

Malawi

Electoral Commission Act

Chapter 2:03

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Electoral Commission Act

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Malawi

Electoral Commission Act

Chapter 2:03

Commenced on 3 July 1998

[This is the version of this document from 2 November 2018.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

[Amended by [Electoral Commission \(Amendment\) Act, 2017 \(Act 32 of 2018\)](#) on 2 November 2018]

[11 of 1998; 16 of 2010; 11 of 2013]

An Act to make provision for the appointment of members of the Electoral Commission; for the establishment of a Secretariat for the Electoral Commission; and for matters incidental thereto and connected therewith

Part I – Preliminary

1. Short title

This Act may be cited as the Electoral Commission Act.

2. Interpretation

In this Act, unless the context otherwise requires, the several words and expressions used in this Act shall have the same meanings assigned to them in the Constitution and the Parliamentary and Presidential Elections Act and the following additional words shall have the following meaning—

"**Chairman**" means the Chairman of the Commission;

[definition of "Chairman" inserted by section 2 of [Act 32 of 2018](#)]

"**Chief Elections Officer**" means the Chief Elections Officer appointed under [section 12](#).

"**Commission**" means the Electoral Commission established under section 75(1) of the Constitution; and

[definition of "Commission" inserted by section 2 of [Act 32 of 2018](#)]

[Cap. 2:01]

Part II – Status and membership of the Commission

3. Legal personality and capacity of the Commission

The Commission shall be a body corporate with perpetual succession and a common seal and be capable of —

- (a) acquiring, holding and disposing of real and personal property;
- (b) suing and being sued in its own name; and
- (c) doing or performing all such acts and things as bodies corporate may by law do or perform.

4. Appointment of members of the Commission

- (1) The President shall, subject to section (75) of the Constitution and in accordance with subsections (2), (3) and (4), appoint suitably qualified persons to be members of the Commission on such terms and conditions as the Public Appointments Committee of Parliament shall determine.
- (2) Leaders of political parties represented in the National Assembly which secured more than one tenth of the national vote in election to that Parliament, shall submit to the President a maximum of three persons as the political parties nominees as members of the Commission provided that where the President notes that all nominees used for such adequate number as is required under subsection (3), are not qualified under the Constitution for this Act to hold office as a Commissioner, the President shall return the names to nominating political parties within a reasonable time and in any event before appointing the members of the Commission and the nominating political party shall resubmit a final list of nominees within seven days of receipt of such notification.
- (3) Upon receipt of the nominees, as provided under subsection (2), the President shall appoint members of the Commission from the nominees in proportion to the nominating political parties representation in the National Assembly as determined by the previous General Elections.
- (4) In the event a vacancy in the membership of the Commission before the expiry of the term of a commissioner, the President shall notify the political party that nominated the commissioner whose office has fallen vacant to submit a minimum of three names within 14 days of the notification and the President shall appoint a Commissioner from those names within a reasonable time, provided that provision to subsection (2), shall apply to this subsection *mutatis mutandis*.
- (5) The remuneration and any allowance of a member of a Commission, may not be reduced during his period of office without his consent, and may be increased at such intervals as the Public Appointments Committee of Parliament may determine.
- (6) Subject to the Constitution, a member of the Commission may be removed from office on the following grounds—
 - (a) incompetence;
 - (b) incapacity;
 - (c) bankruptcy; and
 - (d) where the member is so compromised to the extent that his or her ability to impartially exercise the duties of his or her office is seriously in question.

[section 4 substituted by section 3 of [Act 32 of 2018](#)]

5. Eligibility for appointment to the Commission

No person who is a candidate in any election or is a serving employee of the Commission shall be eligible to be appointed a member of the Commission or any of its committees.

6. Independence of the Commission

- (1) Every individual member and employee of the Commission shall perform the functions and exercise the powers provided for in this Act independently of the direction or interference of—
 - (a) any public office;
 - (b) any organ of the Government;
 - (c) any political party;
 - (d) any candidate; or

- (e) any person whosoever or organization whatsoever:

Provided that for the purpose only of accountability the Commission shall be answerable, and report directly, to the President on the overall fulfilment of the functions and powers of the Commission.

- (2) Upon assuming his office or immediately thereafter, every member of the Commission shall take an oath of office before the Chief Justice in the prescribed form.

7. Committees of the Commission

- (1) For the better carrying into effect of its functions, the Commission may establish such number of committees as it shall deem appropriate, to perform, subject to [section 9](#), any of its functions and carry out such other responsibilities as the Commission may direct.
- (2) A committee of the Commission may consist of either members of the Commission only or members of the Commission and such other suitably qualified persons as the Commission may deem fit.
- (3) The Commission shall appoint the chairman of each committee from only amongst the members of the Commission.
- (4) The provisions of this Act relating to meetings of the Commission shall apply *mutatis mutandis* to the meetings of its committees.
- (5) Every committee of the Commission shall act in accordance with any directions given to it in writing by the Commission.

Part III – Functions and powers of the Commission

8. Functions and powers of the Commission

- (1) In addition to the broad functions and powers conferred on the Commission by the Constitution and, subject to the Constitution, the Commission shall exercise general direction and supervision over the conduct of every election and, without prejudice to the generality of such functions and powers, it shall have the following further functions—
 - (a) to determine the number of constituencies or wards for the purposes of elections;
[paragraph (a) amended by section 4(a) of [Act 32 of 2018](#)]
 - (b) to undertake or the demarcation of boundaries of constituencies and wards;
[paragraph (b) amended by section 4(b)(i) and (ii) of [Act 32 of 2018](#)]
 - (c) any ward created in accordance with [section 8\(1\)\(c\)](#) repealed by this Act, shall continue to be in force, until re-demarcated in accordance with this section;
[paragraph (c) substituted by section 4(c) of [Act 32 of 2018](#)]

Provided that—

- (i) in the case of the City of Blantyre, the total number of wards shall not exceed thirty;
- (ii) in the case of the City of Lilongwe, the total number of wards shall not exceed thirty;
- (iii) in the case of the City of Mzuzu, the total number of wards shall not exceed fifteen;
- (iv) in the case of the City of Zomba, the total number of wards shall not exceed ten;

[11 of 2013]

- (v) in the case of Kasungu Municipal Council, the total number of wards shall not exceed ten;
[11 of 2013]
- (vi) in the case of Luchenza Municipal Council, the total number of wards shall not exceed eight;
[11 of 2013]
- (vii) in the case of Mangochi Town Council, the total number of wards shall not exceed ten; and
[11 of 2013]
- (viii) in all other cases, the number of wards shall not exceed two for each parliamentary constituency, and the Commission shall ensure that ward boundaries do not cross local authority boundaries;
[Cap. 22:02; 16 of 2010]
- (d) to organize and direct the registration of voters;
- (e) to devise and establish voters registers and ballot papers;
- (f) to print, distribute and take charge of ballot papers and voters registers;
- (g) to approve and procure ballot boxes;
- (h) to establish and operate polling stations;
- (i) to establish security conditions necessary for the conduct of every election in accordance with any written law governing elections;
- (j) to promote public awareness of electoral matters through the media and other appropriate and effective means and to conduct civic and voter education on such matters;
- (k) to promote and conduct research into electoral matters and into any matter pertaining to its functions and to publish the results of such research;
- (l) to perform the functions conferred upon it by or under any written law; and
- (m) to take measures and to do such other things as are necessary for conducting free and fair elections.

Provided that the Commission shall, when undertaking the demarcation of wards, ensure that ward boundaries do not cross into local authority boundaries.

[proviso inserted by section 4(d) of [Act 32 of 2018](#)]

- (2) For purposes of discharging the functions and exercising the powers conferred upon it by the Constitution, this Act or any other written law relating to elections, the Commission shall freely communicate with the Government and any political party or any candidate, person or organization.

[16 of 2010; 11 of 2013]

9. Delegation of powers and functions

The Commission may delegate to any of its committees, the Chief Elections Officer or other employee of the Commission all or any of its powers and functions.

10. Vacancy in the membership of the Commission

Subject to the Constitution and to [section 11](#) (3), any vacancy in the membership of the Commission shall not affect its decisions, the performance of its functions or the exercise of its powers under the Constitution, this Act or any other written law.

Part IV – Meetings of the Commission

11. Meetings of the Commission

- (1) The Commission shall meet at such place or places, and at such time or times as the Chairman may determine:

Provided that the Chairman shall convene a meeting within fourteen days of receipt by him of a request in writing signed by the majority of members of the Commission and specifying the purpose for which the meeting is to be convened.
- (2) The Chairman shall take all reasonable steps to ensure that every member of the Commission is given due and adequate notice of every meeting of the Commission.
- (3) The quorum at every meeting of the Commission shall be fifty-one *per centum* of the members of the Commission.
- (4) The Chairman shall preside at all meetings of the Commission. In the absence of the Chairman the members present and forming a quorum shall elect one of their number to preside over the meeting of the Commission.
- (5) At any meeting of the Commission, the decision of the Commission on any matter shall be that of the majority of the members of the Commission present and voting, and at all such meetings, the person presiding shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.
- (6) Subject to the Constitution and this Act, the Commission shall have power to regulate its own procedure by standing orders and the procedure of any of its committees and may vary, suspend or revoke any such standing orders.
- (7) The Chief Elections Officer or such other employee of the Commission as the Commission may designate shall be the secretary to the Commission or at the meetings of any of its committees.
- (8) Minutes of each meeting of the Commission or a committee of the Commission shall be kept by the secretary and shall be confirmed at the subsequent meeting of the Commission or committee, as the case may be.

Part V – Management

12. Appointment of Chief Elections Officer

- (1) The Commission shall appoint a suitably qualified person with relevant experience to be the Chief Elections Officer through an open, transparent and competitive process upon such terms and conditions as the Commission may determine;

[subsection (1) substituted by section 5(a) of [Act 32 of 2018](#)]
- (2) The Chief Elections Officer shall hold office for a period of five years and shall be eligible to be reappointed as Chief Elections Officer for a further period of five years.
- (3) The Chief Elections Officer shall be the Chief Executive Officer and Controlling Officer of the Commission and, subject to the general and specific directions of the Commission, be responsible

for the day to day management of the Commission and, in that regard be responsible and answerable only to the Commission.

[subsection (3) substituted by section 5(b) of [Act 32 of 2018](#)]

- (4) The Chief Elections Officer shall not divulge any information to any person or accept or seek instructions from any person in relation to his functions and duties or the functions or powers of the Commission or in relation to the conduct of any election.

13. Appointment of staff of the Commission

- (1) The Commission shall appoint such other professional, technical and administrative officers and support staff as the Commission may deem necessary, subject to such terms and conditions as the Commission shall, in its discretion, determine.
- (2) The Commission may pay to every person in its service, including the Chief Elections Officer, such remuneration and allowances and grant to every such person such fringe benefits as it may deem appropriate.
- (3) There may be seconded to the Commission such number of public officers as the Commission may arrange with the appropriate authority responsible for such public officers for such periods and on such terms and conditions as may be agreed between the Commission and the authority concerned.
- (4) For purposes of this Act, a public officer who is seconded to the Commission under subsection (3), shall be deemed to be an employee of the Commission and shall enjoy the same benefits and shall be required to comply with the Constitution, this Act and any other written law relating to elections and any instruction, orders and directions of the Commission in the same manner as an employee recruited directly by the Commission under this Act.
- (5) The Commission shall deploy persons in its service in such manner as it deems appropriate and shall, for each district, constituency, ward and polling station, designate a District Elections Officer, elections officers, assistant elections officers, returning officers, presiding officers, registration officers, polling officials and counting officers in such numbers as the Commission shall deem appropriate for purposes of conducting or supervising elections.
- (6) Upon assuming office, or immediately thereafter, every employee including the Chief Elections Officer shall take an oath of office in the prescribed form before a commissioner of oaths and, if there be no such form, in such form as the Commission shall determine.

14. Vacancy where employee becomes candidate in the elections

The office or post of an employee of the Commission shall automatically become vacant in the event that the employee becomes a candidate in any presidential, parliamentary or local government election.

Part VI – Financial provisions

15. Funds of the Commission

- (1) The funds of the Commission shall consist of—
 - (a) such sums as shall be appropriated by Parliament for purposes of the Commission;
 - (b) such sums or assets as may accrue to or vest in the Commission, whether in the course of the performance by the Commission of its functions or the exercise of its powers or otherwise;
 - (c) such sums or assets as may accrue to or vest in the Commission by way of grants, subsidies, bequests, donations, gifts and subscriptions, from the Government or any other person;
 - (d) such sums as are derived from the sale of any property, real or personal, by or on behalf of the Commission;

- (e) such sums as are received by the Commission by way of voluntary contributions; and
 - (f) such sums or assets as may be donated to the Commission by any foreign government, international agency or other external body of persons, corporate or unincorporate.
- (2) For the purposes of this section an “external body of persons”, means any body of persons, corporate or unincorporated, formed under or by virtue of the laws of any country other than Malawi.
- (3) The funds of the Commission shall exclusively be under the control of the Commission and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Commission and for no other purpose.

16. Books and other records of accounts, audit and reports of the Commission

- (1) The Commission shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Commission in accordance with acceptable principles of accounting.
- (2) The accounts of the Commission shall be audited annually by the Auditor General or by independent professional auditors appointed by the Commission in consultation with the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.
- (3) The Commission shall, as soon as practicable, but not later than six months after the end of the financial year of the Commission submit to the Minister and publish in the *Gazette* annual report on all the financial transactions of the Commission and on the work, activities and operations of the Commission.
- (4) The report referred to in subsection (3) shall include a balance sheet and an income and expenditure account, and shall be laid by the Minister before the National Assembly in accordance with the Finance and Audit Act.

[Cap. 37:01]

- (5) The Commission shall at all times comply with the provisions of the Finance and Audit Act.

[Cap. 37:01]

17. Holdings of funds of the Commission

- (1) All sums received for the purposes of the Commission shall be paid into one or more banking accounts at such bank or banks as the Commission may determine, and no amount shall be withdrawn therefrom except under the written authority of the Commission and by means of cheques signed by such persons as are authorized in that behalf by the Commission.
- (2) Any sums not immediately required for the purposes of the Commission may be invested in such manner as the Commission may, in its discretion, determine.

18. Financial year

The financial year of the Commission shall be the period of twelve months commencing on the 1st July of each year and ending on the 30th June of the following year:

Provided that the first financial year may be a period shorter or longer than twelve months as the Commission shall determine, but in any case not longer than eighteen months.

Part VII – Miscellaneous

19. Duty to co-operate

- (1) It shall be the duty of every relevant or competent public officer and public or private entity to co-operate with the Commission in its activities and to contribute towards the success of an election and not to do anything that might hinder such process.
- (2) It shall be the special duty of—
 - (a) all District Commissioners, in their respective districts, and all Clerks of local authorities, in their respective local authorities, to give the Commission and its officers the support and collaboration deemed by the Commission or its officers to be necessary for the execution of the activities connected with the conduct of an election; and
 - (b) officers-in-charge of police, in their respective areas of operation, to take all necessary measures for the maintenance of law and order and stability necessary for the conduct of an election and to protect and uphold the rights of all persons under any written law relating to elections.

20. Legal representation

The Commission may instruct the Attorney General or any legal practitioner to provide legal representation to the Commission in any court proceedings, including proceedings concerning appeals against its decisions on complaints about any aspect of the electoral process, or to provide general legal advice to the Commission.

21. Publicity

The Commission shall, in such manner as it shall consider appropriate, publish a notice for public information specifying—

- (a) the location of its principal office; and
- (b) its address or addresses, telephone numbers and other means of communication or contact with the Commission.

21A. Provision of voter education

The Commission shall establish mechanisms for the provision of continuous voter education, and cause to be prepared a voter education curriculum.

[section 21A inserted by section 6 of [Act 32 of 2018](#)]

21B. Accreditation by the Commission

A person shall not conduct voter education without being accredited by the Commission in accordance with this Act.

[section 21B inserted by section 6 of [Act 32 of 2018](#)]

21C. Accreditation to provide voter education

Any person, other than a registered political party, may apply to the Commission in the prescribed manner for accreditation to provide voter education to the general public for or in respect of any election.

[section 21C inserted by section 6 of [Act 32 of 2018](#)]

21D. Code of conduct for accredited voter education providers

The Commission shall, in consultation with the Minister, by notice, publish in the *Gazette*, a code of conduct for persons accredited to provide voter education for or in respect of an election.

[section 21D inserted by section 6 of [Act 32 of 2018](#)]

21E. Failure to comply with the code etc.

Where a person accredited to provide voter education fails to comply with the conditions of accreditation or the code of conduct specified in [section 21C](#), the Commission may, after having given the person the opportunity to be heard, cancel the accreditation concerned or suspend the accreditation until the conditions are met.

[section 21E inserted by section 6 of [Act 32 of 2018](#)]

22. Regulations

The Minister may, on the recommendation of the Commission, make regulations for the better carrying out of this Act.

Part VIII – Transitional provisions

23. Savings

- (1) Notwithstanding anything contained in this Act, any person who, at the commencement of this Act, is a member of the Commission shall continue as such member until the expiry of his term of office, or termination of his appointment, respectively.

[subsection (1) substituted by section 7 of [Act 32 of 2018](#)]

- (2) The validity of any legal proceedings commenced by or against the Commission and any thing done or action or decision taken or made by a court or the Commission or any of its employees prior to the commencement of this Act shall not be affected by this Act.

24. Transfer of assets, etc.

- (1) All property assets rights liabilities obligations agreements and other arrangements (other than arrangements with foreign Governments or other foreign donor agencies) existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Commission shall, upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Commission and shall become enforceable by or against the Commission to the same extent as they were enforceable by or against the Commission before the commencement of the Act.
- (2) Where the transfer of any property transferred to or vested in the Commission under subsection (1) is required by any written law to be registered, the Commission shall, within one year from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Commission or any person by way of registration fees, stamp or other duties—
 - (a) make such entries in the appropriate register as shall give effect to the transfer;
 - (b) where appropriate, issue to the Commission a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and

- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.