case of any other election, to the State Authority.

*[Ins. Act A1177]*

**32. Avoidance of election on election petition.**

The election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:

*[Am. Act A1177]*

- (a) that general bribery, general treating or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;

*[Am. Act A1177]*

- (b) non-compliance with the provisions of any written law relating to the conduct of any election if it appears that the election was not conducted in accordance with the principles



laid down in such written law and that such non-compliance affected the result of the election;

*[Am. Act A1177]*

- (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate;
- (d) that the candidate personally engaged a person as his election agent, or as a canvasser or agent, knowing that such person had within seven years previous to such engagement been convicted or found guilty of a corrupt practice by a Sessions Court, or by the report of an Election Judge; or
- (e) that the candidate was at the time of his election a person disqualified for election.

## PART VII

### *ELECTION PETITIONS*

#### **33. Appointment and powers of Election Judge.**

- (1) Every election petition shall be tried by the Chief Judge or by a Judge of any High Court nominated by the Chief Judge for the purpose:

Provided that the Chief Judge shall not nominate a Judge of a High Court of which he is not Chief Judge without consulting the Chief Judge of that High Court.

- (2) Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and shall be subject to the same penalties for the giving of false evidence.
- (3) On the trial of an election petition under this Act the Election Judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The Election Judge may examine any witness so compelled to attend or any person in Court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by the Election Judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.
- (4) Unless otherwise ordered by the Chief Judge, all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the High Court whose decision shall be final.

#### **34. Who may present petition.**

An election petition may be presented to the High Court by any one or more of the following persons:

- (a) some person who voted or had a right to vote at the election to which the petition relates;
- (b) some person claiming to have had a right to be returned or elected at such election; or

(c) some person alleging himself to have been a candidate at such election.

### **35. Relief which may be claimed.**

All or any of the following reliefs to which the petitioner may be entitled may be claimed in an election petition:

- (a) a declaration that the election is void;
- (b) a declaration that the person was not duly elected or ought not to have been returned;
- (c) *[Deleted by Act A1177]*
- (d) where the seat is claimed for an unsuccessful candidate on the ground that he had a majority of lawful votes, a scrutiny.

### **35A. Time for completion of trial of election petition.**

The trial of every election petition shall be completed not later than six months from the date of the presentation of the election petition.

*[Ins. Act A1177]*

### **36. Determination of Election Judge.**

- (1) At the conclusion of the trial of an election petition, the Election Judge shall —
  - (a) determine whether the candidate whose return or election is complained of was duly returned or elected or whether the election is void; and
  - (b) pronounce such determination in open court.
- (2) The Election Judge shall within fourteen days of making his determination under subsection (1) certify his determination —
  - (a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, a local authority under the jurisdiction of the Federal Government or of any other election that the Election Commission may be authorized to conduct; or
  - (b) in the case of any other election, to the State Authority.

*[Subs. Act A1177]*

### **36A. Appeal.**

- (1) The petitioner or a candidate whose return or election is complained of may appeal against the determination of an Election Judge to the Federal Court.
- (2) Every appeal under this section shall be presented within fourteen days from the date of the determination of the Election Judge under section 36 and such appeal shall be presented in accordance with the rules of court applicable to appeals to the Federal Court.



- (3) The Registrar of the Federal Court shall, within fourteen days from the date of the decision of the Federal Court certify such decision —
- (a) to the Election Commission in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, a local authority under the jurisdiction of the Federal Government or of any other election that the Election Commission may be authorized to conduct; or
  - (b) in the case of any other election, to the State Authority.

*[Ins. Act A1177]*

**36B. Time for completion of hearing of appeal.**

Notwithstanding any other law to the contrary, an appeal against the determination of an Election Judge shall be heard and decided upon by the Federal Court within six months from the date of presentation of the appeal.

*[Ins. Act A1177]*

**36C. Effect of decision of Election Judge or Federal Court.**

At the end of the period specified in section 36A(2), if there is no appeal to the Federal Court, or upon the certificate being given under section 36A(3), if there is an appeal to the Federal Court, the determination of the Election Judge or the decision of the Federal Court, as the case may be, shall be final, and the return or election shall be confirmed or the election shall be void and in such case within thirty days from the end of such period or from the date the certificate is given, the Election Commission or the State Authority, as the case may be, shall give notice of election in the constituency or electoral ward concerned in accordance with the certificate given under section 36A(2) or (3).

*[Ins. Act A1177]*

**37. Report of Judge or Registrar as to corrupt or illegal practice.**

*[Am. Act A1177]*

- (1) At the conclusion of the trial of an election petition or of the hearing of an appeal against the determination of an Election Judge, the Election Judge or the Registrar of the Federal Court, as the case may be, shall also report in writing-

*[Am. Act A1177]*

- (a) to the Election Commission, in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, the municipal council of the federal capital or of any other election that the Election Commission may be authorized to conduct; or
- (b) in the case of any other election, to the State Authority-
  - (i) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by his agent, and the nature of such corrupt or illegal practice, if any; and

- (ii) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice.
- (2) Before any person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an Election Judge or the Registrar of the Federal Court under this section, the Election Judge or the Registrar of the Federal Court shall give such person the right to be represented by counsel and an opportunity of being heard and of giving and calling evidence to show why he should not be so reported;

[Am. Act A1177]

- (3) When an Election Judge or the Registrar of the Federal Court reports that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had been convicted of that practice and a person shall be subject to the same incapacities if he was a candidate at the election and the Election Judge or the Registrar of the Federal Court reports that such corrupt or illegal practice was committed with his knowledge and consent or by his agent.

[Am. Act A1177]

- (4) The Election Commission or the State Authority (as the case may be) shall cause a copy of such report to be published in the *Gazette*, and it shall be the duty of every registering officer forthwith to peruse the report and forthwith to delete from the register or list of electors assigned to him the name of every person appearing from the report to be incapable of voting at an election.

### 38. Time for presentation.

- (1) Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the *Gazette*:

Provided that-

- (a) an election petition questioning the return or the election upon the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since the date aforesaid by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act;
- (b) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects such illegal practice, be presented within the time following:
  - (i) at any time before the expiration of fourteen days immediately after the date of the publication in the *Gazette* of the notice required by section 24 as to the election expenses of the person whose election is questioned;
  - (ii) if the election petition specifically alleges a payment of money or other act to have been made or done since the said date by the person whose election is questioned or by an agent of the person or with the privity of the person or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition



may be presented at any time within twenty-eight days immediately after the date of such payment or other act.

- (2) An election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the High Court within the time within which an election petition questioning the return or the election upon that ground may be presented.
- (3) For the purposes of this section, where there is an authorized excuse for failing to make and transmit the return and statements respecting election expenses, the date of the allowance of the excuse or, if there was a failure in two or more particulars and the excuse was allowed at different times, the date of the allowance of the last excuse shall be substituted for the date of the publication of the notice mentioned in the proviso to subsection (1) (b).

### 39. Prohibition of disclosure of vote.

No elector who has voted at any election shall, in any proceeding to question the election, be required to state for whom he has voted.

### 40. Votes to be struck off at a scrutiny.

- (1) On a scrutiny at the trial of an election petition the following votes only shall be struck off:
    - (a) the vote of any person whose name was not on the register or list of electors assigned to the polling station at which the vote was recorded or who has not been authorized to vote at such station;
    - (b) the vote of any person whose vote was procured by bribery, treating, or undue influence;
    - (c) the vote of any person who committed or procured the commission of personation at the election;
    - (d) where the election was an ordinary election, the vote of any person proved to have voted at such ordinary election in more than one constituency or electoral ward;
    - (e) the vote of any person, who, by reason of a conviction of a corrupt or illegal practice or by reason of the report of an Election Judge, or the Registrar of the Federal Court or by reason of his conviction of an offence under section 3 was incapable of voting at the election; and
- [Am. Act A11770]*
- (f) votes given for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification, or when the disqualification or the facts causing it were notorious.
  - (2) The vote of a registered elector shall not, except in the case specified in subsection (1) (e), be struck off at a scrutiny by reason only of the voter not having been or not being qualified to have his name entered on the register or list of electors.

(3) *[Deleted by Act A1177]*

41. *[Deleted by Act A5];*

**42 Procedure and practice on election petitions.**

- (1) The procedure and practice on election petitions shall be regulated by the Election Petition Rules 1954 as provided for in the Second Schedule;

*[Am. Act A1177]*

- (2) When any matter is not expressly provided for in the Election Petition Rules 1954, the High Court Rules 1980 *[P.U.(A) 50/1980]* shall apply.

*[Subs. Act A1177]*

*(Note: All Forms and Schedules are retained unchanged)*

(end of this document)





## ELECTION COMMISSION ACT 1957 (REVISED - 1970)

An Act to make provision for the remuneration, privileges and protection of members of the Election Commission, for the punishment of offences in connection with the Election Commission, and for other matters connected with it.

[Peninsular Malaysia, Federal Territory of Putrajaya\*—31 August 1957, Ord. No. 76/1957; Sabah, Federal Territory of Labuan\*\* —20 May 1965, L.N. 202/1965; Sarawak—25 April 1966, P.U. 273/1966]

### 1. **Short title**

This Act may be cited as the Election Commission Act 1957.

### 2. **Remuneration**

(1) The remuneration of members of the Election Commission shall consist of the salary or fixed allowance, allowances and privileges prescribed in the Schedule.

(2) The salary or fixed allowance of each member of the Election Commission shall—

(a) commence from the date of his appointment;

(b) accrue from day to day; and

(c) be payable monthly on the last day of each month or on such other day as the Treasury may from time to time determine.

### 3. **Provision against double salary**

A person to whom salary is payable under this Act or for whose salary as the holder of any other office provision is made by any other written law shall be entitled to receive only one such salary, but if he is the holder of two or more offices in respect of which salary is so payable and there is a difference in the salaries payable in respect of those offices, the office in respect of which salary is payable to him shall be that in respect of which the highest salary is payable.

### 4. **Charge of salary**

The sum required for the remuneration payable under this Act shall be charged on the Consolidated Fund.

### 5. *[Deleted by Act A0000];*

### 6. **Protection of members**

Every member of the Election Commission shall have the like protection and privileges in case of any action or suit brought against him for any act done or omitted to be done by him when acting in the proper and lawful execution of his office as is by law given to a Magistrate acting in the execution of his office.

### 7. **Members, officers and servants of Commission deemed public servants**

Every member, officer and servant of the Election Commission shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].



**8. Giving false information to Commission**

Any person who, in connection with the exercise by the Election Commission of any of its functions, wilfully gives to the Commission or to any member thereof or to any person or body of persons appointed by the Commission to assist in the exercise of its functions any information which is false or misleading in any material particular shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**9. Unauthorized publication and disclosure of information**

(1) No member of the Election Commission nor any other person shall, without the written permission of the Yang di-Pertuan Agong, publish or disclose to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duty as a member in respect of any matter relating to the exercise by the Commission of any of its functions, and any person who knowingly acts in contravention of this subsection shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) If any person having possession of any information which to his knowledge has been disclosed in contravention of this section publishes or communicates the information to any person otherwise than for the purpose of a prosecution under this Act, he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

**10. Influencing or attempting to influence Commission**

Any person who, otherwise than in the course of his duty, directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Election Commission or any member thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding two years or to both:

Provided that nothing in this section shall prohibit any person from supplying any information or assistance upon formal request made by the Commission.

**11. Consent of Public Prosecutor to prosecutions**

1. A prosecution under this Act shall not be instituted except by or with the consent of the Public Prosecutor.

2. Within eight weeks from the publication of the results of the election, the Public Prosecutor shall prepare and submit a report to the Election Commission, the person or persons lodging the complaints of offences under this Act and all political parties, setting out the list and particulars of complaints of offences under this Act during the course of the election; stating particulars of the offences for which he has given consent for prosecution and setting out the reasons for those offences which he has not given such consent..

**12. Schedule may be amended by regulations**

The Yang di-Pertuan Agong may by regulations amend the Schedule.

## SCHEDULE

[Section 2]

1. SALARY:

Chairman RM12,523.75 per month

Deputy Chairman RM10,270.05 per month

[Am. P.U.(A)118/2010]

FIXED ALLOWANCE:

Members RM6,379.64 per month

[Am. P.U.(A) 416/2007]

ACTING ALLOWANCE:

- (a) In the event of the Deputy Chairman or any member performing the functions of the Chairman or Deputy Chairman during a period exceeding twenty-eight days, he shall be entitled to an acting allowance, equivalent to the difference between his salary or fixed allowance, as the case may be, and the salary of the position he is acting in.
- (b) The Deputy Chairman or any member who has been asked to perform the functions of the Chairman for the second or subsequent time shall be entitled to an acting allowance, if he performs the functions for a period exceeding fourteen days, including public holidays.

2. SUBSISTENCE ALLOWANCES (DOMESTIC):

(a) on outstation duty for a period of twenty-four hours and above:

Chairman equivalent to a member of the public service in Premier/Special Grade "A" and above on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003\* or as may be determined by the Treasury from time to time.

Deputy Chairman and members equivalent to a member of the public service in category I with a salary of RM4794.02 to Premier/Special Grade "B" on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 or as may be determined by the Treasury from time to time.

(b) equivalent to a member of the public service in category I with a salary of RM4794.02 to Premier/Special Grade "B" on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 or as may be determined by the Treasury from time to time.

3. HOTEL ACCOMMODATION EXPENSES AND LODGING (DOMESTIC):

Chairman equivalent to a member of the public service in Premier/Special Grade "A" and above on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 or as may be determined by the Treasury from time to time.



Deputy Chairman and members equivalent to a member of the public service in category I with a salary of RM4794.02 to Premier/Special Grade "B" on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 or as may be determined by the Treasury from time to time.

4. ALLOWANCE FOR TRAVELLING USING OWN VEHICLE: (travelling from house to office and vice versa excepted)

A member of the Commission using his own vehicle to carry out his official duty outside the headquarters is entitled to claim travelling allowance on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 and Treasury Circular No. 6 Of 2001 or as may be determined by the Treasury from time to time.

5. MEDICAL FACILITIES:

Free outpatient treatment for the Chairman, Deputy Chairman and members, their spouses and children but in case of hospitalization daily ward charges are payable according to rates chargeable for Division I officers except where hospitalization is as a result of injuries sustained in the course of duty. Where the Chairman, Deputy Chairman or member is a pensioner he may opt for the medical facilities available to pensioners. "Child" means any dependant child below 21 years of age of the Chairman, Deputy Chairman, or member, or any dependant child pursuing a first degree in an institution of higher learning and includes a child who is mentally retarded or physically handicapped in which case the age limit shall not apply. It shall also include a stepchild or a child adopted under any recognized law or custom.

6. LEAVE:

(a) Thirty days vacation leave in respect of each completed year of service with the Commission shall be granted;

(b) a member may carry forward the vacation leave which he is unable to finish on that particular year to the next succeeding year of his term of office; and

(c) a member may apply for special leave to perform the Haj on condition that he has not used this privilege while in the public service and subject to other terms and conditions as may be determined by the Government from time to time.

7. MONTHLY HOUSING ALLOWANCE:

Furnished Class "B" or "C" quarters shall be provided free of charge or if not living in quarters housing allowance at the following rates shall be payable:

Chairman RM2,500

[Am. P.U.(A) 118/2010]

Deputy Chairman RM1,600

[Am. P.U.(A) 118/2010]

Members RM900

8. GRATUITY:

A gratuity at the rate of 17.5%–12% Employees Provident Fund (EPF) contribution x number of completed months of service x the last month's basic salary after deducting the employer's contribution to the EPF shall be paid—

(a) on the expiry of the term of appointment of the member but where a member is appointed for more than one term he may opt either to be paid at the end of each term or until he has completed all the terms (in either case he is entitled to exemption from income tax only once); or

(b) to such of his dependants as may be determined by the Yang di-Pertuan Agong or if there are no dependants, to his personal representative, if he dies while holding office.

9. ADVANCE TO PURCHASE MOTOR VEHICLES:

(payable within the term of office of the member during which the advance is given on such terms and conditions as stipulated in the Treasury Circular or Circular Letter for Advance To Purchase Motor Vehicles for members of the public services or as may be determined by the Treasury from time to time).

Chairman and Deputy Chairman RM70,000

[Am. P.U.(A) 118/2010]

Members RM55,000

10. DRIVER'S ALLOWANCE:

Chairman and Deputy Chairman provided with a driver or if the driver employed is not from the public service, the salary is based on Grade R10 of the New Remuneration System.

[Am. P.U.(A) 118/2010]

Members equivalent to a member of the public service in category I with a salary of RM4794.02 to Special Grade "B" on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 or as may be determined by the Treasury from time to time.

[Am. P.U.(A) 118/2010]

11. AIR TRAVEL:

("domestic" means flights within and to and from Brunei, Kalimantan, Malaysia, Singapore and Thailand (from Phuket southwards).

Chairman, Deputy Chairman and members First Class (non-domestic and domestic)

12. MONTHLY ENTERTAINMENT ALLOWANCE:

Chairman RM5,000

Deputy Chairman RM3,050

[Am. P.U.(A) 118/2010]

Members RM800

13. OFFICIAL CAR:



The Chairman and Deputy Chairman shall be provided with an official car as may be determined by the Treasury from time to time.

14. TRAVELLING ELIGIBILITY WHEN REPORTING FOR DUTY:

A member of the Commission is entitled to—

- (a) claim air fare based on his eligibility when travelling to report for duty;
- (b) air fare for the spouse and any child under the age of 21 years old; and
- (c) transfer allowance to his home state when his term of office expires.

15. SUBSTITUTION ALLOWANCE:

A member of the Commission is entitled to substitution allowance when using his own car for carrying out official functions outside headquarters subject to terms and conditions as may be determined by the Treasury from time to time.

16. ADVANCE:

When carrying out official functions outside headquarters, a member of the Commission is entitled to an advance subject to the terms and conditions as may be determined by the Treasury from time to time.

17. MISCELLANEOUS EXPENSES:

When travelling to carry out official functions, the following miscellaneous expenses incurred shall be reimbursed:

- (a) telephone, telegram or postal charges incurred in respect of the official functions;
- (b) laundry expenses (to be supported by receipts) incurred during hotel stay of more than three days; and
- (c) parking, toll and ferry charges (to be supported by receipts).

18. HOUSE UPKEEP ALLOWANCE:

Chairman RM3,000 per year

[Am. P.U.(A) 118/2010]

Deputy Chairman RM2,000 per year

19. SERVANTS' ALLOWANCE:

Chairman RM1000 per month

[Am. P.U.(A) 118/2010]

Deputy Chairman RM500 per month

20. WATER AND ELECTRICITY CHARGES:

The Chairman shall be entitled to free water and electricity.

21. OFFICIAL DUTY OUTSIDE MALAYSIA:

(a) Subsistence Allowances

Chairman equivalent to a member of the public service in Premier/Special Grade "A" and above on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 and Treasury Circular No. 6 Of 2001 or as may be determined by the Treasury from time to time.

Deputy Chairman and members equivalent to a member of the public service in category I with a salary of RM4794.02 to Premier/ Special Grade "B" on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 and Treasury Circular No. 6 Of 2001 or as may be determined by the Treasury from time to time.

(b) Hotel Accommodation Expenses and Lodging

Chairman equivalent to a member of the public service in Premier/Special Grade "A" and above on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 and Treasury Circular No. 6 Of 2001 or as may be determined by the Treasury from time to time.

Deputy Chairman and members equivalent to a member of the public service in category I with a salary of RM4794.02 to Premier/ Special Grade "B" on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 and Treasury Circular No. 6 Of 2001 or as may be determined by the Treasury from time to time.

(c) Miscellaneous Expenses

When carrying out official duty outside Malaysia, a member of the Commission is entitled to claim miscellaneous expenses on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 or as may be determined by the Treasury from time to time.

(d) Warm Clothing Allowance

When required to carry out official duty in countries of temperate climate, a member of the Commission is eligible to claim Warm Clothing Allowance on such terms and conditions as stipulated in Treasury Circular No. 3 Of 2003 or as may be determined by the Treasury from time to time.

22. EX-GRATIA SCHEME FOR WORK DISASTER:

A member of the Commission involved in an accident or injured while on official duty is entitled to receive benefit on such terms and conditions as stipulated in Treasury Circular No. 7 Of 2001 or as may be determined by the Treasury from time to time.

**LIST OF AMENDMENTS.**

Amending law	Short title	<i>In force from</i>
L.N. 202/65	Modification of Laws (Election Commission) (Extension to Sabah) Order 1965	20.5.1965
L.N. 246/65	Corrigendum to L.N. 202/1965 17-6-1965	17.6.1965



P.U.273/66	Modification of Laws (Election Commission) (Extension to Sarawak) Order 1966	25.4.1966
Act A150	Election Commission (Amendment) Act 1972 1-1-1972	1.1.1972
Act A165	Election Commission (Amendment) Act 1973 1-1-1972	1.1.1972
Act A214	Election Commission (Amendment) (No. 2) Act 1973	31.8.1973
Act A469	Election Commission (Amendment) Act 1979 1-7-1977	1.7.1977
P.U.(A) 97/81	Election Commission (Amendment of Second Schedule) Regulations 1981	1.7.1980
Act A510	Election Commission (Amendment) Act 1981 1-7-1980	1.7.1980
Act A524	Election Commission (Amendment) Act 1981 15-5-1981	15.5.1981
P.U.(A) 314/81	Election Commission (Amendment of Schedule) Regulations 1981	15.5.1981
P.U.(A) 427/89	Election Commission (Amendment of Schedule) Regulations 1989	1.10.1988
P.U.(A) 79/92	Election Commission (Amendment of Schedule) Regulations 1992	Reg. 2(1): 1.1.1989 Reg. 3(1): 1.1.1992
P.U.(B) 501/94	National Language Act 1963/67	4.11.1994
P.U.(A) 331/96	Election Commission (Amendment of Schedule) Regulations 1996	1.1.1994
P.U.(A) 599/96	Election Commission (Amendment of Schedule) (No. 2) Regulations 1996	1.1.1995
P.U.(A) 231/98	Election Commission (Amendment of Schedule) Regulations 1998	19.6.1998
P.U.(A) 222/2000	Election Commission (Amendment of Schedule) Regulations 2000.	1.8.1999
P.U.(A) 408/2000	Election Commission (Amendment of Schedule)(No.2) Regulations 2000.	1.1.2000
P.U.(A) 243/2001	Election Commission (Amendment of Schedule) Regulations 2001	1.3.2001
P.U.(A) 163 /2002	Election Commission (Amendment of Schedule) Regulations 2002	1.1.2002
P.U.(A) 32/2003	Election Commission (Amendment of Schedule) Regulations 2003.	2.10.2002
P.U.(A) 229/2004	Election Commission (Amendment of Schedule) Regulations 2001 – Corrigendum	-
P.U.(A) 19/2005	Election Commission (Amendment of Schedule) Regulations 2005.	1.11.2002
P.U.(A) 24/2005	Election Commission (Amendment of Schedule)(No.2) Regulations 2005.	1.10.2003
P.U.(A) 416/2007	Election Commission (Amendment of Schedule) Regulations 2007.	1.7.2007
P. U. (A) 118/2010	Election Commission (Amendment of Schedule) Regulations 2010.	22.4.2010

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