

THE ELECTIONS (AMENDMENT) BILL, 2012

A Bill for

AN ACT of Parliament to amend the Elections Act, 2011

ENACTED by the Parliament of Kenya as follows—

1. This Act shall be cited as the Elections (Amendment) Act, 2012 and shall be deemed to have come into operation on 4th September, 2012.

Short title and commencement.

2. Section 5 of the Elections Act, 2011, in this Act referred to as the “principal Act,” is amended in subsection (1) by deleting the word “ninety” appearing in paragraph (a) and substituting therefor the word “sixty”.

Amendment of section 5 of No 4 of 2011.

3. Section 109 of the principal Act is amended by deleting the word “six” appearing in subsection (3) and substituting therefor the word “four”.

Amendment of section 109 of No 4 of 2011.

MEMORANDUM OF OBJECTS AND REASONS

This aim of this Bill is twofold;

Firstly, the Bill aims to amend Elections Act 2011 so as to reduce the period at which the registration of voters and revision of the register of voters terminates under the Act in the case of a general election or presidential election, from ninety to sixty days to the date of such election.

Secondly, the Bill seeks to reduce the limit on the period for approval by the National Assembly of draft regulations under the Act from six months preceding a general election to four months preceding a general election.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 3rd September, 2012.

A. H. MOHAMED,
Member of Parliament.

Section 5 of No 24 of 2011 which it is proposed to amend—

5. (1) Registration of voters and revision of the register of voters under this Act shall be carried out at all times except—

- (a) in the case of a general election or an election under Article 138(5) of the Constitution, between the date of commencement of the ninety day period immediately before the election and the date of such election;
- (b) in the case of a by-election, between the date of the declaration of the vacancy of the seat concerned and the date of such by-election; or
- (c) in any other case, between the date of the declaration of the vacancy of the seat concerned and the date of such election.

(2) Notwithstanding subsection (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area.

(3) Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.

(4) All applicants for registration under this section shall be registered in the appropriate register by the registration officer or any other officer authorised by the Commission.

(5) The registration officer or any other authorised officer referred to in subsection (3) shall, at such times as the Commission may direct, transmit the information relating to the registration of the voter to the Commission for inclusion in the Principal Register of voters.

Section 109 of No 24 of 2011 which it is proposed to amend—

109. (1) The Commission may make regulations generally for the better carrying out of the purposes and provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations to—

- (a) prescribe the manner in which registers of voters shall be compiled and the manner in which they shall be revised;
- (b) prescribe the procedure for registration and issuance of voters cards and provide for the progressive registration of Kenyan citizens living abroad;

- (c) to provide for the regulation of the process by which parties nominate candidates for elections;
- (d) to provide for the manner of nomination , allocation and re-allocation of special seats and mechanisms for resolving disputes arising out of such nomination, allocation and re-allocation;
- (e) prescribe the procedure for making and determining claims to be registered and objections to registration;
- (f) authorise any registration officer to consider or determine any application, claim, objection or appeal, to summon any person to appear before them and give evidence on oath, and to administer an oath for that purpose and to order the production of any document relevant to any issue which the officer is required to consider and determine;
- (g) provide for the division of constituencies into units for the purpose of the registration of voters;
- (h) prescribe the conditions under which elections may be held in accordance with the provisions of the Constitution, this Act or any other written law relating to elections;
- (i) prescribe the amount of the deposit to be paid by or on behalf of candidates at all elections and the circumstances in which the deposit may be forfeited;
- (j) provide for the appointment of officers to preside at polling stations;
- (k) prescribe the facilities to be provided at polling stations and the persons who may be admitted to polling stations;
- (l) prescribe the place and manner in which votes may be cast and the construction and scaling of ballot boxes and provide for the issue a ballot papers to voters;
- (m) provide for the manner in which, and the person by whom any question as to the identity of any person claiming the right to vote shall be determined;
- (n) provide for the manner in which a voter who is not able to read or write may vote or be assisted in voting;
- (o) provide for the manner in which a voter with special needs including a person with a disability may vote or be assisted in voting;

- (p) prescribe the procedure to be followed in the counting of votes and the circumstances in which votes may be rejected by a returning officers as being invalid;
- (q) prescribe conditions for the use of private motor vehicles, vessels or buildings at elections;
- (r) prescribe the facilities to be provided during the electoral process and in particular, for voting by electronic machines and the persons entitled so to vote and the circumstances in which persons may so vote;
- (s) provide for the allocation by the Commission, in a just and equitable manner of the use of state owned radio and television broadcasting services during any election period;
- (t) prescribe the procedure to be adopted by the public in making representations for the alteration of electoral area boundaries;
- (u) prescribe the forms which may be used under this Act and the fees in respect of anything to be done under this Act;
- (v) prescribe the procedure for advance voting for special categories including patients admitted in hospital, pastoralists, armed forces, elections officers and other citizens of Kenya providing essential services;
- (w) prescribe the procedure for voting for citizens residing outside Kenya;
- (x) provide for complaints resolution mechanisms and for the manner of settlement of electoral disputes.
- (y) provide for the conduct of election observers, the media, monitors and evaluators and organizations carrying out civic and voter education;
- (z) provide with reasonable grounds for the postponement of elections;
- (aa) provide for mechanisms for carrying out effective voter education;
- (bb) provide for the mode of declaration of the result of an election;
- (cc) prescribe the manner of enforcing the Electoral Code of Conduct; or
- (dd) provide for the conduct of campaigns during a referendum or an election;

- (ee) provide for the financing of campaigns during a referendum or an election;
- (ff) prescribe anything which is required to be prescribed or is necessary or desirable for the better giving effect to this Act.

(2) The power to make regulations conferred on the Commission under this Act shall be—

- (a) for the purpose and objective of giving effect to the Constitution and this Act;
- (b) limited to the nature and scope specifically stipulated in the Constitution and this Act; and
- (c) based on the general principles and standards contained in the Constitution and this Act.

(3) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly, at least six months preceding a general election.